

# Enrolled Senate Bill 200

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor John A. Kitzhaber, M.D., for Water Resources Department)

CHAPTER .....

AN ACT

Relating to water right assignments; creating new provisions; and amending ORS 536.050.

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

**SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS chapter 537.**

**SECTION 2. (1) Notwithstanding ORS 537.220 and 537.635, except as provided in subsection (6) of this section, a record landowner holding a water right permit for an irrigation, nursery, temperature control, stock watering or agricultural water use that has a subsequent completion date may apply for assignment of all or part of the water right permit and for the issuance of a replacement water right permit that reflects that assignment. To obtain the assignment and replacement water right permits, the applicant shall submit an application to the Water Resources Department that includes, at a minimum:**

- (a) A map prepared by a certified water right examiner and meeting department mapping standards that identifies the authorized place of use, rate of use, any applicable acre-foot allowances, tax lots and points of diversion or appropriation;**
- (b) A copy of the deed showing that the applicant is an owner of the land;**
- (c) An affidavit certifying that the water right has not been conveyed or withheld;**
- (d) A statement by the applicant that the most recent water use under the permit, if any, has been exercised within relevant terms and conditions of the permit; and**
- (e)(A) Agreements to the assignment and to the request for the issuance of replacement water right permits submitted jointly or individually by all owners of the land to which the water right is appurtenant; or**
- (B) An assignment of interest and request for the issuance of replacement water right permits submitted by one or more of the owners of land to which the water right is appurtenant and information identifying the names, addresses and proportionate interests for those owners not submitting the assignment and request.**

**(2) In addition to the application contents described in subsection (1) of this section, the department may require that the applicant provide any additional information the department deems appropriate to determining whether to approve the application.**

**(3) Upon receiving an application under subsection (1) of this section, the department shall determine and notify the applicant of the fees payable under ORS 536.050 for processing the application. Upon receipt of the appropriate processing fees, the department shall:**

(a) Verify the address of each owner of the lands identified on the map contained in the application;

(b) Verify that the deed supplied with the application matches the property proposed for assignment;

(c) Prepare a statement that the proposed replacement water right permits will not result in the enlargement of the original water right, a proposed final order and drafts of replacement water right permits;

(d) No later than one week prior to the date of the weekly notice described in paragraph (e) of this subsection, mail copies of the application, the map, the existing water right permit, the proposed final order and the draft replacement water right permits to each owner of land to which the existing water right is appurtenant; and

(e) Provide public notice of the application in the weekly notice published by the department.

(4) The department shall allow comment on the application for 30 days following public notice of the application in the weekly notice published by the department. Any protest against the proposed final order must be submitted no later than 45 days after the date of the weekly notice published by the department. A protest must be filed in the manner provided in section 3 of this 2013 Act.

(5) If the department determines that an application under subsection (1) of this section to assign all or part of a water right permit has been properly filed, and that the issuance of replacement water right permits will not result in the enlargement of the original water right or otherwise cause injury to other water right holders, the department shall issue one or more replacement water right permits to reflect the assignment. The replacement water right permits:

(a) Must have the same conditions as the replaced water right permit, including but not limited to priority date, source of water and type of use;

(b) May not add or change a point of diversion or point of appropriation;

(c) May not result in the enlargement of the water use authorized under the replaced water right permit;

(d) Must apportion the rate, and if applicable the duty, in proportion to the amount of land to which the water right is appurtenant; and

(e) Must identify the land to which the replacement water right permit is appurtenant and the owner of that land.

(6) This section does not apply to municipal or quasi-municipal permits or to permits held by a unit of local government, including but not limited to permits held by a port or water authority or a district. As used in this subsection, "unit of local government" has the meaning given that term in ORS 190.003 and "district" has the meaning given that term in ORS 540.505.

**SECTION 3.** (1) A record landowner, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right assignment under section 2 of this 2013 Act. The protest must be in writing and received by the department within the time provided under section 2 (4) of this 2013 Act. The protest must be accompanied by the protest fee required under ORS 536.050 and include:

(a) The name, address and telephone number of the person filing the protest; and

(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.

(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with section 2 of this 2013 Act.

**(3) If a protest is properly filed, the department may work with the applicant for the water right assignment and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. The department may:**

- (a) Reissue a proposed final order;**
- (b) Issue a final order; or**
- (c) Refer the matter for a contested case hearing.**

**(4) If the department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with section 2 of this 2013 Act. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the department an opportunity for response is not subject to review at the contested case hearing.**

**(5) Notwithstanding ORS 183.310, the parties to a contested case hearing held under this section are limited to:**

- (a) The applicant for the water right assignment; and**
- (b) Persons that timely filed a protest against the proposed order under section 2 (4) of this 2013 Act.**

**SECTION 4.** ORS 536.050 is amended to read:

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

- (a) For examining an application for a permit:**
  - (A) To appropriate water, except as provided under ORS 543.280 for an application for a hydroelectric project:**
    - (i) A base fee of \$700 for an appropriation of water through a single use, point of diversion or point of appropriation;**
    - (ii) \$250 for the first second-foot or fraction thereof appropriated under the permit;**
    - (iii) \$250 for each additional second-foot or fraction thereof appropriated under the permit;**
    - (iv) \$250 for each additional use, point of diversion or point of appropriation included in the application;**
    - (v) If appropriating stored water, \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof; and**
    - (vi) If appropriating ground water, in addition to any other fees, \$300 for each application filed.**
  - (B) To store water under ORS 537.400 or 537.534 (4):**
    - (i) A base fee of \$700;**
    - (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof; and**
    - (iii) \$100 for each additional storage location.**
  - (C) To exclusively appropriate stored water:**
    - (i) A base fee of \$400; and**
    - (ii) \$25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof.**
  - (b) For a permit issued under ORS 537.147, 537.211, 537.409 or 537.625 to appropriate or store water:**
    - (A) A base fee of \$400 for recording the permit; and**
    - (B) An additional fee of \$500 if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.**
    - (c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, \$75.**
    - (d) For copying records in the department, \$2 for the first page and 50 cents for each additional page.**
    - (e) For certifying copies, documents, records or maps, \$10 for each certificate.**
    - (f) For a blueprint copy of any map or drawing, the actual cost of the work.**

- (g) For a computer-generated map, the actual cost of the work.
- (h) For examining an application for approval of a change to an existing water right or permit:
  - (A) A base fee of \$900 for a change to a single water right or permit;
  - (B) \$700 for each additional type of change requested;
  - (C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, \$250 for each second-foot or fraction thereof requested beyond the first second-foot;
  - (D) \$400 for each additional water right or permit included in the application; and
  - (E) An additional fee of \$300 per application, if the application is for an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.
- (i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of \$600 for the first water right or permit, plus \$200 for each additional water right or permit included in the application and:
  - (A) For nonirrigation uses, \$150 for each second-foot or fraction thereof requested beyond the first second-foot; or
  - (B) For irrigation uses, \$2 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 50 cents per acre of land irrigated.
- (j) For submitting a protest to the department:
  - (A) \$600 if the protest is by a nonapplicant; and
  - (B) \$300 if the protest is by an applicant.
- (k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, \$500.
- (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.
- (m) For filing, examining and certifying a petition under ORS 541.329, \$300 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.
- (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$150.
- (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, \$350.
- (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$20.
- (q) For examining an application to store water under ORS 537.409:
  - (A) A base fee of \$300; and
  - (B) \$25 for each acre-foot or fraction thereof.
- (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established by the Water Resources Director under ORS 543A.410.
- (s) For examining an application for a substitution made under ORS 540.524:
  - (A) A base fee of \$630 for the first well substitution; and
  - (B) A fee of \$300 for each additional well substitution.
- (t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500:
  - (A) A base fee of \$850 for the first water right that is part of the allocation; and
  - (B) An additional fee of \$300 for each water right that is part of the allocation beyond the first water right.

(u) For submitting a water management and conservation plan pursuant to rules of the commission:

(A) \$400, if the plan is submitted by an agricultural water supplier;

(B) \$800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

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

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

(A) \$400 for an application for a lease with four or more landowners or four or more water rights; or

(B) \$250 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, \$100.

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

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

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

**(aa) For processing an application under section 2 of this 2013 Act for an assignment of water right to one or more landowners and issuance of replacement water right permits, the actual cost of the work.**

(2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard rating as determined by the department. The fees the department may charge the dam owner are:

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

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

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

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

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

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

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

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

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

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

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

(a) Made pursuant to ORS 537.348;

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

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

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

(7) All moneys received under this section, less any amounts refunded under subsection (4) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

(8) Notwithstanding subsection (7) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015.

**SECTION 5.** ORS 536.050, as amended by section 12, chapter 819, Oregon Laws 2009, is amended to read:

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

(a) For examining an application for a permit:

(A) To appropriate water, except as provided under ORS 543.280 for an application for a hydroelectric project:

(i) A base fee of \$500 for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) \$200 for the first second-foot or fraction thereof appropriated under the permit;

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

(iv) \$200 for each additional use, point of diversion or point of appropriation included in the application; and

(v) If appropriating stored water, \$20 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof.

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

(i) A base fee of \$500; and

(ii) \$20 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1 for each additional acre-foot or fraction thereof.

(C) To exclusively appropriate stored water:

(i) A base fee of \$250; and

(ii) \$15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus \$1 for each additional acre-foot or fraction thereof.

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

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, \$50.

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

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

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

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

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

(A) A base fee of \$400 for a change to a single water right or permit;

(B) \$400 for each additional type of change requested;

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

(D) \$200 for each additional water right or permit included in the application.

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

(A) For nonirrigation uses, \$80 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, \$1 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 25 cents per acre of land irrigated.

(j) For submitting a protest to the department, \$350.

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

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

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

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$100.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, \$250.

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

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

(A) A base fee of \$80; and

(B) \$20 for each acre-foot or fraction thereof.

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

(s) For examining an application for a substitution made under ORS 540.524, \$280.

(t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500, \$700.

(u) For submitting a water management and conservation plan pursuant to rules of the commission:

(A) \$250, if the plan is submitted by an agricultural water supplier;

(B) \$500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) \$1,000, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

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

(A) \$200 for an application for a lease with four or more landowners or four or more water rights; or

(B) \$100 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, \$50.

**(x) For processing an application under section 2 of this 2013 Act for an assignment of water right to one or more landowners and issuance of replacement water right permits, the actual cost of the work.**

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

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

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

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

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

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

- (a) Made pursuant to ORS 537.348;
- (b) Necessary to complete a project funded under ORS 541.932; or
- (c) Approved by the State Department of Fish and Wildlife as a change or allocation of conserved water that will result in a net benefit to fish and wildlife habitat.

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

(6) All moneys received under this section, less any amounts refunded under subsection (3) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

(7) Notwithstanding subsection (6) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015.

**Passed by Senate February 26, 2013**

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

**Passed by House May 13, 2013**

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Tina Kotek, Speaker of House

**Received by Governor:**

.....M.,....., 2013

**Approved:**

.....M.,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M.,....., 2013

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Kate Brown, Secretary of State