

A-Engrossed
House Bill 2259

Ordered by the House April 19
Including House Amendments dated April 19

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Water Resources Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Increases] **Eliminates sunset on current amounts of** certain fees charged by Water Resources Department. **Allows adjustment of fee amounts for inflation.**
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to fees charged by the Water Resources Department; creating new provisions; amending
3 ORS 536.050, 537.150, 537.153, 537.610, 537.620, 537.621 and 543A.120; repealing section 18,
4 chapter 819, Oregon Laws 2009; and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. Notwithstanding ORS 536.050, the fee for a limited license under ORS 537.143**
7 **to divert and use water for mining purposes is \$250 regardless of the number of diversion**
8 **points for the water.**

9 **SECTION 2.** ORS 536.050, as amended by section 12, chapter 819, Oregon Laws 2009, is
10 amended to read:

11 536.050. (1) The Water Resources Department may collect the following fees in advance:

12 (a) For examining an application for a permit:

13 (A) To appropriate water, except as provided under ORS 543.280 for an application for a hy-
14 droelectric project:

15 (i) A base fee of [*\$500*] **\$700** for an appropriation of water through a single use, point of diver-
16 sion or point of appropriation;

17 (ii) [*\$200*] **\$250** for the first second-foot or fraction thereof appropriated under the permit;

18 (iii) [*\$100*] **\$250** for each additional second-foot or fraction thereof appropriated under the permit;

19 (iv) [*\$200*] **\$250** for each additional use, point of diversion or point of appropriation included in
20 the application; [*and*]

21 (v) If appropriating stored water, [*\$20*] **\$25** for the first acre-foot or fraction thereof up to 20
22 acre-feet, plus \$1 for each additional acre-foot or fraction thereof[.]; **and**

23 **(vi) If appropriating ground water, in addition to any other fees, \$300 for each application**
24 **filed.**

25 (B) To store water under ORS 537.400 or 537.534 (4):

26 (i) A base fee of [*\$500*] **\$700**; [*and*]

27 (ii) [*\$20*] **\$25** for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each addi-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted.
New sections are in **boldfaced** type.

1 tional acre-foot or fraction thereof[.]; **and**

2 **(iii) \$100 for each additional storage location.**

3 (C) To exclusively appropriate stored water:

4 (i) A base fee of [~~\$250~~] **\$400**; and

5 (ii) [~~\$15~~] **\$25** for the first acre-foot or fraction thereof up to 10 acre-feet, plus \$1 for each addi-
6 tional acre-foot or fraction thereof.

7 [*(b) For recording a permit to appropriate or store water, \$300.*]

8 **(b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or**
9 **store water:**

10 **(A) A base fee of \$400 for recording the permit; and**

11 **(B) An additional fee of \$500 if the permit is issued pursuant to a final order that con-**
12 **tains provisions requested by the applicant for mitigating impacts to the proposed water**
13 **source.**

14 (c) For filing and recording the assignment or partial assignment of a water right application,
15 permit or license under ORS 537.220 or 537.635, [~~\$50~~] **\$75**.

16 (d) For copying records in the department, \$2 for the first page and 50 cents for each additional
17 page.

18 (e) For certifying copies, documents, records or maps, \$10 for each certificate.

19 (f) For a blueprint copy of any map or drawing, the actual cost of the work.

20 (g) For a computer-generated map, the actual cost of the work.

21 (h) For examining an application for approval of a change to an existing water right or permit:

22 (A) A base fee of [~~\$400~~] **\$900** for a change to a single water right or permit;

23 (B) [~~\$400~~] **\$700** for each additional type of change requested;

24 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
25 540.533, [~~\$200~~] **\$250** for each second-foot or fraction thereof requested beyond the first second-foot;
26 [*and*]

27 (D) [~~\$200~~] **\$400** for each additional water right or permit included in the application[.]; **and**

28 **(E) An additional fee of \$300 per application, if the application is for an additional point**
29 **of appropriation, a change in a point of appropriation or a change from surface water to**
30 **ground water or for substitution as described in ORS 540.524.**

31 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
32 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
33 point of diversion to allow for the appropriation of ground water or a change of a primary right to
34 a supplemental right under ORS 540.570, a base fee of [~~\$200~~] **\$600** for the first water right or permit,
35 plus [~~\$50~~] **\$200** for each additional water right or permit included in the application and:

36 (A) For nonirrigation uses, [~~\$80~~] **\$150** for each second-foot or fraction thereof requested beyond
37 the first second-foot; or

38 (B) For irrigation uses, [~~\$1~~] **\$2** per acre of land irrigated or, if the application and required map
39 are submitted to the department in a department-approved digital format, [~~25~~] **50** cents per acre of
40 land irrigated.

41 (j) For submitting a protest to the department[, ~~\$350~~.]:

42 **(A) \$600 if the protest is by a nonapplicant; and**

43 **(B) \$300 if the protest is by an applicant.**

44 (k) For filing an application for extension of time within which irrigation or other works shall
45 be completed or a water right perfected, [~~\$350~~] **\$500**.

1 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
2 Water Resources Commission.

3 (m) For filing, examining and certifying a petition under ORS 541.329, [~~\$250~~] **\$300** plus 10 cents
4 per acre of water involved in the application. For purposes of computing this fee, when any acreage
5 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
6 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
7 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
8 and certifying the petition.

9 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, [~~\$100~~] **\$150**.

10 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,
11 [~~\$250~~] **\$350**.

12 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
13 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
14 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, [~~\$10~~] **\$20**.

15 (q) For examining an application to store water under ORS 537.409:

16 (A) A base fee of [~~\$80~~] **\$300**; and

17 (B) [~~\$20~~] **\$25** for each acre-foot or fraction thereof.

18 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established
19 by the Water Resources Director under ORS 543A.410.

20 (s) For examining an application for a substitution made under ORS 540.524[, ~~\$280~~.]:

21 (A) **A base fee of \$630 for the first well substitution; and**

22 (B) **A fee of \$300 for each additional well substitution.**

23 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
24 537.500[, ~~\$700~~.]:

25 (A) **A base fee of \$850 for the first water right that is a part of the allocation; and**

26 (B) **An additional fee of \$300 for each water right that is a part of the allocation beyond**
27 **the first water right.**

28 (u) For submitting a water management and conservation plan pursuant to rules of the com-
29 mission:

30 (A) [~~\$250~~] **\$400**, if the plan is submitted by an agricultural water supplier;

31 (B) [~~\$500~~] **\$800**, if the plan is submitted by a municipal water supplier serving a population of
32 1,000 or fewer persons; or

33 (C) [~~\$1,000~~] **\$1,600**, if the plan is submitted by a municipal water supplier serving a population
34 of more than 1,000 persons.

35 (v) For examining a new application for an in-stream water right lease under ORS 537.348:

36 (A) [~~\$200~~] **\$400** for an application for a lease with four or more landowners or four or more
37 water rights; or

38 (B) [~~\$100~~] **\$250** for all other applications.

39 (w) For examining an application for an in-stream water right lease renewal, [~~\$50~~] **\$100**.

40 (x) **For submitting a claim of beneficial use under a permit or transfer having a priority**
41 **date of July 9, 1987, or later, \$150.**

42 (y) **For submitting a request no later than 60 days after cancellation of a permit under**
43 **ORS 537.260 to reinstate the permit, \$400.**

44 (z) **For submitting a request for a basin program exception under ORS 536.295, \$500.**

45 (2)(a) **The department may charge a dam owner an annual fee based upon the dam's**

1 **hazard rating as determined by the department. The fees the department may charge the**
2 **dam owner are:**

3 **(A) \$75 for a dam with a low hazard rating.**

4 **(B) \$150 for a dam with a significant hazard rating.**

5 **(C) \$500 for a dam with a high hazard rating.**

6 **(D) If the dam owner fails to pay an annual fee on or before six months after the billing**
7 **date, a late fee of \$100.**

8 **(b) If a dam owner fails to pay an annual fee or a late fee charged by the department,**
9 **the department may, after giving the dam owner notice by certified mail, place a lien on the**
10 **real property where the dam is located for the fees owed by the dam owner.**

11 [(2)] (3) Notwithstanding the fees established under subsection (1) of this section, the commission
12 may establish lower examination and permit fees by rule for:

13 (a) The right to appropriate water for a storage project of five acre-feet or less; or

14 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
15 outside of a riparian area, as that term is defined in ORS 541.890.

16 [(3)(a)] (4)(a) The director may refund all or part of a fee paid to the department under this
17 section if the director determines that a refund of the fee is appropriate in the interests of fairness
18 to the public or necessary to correct an error of the department.

19 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
20 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
21 Water Resources Commission establishes that all or part of a water right has not been canceled or
22 modified under ORS 540.610 to 540.650.

23 [(4)] (5) The director may waive all or part of a fee for a change to a water right permit under
24 ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an
25 allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

26 (a) Made pursuant to ORS 537.348;

27 (b) Necessary to complete a project funded under ORS 541.932; or

28 (c) Approved by the State Department of Fish and Wildlife as a change or allocation of con-
29 served water that will result in a net benefit to fish and wildlife habitat.

30 [(5)] (6) Notwithstanding the fees established pursuant to this section, the commission may adopt
31 by rule reduced fees for persons submitting materials to the department in a digital format approved
32 by the department.

33 [(6)] (7) All moneys received under this section, less any amounts refunded under subsection
34 [(3)] (4) of this section, shall be deposited in the Water Resources Department Water Right Operat-
35 ing Fund.

36 [(7)] (8) Notwithstanding subsection [(6)] (7) of this section, all fees received by the department
37 for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hy-
38 droelectric Fund established by ORS 536.015.

39 **SECTION 3.** ORS 537.150, as amended by section 13, chapter 819, Oregon Laws 2009, is
40 amended to read:

41 537.150. (1) Within 15 days after receiving an application, the Water Resources Department shall
42 determine whether the application contains the information listed under ORS 537.140 (1) and is
43 complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the
44 department determines that the application is incomplete or defective or that not all fees have been
45 paid, the department shall return the fees paid and the application.

1 (2) Upon determining that an application contains the information listed under ORS 537.140 (1)
2 and is complete and not defective, the department shall indorse on the application the date upon
3 which the application was received at the department, which shall be the priority date for any water
4 right issued in response to the application. All applications that comply with the provisions of law
5 shall be recorded in a suitable book kept for that purpose.

6 (3) If an application is complete and not defective, the department shall determine whether the
7 proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter
8 538, the department shall reject the application and return all fees to the applicant with an expla-
9 nation of the statutory prohibition.

10 (4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake
11 an initial review of the application and make a preliminary determination of:

12 (a) Whether the proposed use is restricted or limited by statute or rule;

13 (b) The extent to which water is available from the proposed source during the times and in the
14 amounts requested; and

15 (c) Any other issue the department identifies as a result of the initial review that may preclude
16 approval of or restrict the proposed use.

17 (5) Upon completion of the initial review and no later than 30 days after determining an appli-
18 cation to be complete and not defective as described in subsection (1) of this section, the department
19 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the
20 date of mailing within which to notify the department to stop processing the application or to pro-
21 ceed with the application. If the applicant notifies the department to stop processing the application,
22 the department shall return the application and all fees paid in excess of [~~\$150~~] **\$200**. If the depart-
23 ment receives no timely response from the applicant, the department shall proceed with the appli-
24 cation.

25 (6) Within seven days after proceeding with the application under subsection (5) of this section,
26 the department shall give public notice of the application in the weekly notice published by the de-
27 partment. The notice shall include a request for comments on the application and information per-
28 taining to how an interested person may obtain future notices about the application and a copy of
29 the proposed final order.

30 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-
31 ested in the application shall submit written comments to the department. Any person who asks to
32 receive a copy of the department's proposed final order shall submit to the department the fee re-
33 quired under ORS 536.050 (1).

34 **SECTION 4.** ORS 537.153, as amended by section 14, chapter 819, Oregon Laws 2009, is
35 amended to read:

36 537.153. (1) Within 60 days after the Water Resources Department proceeds with the application
37 under ORS 537.150 (5), the department shall complete application review and issue a proposed final
38 order approving or denying the application or approving the application with modifications or con-
39 ditions. The department may request the applicant to provide additional information needed to
40 complete the review. If the department requests additional information, the request shall be specific
41 and shall be sent to the applicant by registered mail. The department shall specify a date by which
42 the information must be returned, which shall be not less than 10 days after the department mails
43 the request to the applicant. If the department does not receive the information or a request for a
44 time extension under ORS 537.175 by the date specified in the request, the department may reject
45 the application and may refund fees in accordance with ORS 536.050 [~~(3)(a)~~] **(4)(a)**. The time period

1 specified by the department in a request for additional information shall allow the department to
2 comply with the 60-day time limit established by this subsection.

3 (2) In reviewing the application under subsection (1) of this section, the department shall pre-
4 sume that a proposed use will not impair or be detrimental to the public interest if the proposed
5 use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or
6 given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure
7 other water rights and if the proposed use complies with rules of the Water Resources Commission.
8 This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that
9 either:

10 (a) One or more of the criteria for establishing the presumption are not satisfied; or

11 (b) The proposed use will impair or be detrimental to the public interest as demonstrated in
12 comments, in a protest under subsection (6) of this section or in a finding of the department that
13 shows:

14 (A) The specific public interest under ORS 537.170 (8) that would be impaired or detrimentally
15 affected; and

16 (B) Specifically how the identified public interest would be impaired or detrimentally affected.

17 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include
18 but need not be limited to:

19 (a) Confirmation or modification of the preliminary determinations made in the initial review;

20 (b) A brief statement that explains the criteria considered relevant to the decision, including the
21 applicable basin program and the compatibility of the proposed use with applicable land use plans;

22 (c) An assessment of water availability and the amount of water necessary for the proposed use;

23 (d) An assessment of whether the proposed use would result in injury to existing water rights;

24 (e) An assessment of whether the proposed use would impair or be detrimental to the public
25 interest as provided in ORS 537.170;

26 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-
27 cation;

28 (g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental
29 to the public interest has been established; and

30 (h) The date by which protests to the proposed final order must be received by the department.

31 (4) The department shall mail copies of the proposed final order to the applicant and to persons
32 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also
33 shall publish notice of the proposed final order by publication in the weekly notice published by the
34 department.

35 (5) Any person who supports a proposed final order may request standing for purposes of par-
36 ticipating in any contested case proceeding on the proposed final order or for judicial review of a
37 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-
38 lished under ORS 536.050 (1)(n).

39 (6) Any person may submit a protest against a proposed final order. A protest shall be in writing
40 and shall include:

41 (a) The name, address and telephone number of the protestant;

42 (b) A description of the protestant's interest in the proposed final order and, if the protestant
43 claims to represent the public interest, a precise statement of the public interest represented;

44 (c) A detailed description of how the action proposed in the proposed final order would impair
45 or be detrimental to the protestant's interest;

1 (d) A detailed description of how the proposed final order is in error or deficient and how to
2 correct the alleged error or deficiency;

3 (e) Any citation of legal authority supporting the protest, if known; and

4 (f) [*For persons other than the applicant,*] The protest fee required under ORS 536.050.

5 (7) Requests for standing and protests on the proposed final order shall be submitted within 45
6 days after publication of the notice of the proposed final order in the weekly notice published by the
7 department. Any person who asks to receive a copy of the department's final order shall submit to
8 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested
9 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the
10 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS
11 536.050 (1)(n).

12 (8) Within 60 days after the close of the period for receiving protests, the Water Resources Di-
13 rector shall:

14 (a) Issue a final order as provided under ORS 537.170 (6); or

15 (b) Schedule a contested case hearing if a protest has been submitted and if:

16 (A) Upon review of the issues, the director finds that there are significant disputes related to
17 the proposed use of water; or

18 (B) Within 30 days after the close of the period for submitting protests, the applicant requests
19 a contested case hearing.

20 **SECTION 5.** ORS 537.610, as amended by section 15, chapter 819, Oregon Laws 2009, is
21 amended to read:

22 537.610. (1) The Water Resources Commission shall accept all registration statements referred
23 to in ORS 537.605 completed and returned to the commission in proper form, endorse on the regis-
24 tration statement the date of the return and record each statement. Upon recording the statement,
25 the commission shall issue to the registrant a certificate as evidence that the registration is com-
26 pleted.

27 (2) The issuance of the certificate of registration serves as prima facie evidence that the regis-
28 trant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent
29 and in the manner disclosed in the recorded registration statement and in the certificate of regis-
30 tration.

31 (3) A certificate of registration issued under this section may not be construed as a final de-
32 termination of any matter stated in the certificate of registration. The right of the registrant to
33 appropriate ground water under a certificate of registration is subject to determination under ORS
34 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right cer-
35 tificate issued. A right to appropriate ground water under a certificate of registration has a tenta-
36 tive priority from the date when the construction of the well was begun.

37 (4) The commission shall adopt by rule the process and standards by which the commission will
38 recognize changes in the place of use, type of use or point of appropriation for claims to appropriate
39 ground water registered under this section. The commission shall adopt fees not to exceed [~~\$500~~]
40 **\$1,125** for actions taken to modify a certificate of registration.

41 **SECTION 6.** ORS 537.620, as amended by section 16, chapter 819, Oregon Laws 2009, is
42 amended to read:

43 537.620. (1) The Water Resources Department shall accept all applications for permits submitted
44 under ORS 537.615 in proper form.

45 (2) Within 15 days after receiving the application, the department shall determine whether the

1 application contains the information listed under ORS 537.615 (2) and is complete and not defective,
 2 including the payment of all fees required under ORS 537.615 (5). If the department determines that
 3 the application is incomplete or defective or that not all fees have been paid, the department shall
 4 return the fees paid and the application to the applicant to remedy the defect. If an application is
 5 complete and not defective, the department shall indorse on the application the date upon which the
 6 application was received at the department, which shall be the priority date for any water right is-
 7 sued in response to the application.

8 (3) Upon determining that an application is complete and not defective, the department shall
 9 determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by
 10 statute, the department shall reject the application and return all fees to the applicant with an ex-
 11 planation of the statutory prohibition.

12 (4) If the proposed use is not prohibited by statute, the department shall undertake an initial
 13 review of the application and make a preliminary determination of:

14 (a) Whether the proposed use is restricted or limited by statute or rule or because the proposed
 15 use is located within a designated critical ground water area;

16 (b) The extent to which water is available from the proposed source during the times and in the
 17 amounts requested; and

18 (c) Any other issue the department identifies as a result of the initial review that may preclude
 19 approval of or restrict the proposed use.

20 (5) Upon completion of the initial review and no later than 30 days after determining an appli-
 21 cation to be complete and not defective as described in subsection (2) of this section, the department
 22 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the
 23 date of mailing within which to notify the department to stop processing the application or to pro-
 24 ceed with the application. If the applicant notifies the department to stop processing the application,
 25 the department shall return the application and all fees paid in excess of [\$150] \$200. If the depart-
 26 ment receives no timely response from the applicant, the department shall proceed with the appli-
 27 cation.

28 (6) Within seven days after proceeding with the application under subsection (5) of this section,
 29 the department shall give public notice of the application in the weekly notice published by the de-
 30 partment. The notice shall include a request for comments on the application and information per-
 31 taining to how an interested person may obtain future notices about the application and a copy of
 32 the proposed final order.

33 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-
 34 ested in the application shall submit written comments to the department. Any person who asks to
 35 receive a copy of the department's proposed final order shall submit to the department the fee re-
 36 quired under ORS 536.050 (1)(p).

37 **SECTION 7.** ORS 537.621, as amended by section 17, chapter 819, Oregon Laws 2009, is
 38 amended to read:

39 537.621. (1) Within 60 days after the Water Resources Department proceeds with the application
 40 under ORS 537.620 (5), the department shall complete application review and issue a proposed final
 41 order approving or denying the application or approving the application with modifications or con-
 42 ditions. The department may request the applicant to provide additional information needed to
 43 complete the review. If the department requests additional information, the request shall be specific
 44 and shall be sent to the applicant by registered mail. The department shall specify a date by which
 45 the information must be returned, which shall be not less than 10 days after the department mails

1 the request to the applicant. If the department does not receive the information or a request for a
2 time extension under ORS 537.627 by the date specified in the request, the department may reject
3 the application and may refund fees in accordance with ORS 536.050 [(3)(a)] **(4)(a)**. The time period
4 specified by the department in a request for additional information shall allow the department to
5 comply with the 60-day time limit established by this subsection.

6 (2) In reviewing the application under subsection (1) of this section, the department shall de-
7 termine whether the proposed use will ensure the preservation of the public welfare, safety and
8 health as described in ORS 537.525. The department shall presume that a proposed use will ensure
9 the preservation of the public welfare, safety and health if the proposed use is allowed in the ap-
10 plicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under
11 ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if
12 the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable
13 presumption and may be overcome by a preponderance of evidence that either:

14 (a) One or more of the criteria for establishing the presumption are not satisfied; or

15 (b) The proposed use would not ensure the preservation of the public welfare, safety and health
16 as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the
17 department that shows:

18 (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would
19 be impaired or detrimentally affected; and

20 (B) Specifically how the identified aspect of the public welfare, safety and health under ORS
21 537.525 would be impaired or be adversely affected.

22 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include
23 but need not be limited to:

24 (a) Confirmation or modification of the preliminary determinations made in the initial review;

25 (b) A brief statement that explains the criteria considered relevant to the decision, including the
26 applicable basin program and the compatibility of the proposed use with applicable land use plans;

27 (c) An assessment of water availability and the amount of water necessary for the proposed use;

28 (d) An assessment of whether the proposed use would result in injury to existing water rights;

29 (e) An assessment of whether the proposed use would ensure the preservation of the public
30 welfare, safety and health as described in ORS 537.525;

31 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-
32 cation;

33 (g) Whether the rebuttable presumption under subsection (2) of this section has been established;

34 (h) The date by which protests to the proposed final order must be received by the department;
35 and

36 (i) The flow rate and duty of water allowed.

37 (4) In establishing the flow rate and duty of water allowed, the department may consider a
38 general basin-wide standard, but first shall evaluate information submitted by the applicant to dem-
39 onstrate the need for a flow rate and duty higher than the general standard. If the applicant pro-
40 vides such information, the department shall authorize the requested rate and duty except upon
41 specific findings related to the application to support a determination that a lesser amount is
42 needed. If the applicant does not provide information to demonstrate the need for a flow rate and
43 duty higher than the general basin-wide standard, the department may apply the general standards
44 without specific findings related to the application.

45 (5) The department shall mail copies of the proposed final order to the applicant and to persons

1 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also
2 shall publish notice of the proposed final order by publication in the weekly notice published by the
3 department.

4 (6) Any person who supports a proposed final order may request standing for purposes of par-
5 ticipating in any contested case proceeding on the proposed final order or for judicial review of a
6 final order. A request for standing shall be in writing and shall be accompanied by the fee estab-
7 lished under ORS 536.050 (1)(n).

8 (7) Any person may submit a protest against a proposed final order. A protest shall be in writing
9 and shall include:

10 (a) The name, address and telephone number of the protestant;

11 (b) A description of the protestant's interest in the proposed final order, and if the protestant
12 claims to represent the public interest, a precise statement of the public interest represented;

13 (c) A detailed description of how the action proposed in the proposed final order would impair
14 or be detrimental to the protestant's interest;

15 (d) A detailed description of how the proposed final order is in error or deficient and how to
16 correct the alleged error or deficiency;

17 (e) Any citation of legal authority supporting the protest, if known; and

18 (f) [*For persons other than the applicant,*] The protest fee required under ORS 536.050.

19 (8) Requests for standing and protests on the proposed final order shall be submitted within 45
20 days after publication of the notice of the proposed final order in the weekly notice published by the
21 department. Any person who asks to receive a copy of the department's final order shall submit to
22 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested
23 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the
24 fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS
25 536.050 (1)(n).

26 (9) Within 60 days after the close of the period for receiving protests, the Water Resources Di-
27 rector shall:

28 (a) Issue a final order as provided under ORS 537.625 (1); or

29 (b) Schedule a contested case hearing if a protest has been submitted and if:

30 (A) Upon review of the issues, the director finds that there are significant disputes related to
31 the proposed use of water; or

32 (B) Within 30 days after the close of the period for submitting protests, the applicant requests
33 a contested case hearing.

34 **SECTION 8.** ORS 543A.120 is amended to read:

35 543A.120. (1) A proposed final order prepared by a Hydroelectric Application Review Team and
36 submitted to the Water Resources Department under ORS 543A.040, 543A.055 or 543A.105 shall be
37 based on the application of the standards set forth in ORS 543A.025 and shall reflect the complete
38 review of the water right application for compliance with applicable statutes and rules.

39 (2) The proposed final order shall cite findings of fact and conclusions of law and shall include
40 but need not be limited to:

41 (a) Confirmation or modification of the preliminary determinations made in the initial review;

42 (b) A brief statement that explains the criteria considered relevant to the decision, including the
43 applicable basin program, the compatibility of the proposed use with applicable land use plans and
44 information set forth in the application report or final report on studies;

45 (c) An assessment of water availability and the amount of water necessary for the proposed use;

1 (d) An assessment of whether the proposed use would result in injury to existing water rights;

2 (e) An assessment of whether the proposed use would impair or be detrimental to the public
3 interest as provided in ORS 543A.025;

4 (f) A draft certificate, including any proposed conditions, or a recommendation to deny the ap-
5 plication; and

6 (g) The date by which protests to the proposed final order must be received by the department.

7 (3) The department shall mail copies of the proposed final order, as submitted by the team, to
8 the applicant and to persons who have requested copies and paid the fee required under ORS 536.050
9 (1)(p). The department also shall give public notice of the proposed final order in the weekly notice
10 published by the department.

11 (4) Any person may request standing for purposes of participating in any contested case pro-
12 ceeding on the proposed final order or for judicial review of a final order. A request for standing
13 shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

14 (5) Any person may submit a protest against a proposed final order. A protest shall be in writing
15 and shall include:

16 (a) The name, address and telephone number of the protestant;

17 (b) A description of the protestant's interest in the proposed final order and, if the protestant
18 claims to represent the public interest, a precise statement of the public interest represented;

19 (c) A detailed description of how the action proposed in the proposed final order would impair
20 or be detrimental to the protestant's interest;

21 (d) A detailed description of how the proposed final order is in error or deficient and how to
22 correct the alleged error or deficiency;

23 (e) Any citation of legal authority supporting the protest, if known; and

24 (f) [*For persons other than the applicant,*] The protest fee required under ORS 536.050 (1)(j).

25 (6) Requests for standing and protests on the proposed final order shall be submitted within 45
26 days after publication of the notice of the proposed final order in the weekly notice published by the
27 department. Any person who asks to receive a copy of the department's final order shall submit to
28 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested
29 copies and paid the required fee.

30 (7) The Hydroelectric Application Review Team shall review any protest received and provide
31 to the Water Resources Director a recommended response to any protest received.

32 (8) Within 120 days after the close of the period for receiving protests and after consultation
33 with the Hydroelectric Application Review Team, the director shall:

34 (a) Issue a final order as provided under ORS 543A.130; or

35 (b) Schedule a contested case hearing if a protest has been submitted and if:

36 (A) Upon review of the issues, the director finds that there are significant disputes related to
37 the proposed reauthorization of the project; or

38 (B) Within 30 days after the close of the period for submitting protests, the applicant requests
39 a contested case hearing.

40 (9) At the request of the applicant, the department may extend the time periods set forth in
41 subsection (8) of this section for a reasonable period of time.

42 (10) If the application is for reauthorization of a water right for a federally licensed project, the
43 department may postpone the issuance of the final order until the Federal Energy Regulatory Com-
44 mission license is issued.

45 **SECTION 9. Section 18, chapter 819, Oregon Laws 2009, is repealed.**

SECTION 10. (1) The Water Resources Commission may adopt rules to:

(a) Increase the amount of a fee authorized under ORS 536.050. The department may not, however, increase a fee under this paragraph by more than the lesser of:

(A) The percentage increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor since the effective date of the previous fee increase; or

(B) Two percent multiplied by the number of years since the effective date of the previous fee increase.

(b) Increase the amount that the department may keep when returning a fee under ORS 537.150 or 537.620. The department may not, however, adopt a rule under this paragraph to increase the amount the department may keep by more than the lesser of:

(A) The percentage increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor since the effective date of the previous amount increase; or

(B) Two percent multiplied by the number of years since the effective date of the previous amount increase.

(c) Increase the maximum amount the department may charge for fees under ORS 537.610. The department may not, however, adopt a rule under this paragraph to increase the maximum amount by more than the lesser of:

(A) The percentage increase in the Portland-Salem Consumer Price Index for All Urban Consumers for All Items as published by the Bureau of Labor Statistics of the United States Department of Labor since the effective date of the previous increase in the maximum amount; or

(B) Two percent multiplied by the number of years since the effective date of the previous increase in the maximum amount.

(2) The commission may not adopt rules under subsection (1) of this section to adjust the same fee amount more than once during a 12-month period.

SECTION 11. For purposes of section 10 of this 2013 Act:

(1) The amendments to ORS 536.050 by section 2 of this 2013 Act are considered to be a continuation of the 2009 increase in ORS 536.050 fees and not a new fee increase.

(2) The amendments to ORS 537.150 and 537.620 by sections 3 and 6 of this 2013 Act are considered to be a continuation of the 2009 increases in the ORS 537.150 and 537.620 amounts and not new increases.

(3) The amendments to ORS 537.610 by section 5 of this 2013 Act is considered to be a continuation of the 2009 increase in the maximum amount that the Water Resources Department may charge for fees under ORS 537.610 and not a new increase in the maximum amount.

SECTION 12. The Water Resources Department shall report as provided under ORS 192.235 to 192.245 to the Seventy-eighth Legislative Assembly regarding the fees being charged by the department under ORS 536.050, the maximum amounts the department may keep when returning a fee under ORS 537.150 and 537.620 and the maximum amount the department may charge for fees under ORS 537.610. The department shall submit the report no later than February 1, 2015.

SECTION 13. (1) If this 2013 Act does not become effective until after July 1, 2013, the Legislative Assembly intends that the amendments to ORS 536.050, 537.150, 537.153, 537.610,

1 537.620, 537.621 and 543A.120 by sections 2 to 8 of this 2013 Act and any fee amounts estab-
2 lished under those amendments apply retroactively to July 1, 2013.

3 (2) The Water Resources Commission may not adopt a rule under section 10 of this 2013
4 Act that applies to fees charged or returned by the department on or before July 1, 2013.

5 SECTION 14. This 2013 Act being necessary for the immediate preservation of the public
6 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
7 on its passage.

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