

**PROPOSED AMENDMENTS TO
HOUSE BILL 2259**

1 On page 1 of the printed bill, line 3, delete “, 539.081”.

2 Delete lines 6 through 31 and delete pages 2 through 18 and insert:

3 **“SECTION 1. Notwithstanding ORS 536.050, the fee for a limited li-**
4 **cence under ORS 537.143 to divert and use water for mining purposes**
5 **is \$250 regardless of the number of diversion points for the water.**

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

8 “536.050. (1) The Water Resources Department may collect the following
9 fees in advance:

10 “(a) For examining an application for a permit:

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

13 “(i) A base fee of [~~\$500~~] **\$700** for an appropriation of water through a
14 single use, point of diversion or point of appropriation;

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

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

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

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

1 fraction thereof[.]; **and**

2 **“(vi) If appropriating ground water, in addition to any other fees,**
3 **\$300 for each application filed.**

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

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

6 **“(ii) [~~\$20~~] **\$25** for the first acre-foot or fraction thereof up to 20 acre-feet,**
7 **plus \$1 for each additional acre-foot or fraction thereof[.]; **and****

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

9 **“(C) To exclusively appropriate stored water:**

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

11 **“(ii) [~~\$15~~] **\$25** for the first acre-foot or fraction thereof up to 10 acre-feet,**
12 **plus \$1 for each additional acre-foot or fraction thereof.**

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

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

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

17 **“(B) An additional fee of \$500 if the permit is issued pursuant to a**
18 **final order that contains provisions requested by the applicant for**
19 **mitigating impacts to the proposed water source.**

20 **“(c) For filing and recording the assignment or partial assignment of a**
21 **water right application, permit or license under ORS 537.220 or 537.635,**
22 **[~~\$50~~] **\$75.****

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

25 **“(e) For certifying copies, documents, records or maps, \$10 for each cer-**
26 **tificate.**

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

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

30 **“(h) For examining an application for approval of a change to an existing**

1 water right or permit:

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

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

5 “(C) For a request for a change in place of use or type of use or for a
6 water exchange under ORS 540.533, [~~\$200~~] **\$250** for each second-foot or frac-
7 tion thereof requested beyond the first second-foot; [*and*]

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

10 “(E) **An additional fee of \$300 per application, if the application is**
11 **for an additional point of appropriation, a change in a point of appro-**
12 **priation or a change from surface water to ground water or for sub-**
13 **stitution as described in ORS 540.524.**

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

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

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

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

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

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

29 “(k) For filing an application for extension of time within which irri-
30 gation or other works shall be completed or a water right perfected, [~~\$350~~]

1 **\$500.**

2 “(L) For a limited license under ORS 537.143 or 537.534 (2), the fee es-
3 tablished by rule by the Water Resources Commission.

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

11 “(n) For requesting standing under ORS 537.153, 537.621 or 543A.120,
12 [~~\$100~~] **\$150.**

13 “(o) For participating in a contested case proceeding under ORS 537.170,
14 537.622 or 543A.130, [~~\$250~~] **\$350.**

15 “(p) Except for an applicant, for obtaining a copy of both a proposed final
16 order and a final order for a water right application under ORS 537.140 to
17 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued
18 under ORS 537.230, 537.248 or 537.630, [~~\$10~~] **\$20.**

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

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

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

22 “(r) For submitting a notice of intent under ORS 543A.030 or 543A.075,
23 the amount established by the Water Resources Director under ORS
24 543A.410.

25 “(s) For examining an application for a substitution made under ORS
26 540.524[, ~~\$280.~~]:

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

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

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

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

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

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

7 “(A) [~~\$250~~] **\$400**, if the plan is submitted by an agricultural water sup-
8 plier;

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

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

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

15 “(A) [~~\$200~~] **\$400** for an application for a lease with four or more land-
16 owners or four or more water rights; or

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

18 “(w) For examining an application for an in-stream water right lease re-
19 newal, [~~\$50~~] **\$100**.

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

22 **“(y) For submitting a request no later than 60 days after cancella-**
23 **tion of a permit under ORS 537.260 to reinstate the permit, \$400.**

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

26 **“(2)(a) The department may charge a dam owner an annual fee**
27 **based upon the dam’s hazard rating as determined by the department.**
28 **The fees the department may charge the dam owner are:**

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

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

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

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

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

8 **“[(2)] (3)** Notwithstanding the fees established under subsection (1) of this
9 section, the commission may establish lower examination and permit fees by
10 rule for:

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

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

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

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

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

29 **“(a)** Made pursuant to ORS 537.348;

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

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

4 “[5] (6) Notwithstanding the fees established pursuant to this section,
5 the commission may adopt by rule reduced fees for persons submitting ma-
6 terials to the department in a digital format approved by the department.

7 “[6] (7) All moneys received under this section, less any amounts re-
8 funded under subsection [(3)] (4) of this section, shall be deposited in the
9 Water Resources Department Water Right Operating Fund.

10 “[7] (8) Notwithstanding subsection [(6)] (7) of this section, all fees re-
11 ceived by the department for power purposes under ORS 543.280 shall be de-
12 posited in the Water Resources Department Hydroelectric Fund established
13 by ORS 536.015.

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

16 “537.150. (1) Within 15 days after receiving an application, the Water
17 Resources Department shall determine whether the application contains the
18 information listed under ORS 537.140 (1) and is complete and not defective,
19 including the payment of all fees required under ORS 537.140 (5). If the de-
20 partment determines that the application is incomplete or defective or that
21 not all fees have been paid, the department shall return the fees paid and the
22 application.

23 “(2) Upon determining that an application contains the information listed
24 under ORS 537.140 (1) and is complete and not defective, the department shall
25 indorse on the application the date upon which the application was received
26 at the department, which shall be the priority date for any water right issued
27 in response to the application. All applications that comply with the pro-
28 visions of law shall be recorded in a suitable book kept for that purpose.

29 “(3) If an application is complete and not defective, the department shall
30 determine whether the proposed use is prohibited by ORS chapter 538. If the

1 proposed use is prohibited by ORS chapter 538, the department shall reject
2 the application and return all fees to the applicant with an explanation of
3 the statutory prohibition.

4 “(4) If the proposed use is not prohibited by ORS chapter 538, the de-
5 partment shall undertake an initial review of the application and make a
6 preliminary determination of:

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

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

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

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

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

28 “(7) Within 30 days after the public notice under subsection (6) of this
29 section, any person interested in the application shall submit written com-
30 ments to the department. Any person who asks to receive a copy of the

1 department's proposed final order shall submit to the department the fee re-
2 quired under ORS 536.050 (1).

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

5 “537.153. (1) Within 60 days after the Water Resources Department pro-
6 ceeds with the application under ORS 537.150 (5), the department shall com-
7 plete application review and issue a proposed final order approving or
8 denying the application or approving the application with modifications or
9 conditions. The department may request the applicant to provide additional
10 information needed to complete the review. If the department requests addi-
11 tional information, the request shall be specific and shall be sent to the ap-
12 plicant by registered mail. The department shall specify a date by which the
13 information must be returned, which shall be not less than 10 days after the
14 department mails the request to the applicant. If the department does not
15 receive the information or a request for a time extension under ORS 537.175
16 by the date specified in the request, the department may reject the applica-
17 tion and may refund fees in accordance with ORS 536.050 [(3)(a)] **(4)(a)**. The
18 time period specified by the department in a request for additional informa-
19 tion shall allow the department to comply with the 60-day time limit estab-
20 lished by this subsection.

21 “(2) In reviewing the application under subsection (1) of this section, the
22 department shall presume that a proposed use will not impair or be detri-
23 mental to the public interest if the proposed use is allowed in the applicable
24 basin program established pursuant to ORS 536.300 and 536.340 or given a
25 preference under ORS 536.310 (12), if water is available, if the proposed use
26 will not injure other water rights and if the proposed use complies with rules
27 of the Water Resources Commission. This shall be a rebuttable presumption
28 and may be overcome by a preponderance of evidence that either:

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

1 “(b) The proposed use will impair or be detrimental to the public interest
2 as demonstrated in comments, in a protest under subsection (6) of this sec-
3 tion or in a finding of the department that shows:

4 “(A) The specific public interest under ORS 537.170 (8) that would be im-
5 paired or detrimentally affected; and

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

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

10 “(a) Confirmation or modification of the preliminary determinations made
11 in the initial review;

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

15 “(c) An assessment of water availability and the amount of water neces-
16 sary for the proposed use;

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

19 “(e) An assessment of whether the proposed use would impair or be det-
20 rimental to the public interest as provided in ORS 537.170;

21 “(f) A draft permit, including any proposed conditions, or a recommen-
22 dation to deny the application;

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

25 “(h) The date by which protests to the proposed final order must be re-
26 ceived by the department.

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

1 department.

2 “(5) Any person who supports a proposed final order may request standing
3 for purposes of participating in any contested case proceeding on the pro-
4 posed final order or for judicial review of a final order. A request for
5 standing shall be in writing and shall be accompanied by the fee established
6 under ORS 536.050 (1)(n).

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

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

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

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

15 “(d) A detailed description of how the proposed final order is in error or
16 deficient and how to 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
19 ORS 536.050.

20 “(7) Requests for standing and protests on the proposed final order shall
21 be submitted within 45 days after publication of the notice of the proposed
22 final order in the weekly notice published by the department. Any person
23 who asks to receive a copy of the department’s final order shall submit to
24 the department the fee required under ORS 536.050 (1)(p), unless the person
25 has previously requested copies and paid the required fee under ORS 537.150
26 (7), the person is a protestant and has paid the fee required under ORS
27 536.050 (1)(j) or the person has standing and has paid the fee under ORS
28 536.050 (1)(n).

29 “(8) Within 60 days after the close of the period for receiving protests, the
30 Water Resources Director shall:

1 “(a) Issue a final order as provided under ORS 537.170 (6); or
2 “(b) Schedule a contested case hearing if a protest has been submitted and
3 if:

4 “(A) Upon review of the issues, the director finds that there are signif-
5 icant disputes related to the proposed use of water; or

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

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

10 “537.610. (1) The Water Resources Commission shall accept all registra-
11 tion statements referred to in ORS 537.605 completed and returned to the
12 commission in proper form, endorse on the registration statement the date
13 of the return and record each statement. Upon recording the statement, the
14 commission shall issue to the registrant a certificate as evidence that the
15 registration is completed.

16 “(2) The issuance of the certificate of registration serves as prima facie
17 evidence that the registrant is entitled to a right to appropriate ground wa-
18 ter and apply it to beneficial use to the extent and in the manner disclosed
19 in the recorded registration statement and in the certificate of registration.

20 “(3) A certificate of registration issued under this section may not be
21 construed as a final determination of any matter stated in the certificate of
22 registration. The right of the registrant to appropriate ground water under
23 a certificate of registration is subject to determination under ORS 537.670
24 to 537.695, and is not final or conclusive until so determined and a ground
25 water right certificate issued. A right to appropriate ground water under a
26 certificate of registration has a tentative priority from the date when the
27 construction of the well was begun.

28 “(4) The commission shall adopt by rule the process and standards by
29 which the commission will recognize changes in the place of use, type of use
30 or point of appropriation for claims to appropriate ground water registered

1 under this section. The commission shall adopt fees not to exceed [\$500]
2 **\$1,125** for actions taken to modify a certificate of registration.

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

5 “537.620. (1) The Water Resources Department shall accept all applica-
6 tions for permits submitted under ORS 537.615 in proper form.

7 “(2) Within 15 days after receiving the application, the department shall
8 determine whether the application contains the information listed under ORS
9 537.615 (2) and is complete and not defective, including the payment of all
10 fees required under ORS 537.615 (5). If the department determines that the
11 application is incomplete or defective or that not all fees have been paid, the
12 department shall return the fees paid and the application to the applicant
13 to remedy the defect. If an application is complete and not defective, the
14 department shall indorse on the application the date upon which the appli-
15 cation was received at the department, which shall be the priority date for
16 any water right issued in response to the application.

17 “(3) Upon determining that an application is complete and not defective,
18 the department shall determine whether the proposed use is prohibited by
19 statute. If the proposed use is prohibited by statute, the department shall
20 reject the application and return all fees to the applicant with an explana-
21 tion of the statutory prohibition.

22 “(4) If the proposed use is not prohibited by statute, the department shall
23 undertake an initial review of the application and make a preliminary de-
24 termination of:

25 “(a) Whether the proposed use is restricted or limited by statute or rule
26 or because the proposed use is located within a designated critical ground
27 water area;

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

30 “(c) Any other issue the department identifies as a result of the initial

1 review that may preclude approval of or restrict the proposed use.

2 “(5) Upon completion of the initial review and no later than 30 days after
3 determining an application to be complete and not defective as described in
4 subsection (2) of this section, the department shall notify the applicant of its
5 preliminary determinations and allow the applicant 14 days from the date
6 of mailing within which to notify the department to stop processing the ap-
7 plication or to proceed with the application. If the applicant notifies the
8 department to stop processing the application, the department shall return
9 the application and all fees paid in excess of [~~\$150~~] **\$200**. If the department
10 receives no timely response from the applicant, the department shall proceed
11 with the application.

12 “(6) Within seven days after proceeding with the application under sub-
13 section (5) of this section, the department shall give public notice of the
14 application in the weekly notice published by the department. The notice
15 shall include a request for comments on the application and information
16 pertaining to how an interested person may obtain future notices about the
17 application and a copy of the proposed final order.

18 “(7) Within 30 days after the public notice under subsection (6) of this
19 section, any person interested in the application shall submit written com-
20 ments to the department. Any person who asks to receive a copy of the
21 department’s proposed final order shall submit to the department the fee re-
22 quired under ORS 536.050 (1)(p).

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

25 “537.621. (1) Within 60 days after the Water Resources Department pro-
26 ceeds with the application under ORS 537.620 (5), the department shall com-
27 plete application review and issue a proposed final order approving or
28 denying the application or approving the application with modifications or
29 conditions. The department may request the applicant to provide additional
30 information needed to complete the review. If the department requests addi-

1 tional information, the request shall be specific and shall be sent to the ap-
2 plicant by registered mail. The department shall specify a date by which the
3 information must be returned, which shall be not less than 10 days after the
4 department mails the request to the applicant. If the department does not
5 receive the information or a request for a time extension under ORS 537.627
6 by the date specified in the request, the department may reject the applica-
7 tion and may refund fees in accordance with ORS 536.050 [(3)(a)] (4)(a). The
8 time period specified by the department in a request for additional informa-
9 tion shall allow the department to comply with the 60-day time limit estab-
10 lished by this subsection.

11 “(2) In reviewing the application under subsection (1) of this section, the
12 department shall determine whether the proposed use will ensure the pres-
13 ervation of the public welfare, safety and health as described in ORS 537.525.
14 The department shall presume that a proposed use will ensure the preserva-
15 tion of the public welfare, safety and health if the proposed use is allowed
16 in the applicable basin program established pursuant to ORS 536.300 and
17 536.340 or given a preference under ORS 536.310 (12), if water is available,
18 if the proposed use will not injure other water rights and if the proposed use
19 complies with rules of the Water Resources Commission. This shall be a
20 rebuttable presumption and may be overcome by a preponderance of evidence
21 that either:

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

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

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

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

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

3 “(a) Confirmation or modification of the preliminary determinations made
4 in the initial review;

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

8 “(c) An assessment of water availability and the amount of water neces-
9 sary for the proposed use;

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

12 “(e) An assessment of whether the proposed use would ensure the preser-
13 vation of the public welfare, safety and health as described in ORS 537.525;

14 “(f) A draft permit, including any proposed conditions, or a recommen-
15 dation to deny the application;

16 “(g) Whether the rebuttable presumption under subsection (2) of this sec-
17 tion has been established;

18 “(h) The date by which protests to the proposed final order must be re-
19 ceived by the department; and

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

21 “(4) In establishing the flow rate and duty of water allowed, the depart-
22 ment may consider a general basin-wide standard, but first shall evaluate
23 information submitted by the applicant to demonstrate the need for a flow
24 rate and duty higher than the general standard. If the applicant provides
25 such information, the department shall authorize the requested rate and duty
26 except upon specific findings related to the application to support a deter-
27 mination that a lesser amount is needed. If the applicant does not provide
28 information to demonstrate the need for a flow rate and duty higher than the
29 general basin-wide standard, the department may apply the general standards
30 without specific findings related to the application.

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

6 “(6) Any person who supports a proposed final order may request standing
7 for purposes of participating in any contested case proceeding on the pro-
8 posed final order or for judicial review of a final order. A request for
9 standing shall be in writing and shall be accompanied by the fee established
10 under ORS 536.050 (1)(n).

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

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

14 “(b) A description of the protestant’s interest in the proposed final order,
15 and if the protestant claims to represent the public interest, a precise state-
16 ment of the public interest represented;

17 “(c) A detailed description of how the action proposed in the proposed
18 final order would impair or be detrimental to the protestant’s interest;

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

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

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

24 “(8) Requests for standing and protests on the proposed final order shall
25 be submitted within 45 days after publication of the notice of the proposed
26 final order in the weekly notice published by the department. Any person
27 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
29 has previously requested copies and paid the required fee under ORS 537.620
30 (7), the person is a protestant and has paid the fee required under ORS

1 536.050 (1)(j) or the person has standing and has paid the fee under ORS
2 536.050 (1)(n).

3 “(9) Within 60 days after the close of the period for receiving protests, the
4 Water Resources Director shall:

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

6 “(b) Schedule a contested case hearing if a protest has been submitted and
7 if:

8 “(A) Upon review of the issues, the director finds that there are signif-
9 icant disputes related to the proposed use of water; or

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

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

13 “543A.120. (1) A proposed final order prepared by a Hydroelectric Appli-
14 cation Review Team and submitted to the Water Resources Department un-
15 der ORS 543A.040, 543A.055 or 543A.105 shall be based on the application of
16 the standards set forth in ORS 543A.025 and shall reflect the complete review
17 of the water right application for compliance with applicable statutes and
18 rules.

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

21 “(a) Confirmation or modification of the preliminary determinations made
22 in the initial review;

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

27 “(c) An assessment of water availability and the amount of water neces-
28 sary for the proposed use;

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

1 “(e) An assessment of whether the proposed use would impair or be det-
2 rimental to the public interest as provided in ORS 543A.025;

3 “(f) A draft certificate, including any proposed conditions, or a recom-
4 mendation to deny the application; and

5 “(g) The date by which protests to the proposed final order must be re-
6 ceived by the department.

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

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

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

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

19 “(b) A description of the protestant’s interest in the proposed final order
20 and, if the protestant claims to represent the public interest, a precise
21 statement of the public interest represented;

22 “(c) A detailed description of how the action proposed in the proposed
23 final order would impair or be detrimental to the protestant’s interest;

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

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

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

29 “(6) Requests for standing and protests on the proposed final order shall
30 be submitted within 45 days after publication of the notice of the proposed

1 final order in the weekly notice published by the department. Any person
2 who asks to receive a copy of the department's final order shall submit to
3 the department the fee required under ORS 536.050 (1)(p), unless the person
4 has previously requested copies and paid the required fee.

5 “(7) The Hydroelectric Application Review Team shall review any protest
6 received and provide to the Water Resources Director a recommended re-
7 sponse to any protest received.

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

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

12 “(b) Schedule a contested case hearing if a protest has been submitted and
13 if:

14 “(A) Upon review of the issues, the director finds that there are signif-
15 icant disputes related to the proposed reauthorization of the project; or

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

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

21 “(10) If the application is for reauthorization of a water right for a
22 federally licensed project, the department may postpone the issuance of the
23 final order until the Federal Energy Regulatory Commission license is is-
24 sued.

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

26 **“SECTION 10. (1) The Water Resources Commission may adopt**
27 **rules to:**

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

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

5 “(B) Two percent multiplied by the number of years since the ef-
6 fective date of the previous fee increase.

7 “(b) Increase the amount that the department may keep when re-
8 turning a fee under ORS 537.150 or 537.620. The department may not,
9 however, adopt a rule under this paragraph to increase the amount the
10 department may keep by more than the lesser of:

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

15 “(B) Two percent multiplied by the number of years since the ef-
16 fective date of the previous amount increase.

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

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

26 “(B) Two percent multiplied by the number of years since the ef-
27 fective date of the previous increase in the maximum amount.

28 “(2) The commission may not adopt rules under subsection (1) of
29 this section to adjust the same fee amount more than once during a
30 12-month period.

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

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

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

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

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

19 **SECTION 13. (1) If this 2013 Act does not become effective until**
20 **after July 1, 2013, the Legislative Assembly intends that the amend-**
21 **ments to ORS 536.050, 537.150, 537.153, 537.610, 537.620, 537.621 and**
22 **543A.120 by sections 2 to 8 of this 2013 Act and any fee amounts es-**
23 **tablished under those amendments apply retroactively to July 1, 2013.**

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

27 **SECTION 14. This 2013 Act being necessary for the immediate**
28 **preservation of the public peace, health and safety, an emergency is**
29 **declared to exist, and this 2013 Act takes effect on its passage.”.**

30