

House Bill 3330

Sponsored by Representatives HELM, OWENS

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 **as introduced**.

Instructs Water Resources Director to schedule evidentiary hearings for certain protests concerning water right applications.

A BILL FOR AN ACT

Relating to the review of water right application protests; creating new provisions; amending ORS 536.050, 537.147, 537.153, 537.170, 537.173, 537.175, 537.343, 537.575, 537.621, 537.625, 537.626, 537.627, 537.628, 537.629, 540.537 and 543.765; and repealing ORS 537.622.

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

EVIDENTIARY HEARING

SECTION 1. (1) An evidentiary hearing described in ORS 537.153 (8) or 537.621 (9) must be held at a regional office of the Water Resources Department.

(2) The evidentiary hearing must occur within 90 days after the Water Resources Director schedules the hearing.

(3) When scheduling an evidentiary hearing as described in ORS 537.153 (8) or 537.621 (9), the director shall:

(a) Provide notice to the applicant; and

(b) Post the schedule for the evidentiary hearing on a department website.

(4) The parties to the evidentiary hearing shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under ORS 537.153 (5) or 537.621 (6) and who requests to intervene in the evidentiary hearing prior to the start of the evidentiary hearing.

(5) Notwithstanding ORS 183.635, a hearings officer designated by the director shall hold the evidentiary hearing, during which oral testimony may be provided.

(6)(a) The person who filed the protest shall, by the close of the protest period:

(A) Submit all reasonably available evidence in favor of the protest for entry into the record, including evidence demonstrating the basis for the protest;

(B) Submit all reasonably available arguments supporting the person's position; and

(C) Identify all statutes or rules that have allegedly been violated.

(b) Failure to raise a reasonably ascertainable issue in a protest or in the evidentiary hearing, or failure to provide sufficient specificity to afford the Water Resources Department

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 **an opportunity to respond to the issue, precludes review by an administrative law judge from**
 2 **the Office of Administrative Hearings and judicial review.**

3 **(7) If the hearings officer receives a request to keep the record open after the evidentiary**
 4 **hearing, including a request by a party to allow the party to respond to evidence or argu-**
 5 **ments presented during the evidentiary hearing, the hearings officer may accept written**
 6 **evidence into the record for no more than 21 days after the evidentiary hearing.**

7 **(8) To assess the evidence, the hearings officer shall use the standard of what a reason-**
 8 **able person could reply on to reach a legal conclusion.**

9 **(9) The hearings officer shall make an initial determination and recommendation to the**
 10 **Office of Administrative Hearings regarding any evidence the hearings officer finds is not**
 11 **relevant to the protest.**

12 **(10) The director shall transmit the record of the evidentiary hearing, including a digital**
 13 **recording of oral testimony or a written summary of oral testimony prepared by the hearings**
 14 **officer, and the initial determination and recommendation of the hearings officer to the Of-**
 15 **fice of Administrative Hearings.**

16 **(11) Notwithstanding ORS 536.050 (1)(j), the Water Resources Department shall establish**
 17 **by rule a protest fee that is sufficient to cover the actual costs of holding an evidentiary**
 18 **hearing described in this section.**

19 **(12) The director may refund all or part of the protest fee described in subsection (11)**
 20 **of this section as described in ORS 536.050 (4).**

21 **(13) Moneys received from payment of protest fees described in subsection (11) of this**
 22 **section, less any amounts refunded as described in subsection (12) of this section, shall be**
 23 **deposited in the Water Resources Department Water Right Operating Fund.**

24
 25 **SURFACE WATER**

26
 27 **SECTION 2.** ORS 537.153 is amended to read:

28 537.153. (1) Within 60 days after the Water Resources Department proceeds with the application
 29 under ORS 537.150 (5), the department shall complete application review and issue a proposed final
 30 order approving or denying the application or approving the application with modifications or con-
 31 ditions. The department may request the applicant to provide additional information needed to
 32 complete the review. If the department requests additional information, the request shall be specific
 33 and shall be sent to the applicant by registered mail. The department shall specify a date by which
 34 the information must be returned, which shall be not less than 10 days after the department mails
 35 the request to the applicant. If the department does not receive the information or a request for a
 36 time extension under ORS 537.175 by the date specified in the request, the department may reject
 37 the application and may refund fees in accordance with ORS 536.050 (4)(a). The time period specified
 38 by the department in a request for additional information shall allow the department to comply with
 39 the 60-day time limit established by this subsection.

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

- 1 either:
- 2 (a) One or more of the criteria for establishing the presumption are not satisfied; or
- 3 (b) The proposed use will impair or be detrimental to the public interest as demonstrated in
- 4 comments, in a protest under subsection (6) of this section or in a finding of the department that
- 5 shows:
- 6 (A) The specific public interest under ORS 537.170 [(8)] (3) that would be impaired or detri-
- 7 mentally affected; and
- 8 (B) Specifically how the identified public interest would be impaired or detrimentally affected.
- 9 (3) The proposed final order shall cite findings of fact and conclusions of law and shall include
- 10 but need not be limited to:
- 11 (a) Confirmation or modification of the preliminary determinations made in the initial review;
- 12 (b) A brief statement that explains the criteria considered relevant to the decision, including the
- 13 applicable basin program and the compatibility of the proposed use with applicable land use plans;
- 14 (c) An assessment of water availability and the amount of water necessary for the proposed use;
- 15 (d) An assessment of whether the proposed use would result in injury to existing water rights;
- 16 (e) An assessment of whether the proposed use would impair or be detrimental to the public
- 17 interest as provided in ORS 537.170;
- 18 (f) A draft permit, including any proposed conditions, or a recommendation to deny the appli-
- 19 cation;
- 20 (g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental
- 21 to the public interest has been established; and
- 22 (h) The date by which protests to the proposed final order must be received by the department.
- 23 (4) The department shall mail copies of the proposed final order to the applicant and to persons
- 24 who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also
- 25 shall publish notice of the proposed final order by publication in the weekly notice published by the
- 26 department.
- 27 (5) Any person who supports a proposed final order may request standing for purposes of par-
- 28 ticipating in any **evidentiary hearing or** contested case proceeding on the proposed final order or
- 29 for judicial review of a final order. A request for standing shall be in writing and shall be accom-
- 30 panied by the fee established under ORS 536.050 (1)(n).
- 31 (6) Any person may submit a protest against a proposed final order. A protest shall be in writing
- 32 and shall include:
- 33 (a) The name, address and telephone number of the protestant;
- 34 (b) A description of the protestant's interest in the proposed final order and, if the protestant
- 35 claims to represent the public interest, a precise statement of the public interest represented;
- 36 (c) A detailed description of how the action proposed in the proposed final order would impair
- 37 or be detrimental to the protestant's interest;
- 38 (d) A detailed description of how the proposed final order is in error or deficient and how to
- 39 correct the alleged error or deficiency;
- 40 (e) Any citation of legal authority supporting the protest, if known; and
- 41 (f) The protest fee [required under ORS 536.050] **described in section 1 (11) of this 2023 Act.**
- 42 (7) Requests for standing and protests on the proposed final order shall be submitted within 45
- 43 days after publication of the notice of the proposed final order in the weekly notice published by the
- 44 department. Any person who asks to receive a copy of the department's final order shall submit to
- 45 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested

1 copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the
 2 fee [required under ORS 536.050 (1)(j)] **described in section 1 (11) of this 2023 Act** or the person
 3 has standing and has paid the fee under ORS 536.050 (1)(n).

4 [(8) *Within 60 days after the close of the period for receiving protests, the Water Resources Director*
 5 *shall:*]

6 [(a) *Issue a final order as provided under ORS 537.170 (6); or*]

7 [(b) *Schedule a contested case hearing if a protest has been submitted and if:*]

8 [(A) *Upon review of the issues, the director finds that there are significant disputes related to the*
 9 *proposed use of water; or*]

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

12 **(8) Within 21 days after a protest is filed, the Water Resources Director shall schedule**
 13 **an evidentiary hearing if:**

14 **(a) Upon review of the issues, the director finds that there are significant disputes re-**
 15 **lated to the proposed use of water; and**

16 **(b) The protest requests an evidentiary hearing.**

17 **(9) Within 60 days after the close of the period for receiving protests, the director shall**
 18 **issue a final order as provided under ORS 537.170 (1) if:**

19 **(a) No protest is received;**

20 **(b) A protest is received but the director finds, upon review of the issues, that there are**
 21 **no significant disputes related to the proposed use of water; or**

22 **(c) A protest is received but does not request an evidentiary hearing.**

23 **SECTION 3.** ORS 537.170 is amended to read:

24 537.170. [(1) *Within 45 days after the Water Resources Director schedules a contested case hearing*
 25 *under ORS 537.153 (8), the Water Resources Department shall hold the contested case hearing. The*
 26 *issues to be considered in the contested case hearing shall be limited to issues identified by the ad-*
 27 *ministrative law judge.*]

28 [(2) *Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings,*
 29 *the parties to any contested case hearing initiated under this section shall be limited to:*]

30 [(a) *The applicant;*]

31 [(b) *Any person who timely filed a protest; and*]

32 [(c) *Any person who timely filed a request for standing under ORS 537.153 (5) and who requests*
 33 *to intervene in the contested case hearing prior to the start of the proceeding.*]

34 [(3) *The contested case proceeding shall be conducted in accordance with the applicable provisions*
 35 *of ORS chapter 183 except:*]

36 [(a) *As provided in subsections (1) and (2) of this section; and*]

37 [(b) *An interlocutory appeal under ORS 183.480 (3) shall not be allowed.*]

38 [(4) *If applicable, an application to appropriate water for the generation of electricity submitted*
 39 *under ORS 537.140 shall be included in the consolidated review and hearings process under ORS*
 40 *543.255.*]

41 [(5) *Each person submitting a protest or a request for standing shall raise all reasonably*
 42 *ascertainable issues and submit all reasonably available arguments supporting the person's position*
 43 *by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in*
 44 *a hearing or failure to provide sufficient specificity to afford the Water Resources Department an op-*
 45 *portunity to respond to the issue precludes judicial review based on that issue.*]

1 [(6)] (1) If, after [*the contested case*] **an evidentiary** hearing or, if [*a*] **an evidentiary** hearing is
2 not held, after the close of the period allowed to file a protest, the **Water Resources** Director de-
3 termines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules
4 adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be
5 detrimental to the public interest, the director shall issue a final order rejecting the application or
6 modifying the proposed final order to conform to the public interest. If, after [*the contested case*] **an**
7 **evidentiary** hearing or, if [*a*] **an evidentiary** hearing is not held, after the close of the period al-
8 lowed to file a protest, the director determines that the proposed use would not impair or be detri-
9 mental to the public interest, the director shall issue a final order approving the application or
10 otherwise modifying the proposed final order. A final order may set forth any of the provisions or
11 restrictions to be included in the permit concerning the use, control and management of the water
12 to be appropriated for the project, including, but not limited to, a specification of reservoir operation
13 and minimum releases to protect the public interest.

14 [(7)] (2) If [*a contested case*] **an evidentiary** hearing is not held:

15 (a) Where the final order modifies the proposed final order, the applicant may request and the
16 **Water Resources** Department shall schedule [*a contested case hearing as provided under subsection*
17 (*3*) of this section] **an evidentiary hearing described in section 1 of this 2023 Act** by submitting
18 the information required for a protest under ORS 537.153 (6) within 14 days after the director issues
19 the final order. However, the issues on which [*a contested case*] **an evidentiary** hearing may be re-
20 quested and conducted under this paragraph shall be limited to issues based on the modifications
21 to the proposed final order.

22 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner
23 established in ORS chapter 183 for appeal of order other than contested cases.

24 [(8)] (3) If the presumption of public interest under ORS 537.153 (2) is overcome, then before is-
25 suing a final order, the director or the commission, if applicable, shall make the final determination
26 of whether the proposed use or the proposed use as modified in the proposed final order would im-
27 pair or be detrimental to the public interest by considering:

28 (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use,
29 municipal water supply, power development, public recreation, protection of commercial and game
30 fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any
31 other beneficial use to which the water may be applied for which it may have a special value to the
32 public.

33 (b) The maximum economic development of the waters involved.

34 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-
35 tation and flood control.

36 (d) The amount of waters available for appropriation for beneficial use.

37 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters
38 involved.

39 (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this
40 state, and the means necessary to protect such rights.

41 (g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to
42 537.534.

43 [(9)] (4) Upon issuing a final order, the director shall notify the applicant and each person who
44 submitted written comments or protests or otherwise requested notice of the final order and send
45 a copy of the final order to any person who requested a copy and paid the fee required under ORS

1 536.050 (1)(p).

2 **SECTION 4.** ORS 537.173 is amended to read:

3 537.173. (1) Within 20 days after the Water Resources Director issues a final order under ORS
4 537.170 after the conclusion of [*a contested case*] **an evidentiary** hearing, any party may file ex-
5 ceptions to the order with the Water Resources Commission.

6 (2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60
7 days after the close of the exception period under subsection (1) of this section.

8 **SECTION 5.** ORS 537.175 is amended to read:

9 537.175. (1) Except as provided in subsection (2) of this section, the Water Resources Department
10 shall issue a final order or schedule [*a contested case*] **an evidentiary** hearing on an application for
11 a water right referred to in ORS 537.140 or 537.400 within 180 days after the department proceeds
12 with the application under ORS 537.150 (5).

13 (2) At the request of the applicant, the department may extend the 180-day period set forth in
14 subsection (1) of this section for a reasonable period of time.

15 (3) If [*a contested case*] **an evidentiary** hearing is held, the department shall issue a final order:

16 (a) Within 270 days after scheduling [*the hearing for a contested case proceeding*] **an evidentiary**
17 **hearing on a protest** that involves three or more parties not including the department; and

18 (b) Within 180 days after scheduling [*the hearing for all other contested case proceedings*] **an**
19 **evidentiary hearing on any other protest.**

20 (4) If the applicant does not request an extension under subsection (2) of this section and the
21 department fails to issue a proposed final order or schedule [*a contested case*] **an evidentiary** hear-
22 ing on an application for a water right within 180 days after the department proceeds with the ap-
23 plication under ORS 537.150 (5), the applicant may apply in the Circuit Court for Marion County for
24 a writ of mandamus to compel the department to issue a final order or schedule [*a contested case*]
25 **an evidentiary** hearing on an application for a water right. If the application is for an out-of-stream
26 use, the writ of mandamus shall compel the department to issue a water right permit, unless the
27 department shows by affidavit that to issue a permit may result in harm to an existing water right
28 holder.

29
30 **GROUND WATER**

31
32 **SECTION 6.** ORS 537.621 is amended to read:

33 537.621. (1) Within 60 days after the Water Resources Department proceeds with the application
34 under ORS 537.620 (5), the department shall complete application review and issue a proposed final
35 order approving or denying the application or approving the application with modifications or con-
36 ditions. The department may request the applicant to provide additional information needed to
37 complete the review. If the department requests additional information, the request shall be specific
38 and shall be sent to the applicant by registered mail. The department shall specify a date by which
39 the information must be returned, which shall be not less than 10 days after the department mails
40 the request to the applicant. If the department does not receive the information or a request for a
41 time extension under ORS 537.627 by the date specified in the request, the department may reject
42 the application and may refund fees in accordance with ORS 536.050 (4)(a). The time period specified
43 by the department in a request for additional information shall allow the department to comply with
44 the 60-day time limit established by this subsection.

45 (2) In reviewing the application under subsection (1) of this section, the department shall de-

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

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

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

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

14 (B) Specifically how the identified aspect of the public welfare, safety and health under ORS
 15 537.525 would be impaired or be adversely affected.

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

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

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

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

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

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

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

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

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

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

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

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

43 (6) Any person who supports a proposed final order may request standing for purposes of par-
 44 ticipating in any **evidentiary hearing** or contested case proceeding on the proposed final order or
 45 for judicial review of a final order. A request for standing shall be in writing and shall be accom-

1 panied by the fee established under ORS 536.050 (1)(n).

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

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

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

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

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

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

12 (f) The protest fee [*required under ORS 536.050*] **described in section 1 (11) of this 2023 Act.**

13 (8) Requests for standing and protests on the proposed final order shall be submitted within 45
14 days after publication of the notice of the proposed final order in the weekly notice published by the
15 department. Any person who asks to receive a copy of the department's final order shall submit to
16 the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested
17 copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the
18 fee [*required under ORS 536.050 (1)(j)*] **described in section 1 (11) of this 2023 Act** or the person
19 has standing and has paid the fee under ORS 536.050 (1)(n).

20 [*(9) Within 60 days after the close of the period for receiving protests, the Water Resources Director*
21 *shall:*]

22 [*(a) Issue a final order as provided under ORS 537.625 (1); or*]

23 [*(b) Schedule a contested case hearing if a protest has been submitted and if:*]

24 [*(A) Upon review of the issues, the director finds that there are significant disputes related to the*
25 *proposed use of water; or*]

26 [*(B) Within 30 days after the close of the period for submitting protests, the applicant requests a*
27 *contested case hearing.*]

28 **(9) Within 21 days after a protest is filed, the Water Resources Director shall schedule**
29 **an evidentiary hearing if:**

30 **(a) Upon review of the issues, the director finds that there are significant disputes re-**
31 **lated to the proposed use of water; and**

32 **(b) The protest requests an evidentiary hearing.**

33 **(10) Within 60 days after the close of the period for receiving protests, the director shall**
34 **issue a final order as provided under ORS 537.625 (1) if:**

35 **(a) No protest is received;**

36 **(b) A protest is received but the director finds, upon review of the issues, that there are**
37 **no significant disputes related to the proposed use of water; or**

38 **(c) A protest is received but does not request an evidentiary hearing.**

39 **SECTION 7. ORS 537.622 is repealed.**

40 **SECTION 8.** ORS 537.625 is amended to read:

41 537.625. (1) If, after [*the contested case*] **an evidentiary** hearing or, if [*a*] **an evidentiary** hearing
42 is not held, after the close of the period allowed to file a protest, the Water Resources Director
43 determines that the proposed use does not ensure the preservation of the public welfare, safety and
44 health as described in ORS 537.525, the director shall issue a final order rejecting the application
45 or modifying the proposed final order as necessary to ensure the preservation of the public welfare,

1 safety and health as described in ORS 537.525. If, after [*the contested case*] **an evidentiary** hearing
2 or, if [*a*] **an evidentiary** hearing is not held, after the close of the period allowed to file a protest,
3 the director determines that the proposed use would ensure the preservation of the public welfare,
4 safety and health as described in ORS 537.525, the director shall issue a final order approving the
5 application or otherwise modifying the proposed final order. A final order may set forth any of the
6 provisions or restrictions to be included in the permit concerning the use, control and management
7 of the water to be appropriated for the project.

8 (2) If [*a contested case*] **an evidentiary** hearing is not held:

9 (a) Where the final order modifies the proposed final order, the applicant may request and the
10 Water Resources Department shall schedule [*a contested case hearing as provided under ORS 537.622*
11 (3)] **an evidentiary hearing described in section 1 of this 2023 Act** by submitting the information
12 required for a protest under ORS 537.621 (7) within 14 days after the director issues the final order.
13 However, the issues on which [*a contested case*] **an evidentiary** hearing may be requested and con-
14 ducted under this paragraph shall be limited to issues based on the modifications to the proposed
15 final order.

16 (b) Only the applicant or a protestant may appeal the provisions of the final order in the manner
17 established in ORS chapter 183 for appeal of order other than contested cases.

18 (3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome,
19 then before issuing a final order, the director or the Water Resources Commission, if applicable,
20 shall make the final determination of whether the proposed use or the proposed use as modified in
21 the proposed final order would preserve the public welfare, safety and health as described in ORS
22 537.525 by considering:

23 (a) The conservation of the highest use of the water for all purposes, including irrigation, do-
24 mestic use, municipal water supply, power development, public recreation, protection of commercial
25 and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic at-
26 traction or any other beneficial use to which the water may be applied for which it may have a
27 special value to the public.

28 (b) The maximum economic development of the waters involved.

29 (c) The control of the waters of this state for all beneficial purposes, including drainage, sani-
30 tation and flood control.

31 (d) The amount of waters available for appropriation for beneficial use.

32 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters
33 involved.

34 (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this
35 state, and the means necessary to protect such rights.

36 (g) The state water resources policy.

37 (4) Upon issuing a final order, the Water Resources Department shall notify the applicant and
38 each person who submitted written comments or protests or otherwise requested notice of the final
39 order and send a copy of the final order to any person who requested a copy and paid the fee re-
40 quired under ORS 536.050 (1)(p).

41 (5) A right to appropriate ground water under a permit has a priority from the date when the
42 application was filed with the department.

43 (6) If the use of water under the permit is for operation of a mining operation as defined in ORS
44 517.952:

45 (a) Review of the application and approval or denial of the application shall be coordinated with

1 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-
 2 proval or denial shall take into consideration all policy considerations for the appropriation of water
 3 as set forth in this chapter and ORS chapter 536.

4 (b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall
 5 be conditioned on the applicant’s compliance with the consolidated application process.

6 (c) The permit shall include a condition that additional conditions may be added to the use of
 7 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS
 8 540.520 and 540.530 to use for a mining operation.

9 **SECTION 9.** ORS 537.626 is amended to read:

10 537.626. (1) Within 20 days after the Water Resources Director issues a final order under ORS
 11 537.625 after the conclusion of [*a contested case*] **an evidentiary** hearing, any party may file with
 12 the Water Resources Commission exceptions to the order.

13 (2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60
 14 days after close of the exception period under subsection (1) of this section.

15 **SECTION 10.** ORS 537.627 is amended to read:

16 537.627. (1) Except as provided in subsection (2) of this section, the Water Resources Department
 17 shall issue a final order or schedule [*a contested case*] **an evidentiary** hearing on an application for
 18 a water right referred to in ORS 537.615 within 180 days after the department proceeds with the
 19 application under ORS 537.620 (5).

20 (2) At the request of the applicant, the department may extend the 180-day period set forth in
 21 subsection (1) of this section for a reasonable period of time.

22 (3) If the applicant does not request an extension under subsection (2) of this section and the
 23 department fails to issue a proposed final order or schedule [*a contested case*] **an evidentiary** hear-
 24 ing on an application for a water right within 180 days after the department proceeds with the ap-
 25 plication under ORS 537.620 (5), the applicant may apply in the Circuit Court for Marion County for
 26 a writ of mandamus to compel the department to issue a final order or schedule [*a contested case*]
 27 **an evidentiary** hearing on an application for a water right. The writ of mandamus shall compel the
 28 department to issue a water right permit, unless the department shows by affidavit that to issue a
 29 permit may result in harm to an existing water right holder.

30 **SECTION 11.** ORS 537.628 is amended to read:

31 537.628. (1) The Water Resources Department may approve an application for less ground water
 32 than applied for or upon terms, conditions and limitations necessary for the protection of the public
 33 welfare, safety and health. In any event the department shall not approve the application for more
 34 ground water than is applied for or than can be applied to a beneficial use. No application shall be
 35 approved when the same will deprive those having prior rights of appropriation for a beneficial use
 36 of the amount of water to which they are lawfully entitled.

37 (2) If [*a contested case*] **an evidentiary** hearing is held, the department shall issue a final order:

38 (a) Within 270 days after scheduling [*the hearing for a contested case proceeding*] **an evidentiary**
 39 **hearing for a protest** that involves three or more parties not including the department; and

40 (b) Within 180 days after scheduling [*the hearing for all other contested case proceedings*] **an**
 41 **evidentiary hearing for all other protests.**

42
 43 **APPLICATION**
 44

45 **SECTION 12.** The amendments to ORS 537.153, 537.170, 537.173, 537.175, 537.621, 537.625,

1 **537.626, 537.627 and 537.628 by sections 2 to 6 and 8 to 11 of this 2023 Act and the repeal of**
2 **ORS 537.622 by section 7 of this 2023 Act apply to protests filed on or after the effective date**
3 **of this 2023 Act.**

4
5 **CONFORMING AMENDMENTS**
6

7 **SECTION 13.** ORS 536.050 is amended to read:

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

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

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

12 (i) A base fee of \$1,090 for an appropriation of water through a single use, point of diversion
13 or point of appropriation;

14 (ii) \$410 for the first second-foot or fraction thereof appropriated under the permit;

15 (iii) \$410 for each additional second-foot or fraction thereof appropriated under the permit;

16 (iv) \$410 for each additional use, point of diversion or point of appropriation included in the
17 application;

18 (v) If appropriating stored water, \$41 for the first acre-foot or fraction thereof up to 20 acre-feet,
19 plus \$1.40 for each additional acre-foot or fraction thereof; and

20 (vi) If appropriating ground water, in addition to any other fees, \$480 for each application filed.

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

22 (i) A base fee of \$1,090;

23 (ii) \$41 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1.40 for each additional
24 acre-foot or fraction thereof; and

25 (iii) \$160 for each additional storage location.

26 (C) To exclusively appropriate stored water:

27 (i) A base fee of \$610; and

28 (ii) \$41 for the first acre-foot or fraction thereof up to 20 acre-feet, plus \$1.40 for each additional
29 acre-foot or fraction thereof.

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

32 (A) A base fee of \$610 for recording the permit; and

33 (B) An additional fee of \$790 if the permit is issued pursuant to a final order that contains
34 provisions requested by the applicant for mitigating impacts to the proposed water source.

35 (c) For filing and recording the assignment or partial assignment of a water right application,
36 permit or license under ORS 537.220 or 537.635, \$120.

37 (d) For copying records in the department, \$2.70 for the first page and 70 cents for each addi-
38 tional page.

39 (e) For certifying copies, documents, records or maps, \$14 for each certificate.

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

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

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

43 (A) A base fee of \$1,360 for a change to a single water right or permit;

44 (B) \$1,090 for each additional type of change requested;

45 (C) For a request for a change in place of use or type of use or for a water exchange under ORS

1 540.533, \$410 for each second-foot or fraction thereof requested beyond the first second-foot;

2 (D) \$610 for each additional water right or permit included in the application;

3 (E) An additional fee of \$480 per application, if the application is for an additional point of ap-
 4 propriation, a change in a point of appropriation or a change from surface water to ground water
 5 or for substitution as described in ORS 540.524; and

6 (F) \$410 for each additional point of appropriation included in the application.

7 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
 8 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
 9 point of diversion to allow for the appropriation of ground water or a change of a primary right to
 10 a supplemental right under ORS 540.570, a base fee of \$950 for the first water right or permit, plus
 11 \$310 for each additional water right or permit included in the application and:

12 (A) For nonirrigation uses, \$230 for each second-foot or fraction thereof requested beyond the
 13 first second-foot; or

14 (B) For irrigation uses, \$2.70 per acre of land irrigated or, if the application and required map
 15 are submitted to the department in a department-approved digital format, 70 cents per acre of land
 16 irrigated.

17 (j) For submitting a protest to the department:

18 (A) \$950 if the protest is by a nonapplicant; and

19 (B) \$480 if the protest is by an applicant.

20 (k) For filing an application for extension of time within which irrigation or other works shall
 21 be completed or a water right perfected, \$780.

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

24 (m) For filing, examining and certifying a petition under ORS 541.329, \$480 plus 10 cents per
 25 acre of water involved in the application. For purposes of computing this fee, when any acreage
 26 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
 27 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
 28 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
 29 and certifying the petition.

30 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$270.

31 (o) For participating in a contested case proceeding under ORS [537.170, 537.622 or] 543A.130,
 32 \$680.

33 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
 34 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
 35 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$35.

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

37 (A) A base fee of \$480; and

38 (B) \$41 for each acre-foot or fraction thereof.

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

41 (s) For examining an application for a substitution made under ORS 540.524:

42 (A) A base fee of \$990 for the first well substitution; and

43 (B) A fee of \$480 for each additional well substitution.

44 (t) For examining an application for an allocation of conserved water under ORS 537.455 to
 45 537.500:

- 1 (A) A base fee of \$1,360 for the first water right that is part of the allocation; and
 2 (B) An additional fee of \$480 for each water right that is part of the allocation beyond the first
 3 water right.
- 4 (u) For submitting a water management and conservation plan pursuant to rules of the com-
 5 mission:
- 6 (A) \$680, if the plan is submitted by an agricultural water supplier;
 7 (B) \$1,220, if the plan is submitted by a municipal water supplier serving a population of 1,000
 8 or fewer persons; or
 9 (C) \$2,450, if the plan is submitted by a municipal water supplier serving a population of more
 10 than 1,000 persons.
- 11 (v) For examining a new application for an in-stream water right lease under ORS 537.348:
- 12 (A) \$610 for an application for a lease with four or more landowners or four or more water
 13 rights; or
 14 (B) \$410 for all other applications.
- 15 (w) For examining an application for an in-stream water right lease renewal, \$150.
- 16 (x) For submitting a claim of beneficial use under a permit or transfer having a priority date
 17 of July 9, 1987, or later, \$230.
- 18 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
 19 537.260 to reinstate the permit, \$610.
- 20 (z) For submitting a request for a basin program exception under ORS 536.295, \$780.
- 21 (aa) For processing an application under ORS 537.225 for an assignment of water right to one
 22 or more landowners and issuance of replacement water right permits, the actual cost of the work.
- 23 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard
 24 rating as determined by the department. The fees the department may charge the dam owner are:
- 25 (A) \$120 for a dam with a low hazard rating.
 26 (B) \$230 for a dam with a significant hazard rating.
 27 (C) \$790 for a dam with a high hazard rating.
 28 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
 29 a late fee of \$140.
- 30 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
 31 partment may, after giving the dam owner notice by certified mail, place a lien on the real property
 32 where the dam is located for the fees owed by the dam owner.
- 33 (3) Notwithstanding the fees established under subsection (1) of this section, the commission may
 34 establish lower examination and permit fees by rule for:
- 35 (a) The right to appropriate water for a storage project of five acre-feet or less; or
 36 (b) The right to appropriate water for the purpose of allowing the applicant to water livestock
 37 outside of a riparian area, as that term is defined in ORS 541.890.
- 38 (4)(a) The director may refund all or part of a fee paid to the department under this section if
 39 the director determines that a refund of the fee is appropriate in the interests of fairness to the
 40 public or necessary to correct an error of the department.
- 41 (b) The director may refund all or part of the protest fee described in subsection (1)(j) of this
 42 section to the legal owner or occupant who filed a protest under ORS 540.641 if an order of the
 43 Water Resources Commission establishes that all or part of a water right has not been canceled or
 44 modified under ORS 540.610 to 540.650.
- 45 (5) The director may waive all or part of a fee for a change to a water right permit under ORS

1 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
 2 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

3 (a) Made pursuant to ORS 537.348;

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

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

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

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

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

15 **SECTION 14.** ORS 537.147 is amended to read:

16 537.147. (1) Notwithstanding the process for applying for a water right permit established in ORS
 17 537.150 to 537.230, a person may, pursuant to this section, apply to the Water Resources Department
 18 for a water right permit to use stored water. A person applying under this section for a water right
 19 permit to use stored water shall submit:

20 (a) A fee, in the amount required by ORS 536.050 for applications to appropriate stored water.

21 (b) A completed application for a secondary permit, in a form determined by the department,
 22 that contains the information required of applications under ORS 537.140 and 537.400 (1).

23 (c) Evidence that the proposed use of the stored water is one of the authorized uses under the
 24 water right permit, certificate or decree that allows the storage of water.

25 (2) If an applicant provides, to the satisfaction of the department, the fee and the information
 26 required by subsection (1) of this section, the department may, after public notice and a 30-day op-
 27 portunity to submit comments on the application, issue a water right permit upon determining that
 28 no public interest issues as identified in ORS 537.170 [(8)] (3) have been raised through the com-
 29 ments submitted.

30 (3) If the department determines that public interest issues have been identified, then the de-
 31 partment shall treat the application under this section as an application under ORS 537.150 and
 32 perform the public interest review required by ORS 537.153 (2).

33 (4) At a minimum, a water right permit issued by the department for use of stored water under
 34 this section shall be conditioned to require:

35 (a) Fish screens and by-pass devices and fish passage as may be required by the State Depart-
 36 ment of Fish and Wildlife; and

37 (b) A measuring device at each point of diversion authorized under the water right permit.

38 (5) Within 10 days of issuing a water right permit under this section, the department shall pro-
 39 vide notice of the permit issuance in the weekly notice published by the department and to persons
 40 who have submitted comments pursuant to subsection (2) of this section.

41 **SECTION 15.** ORS 537.343 is amended to read:

42 537.343. (1) A proposed final order issued under ORS 537.170 [(6)] (1) for an in-stream water right
 43 certificate may include any condition the Water Resources Director considers necessary, but which
 44 is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

45 (a) Approve the in-stream water right for the quantity of water requested;

1 (b) Approve the requested in-stream water right for a lesser quantity of water; or

2 (c) Reject the requested in-stream water right.

3 (2) If the director reduces or rejects the in-stream water right as requested, or conditions the
4 in-stream water right, the director shall include a statement of findings that sets forth the basis for
5 the reduction, rejection or conditions. The director shall be the final authority in determining the
6 level of in-stream flow necessary to protect the public use.

7 (3) After the director issues a final order approving an in-stream water right, the Water Re-
8 sources Department shall issue a certificate for an in-stream water right according to the provisions
9 of ORS 537.341.

10 **SECTION 16.** ORS 540.537 is amended to read:

11 540.537. (1) The Water Resources Commission shall issue an order allowing an exchange unless
12 the commission finds any of the following:

13 (a) The proposed exchange would adversely affect other appropriators.

14 (b) The proposed exchanges would be too difficult to administer.

15 (c) The proposed exchange would adversely affect the public interest as determined under ORS
16 537.170 [(8)] (3).

17 (d) A sufficient quantity of water would not be available to replace the water to be used under
18 the exchange. In determining whether replacement water will be equal to the water exchanged, the
19 commission may consider relative consumptive uses and transmission losses.

20 (2) The commission may include any condition the commission considers necessary in an order
21 allowing an exchange.

22 (3) The commission shall issue an order terminating the exchange:

23 (a) If water is not applied under the exchange within the time fixed by the commission in the
24 order approving the exchange;

25 (b) Upon written request signed by all parties to the exchange;

26 (c) Upon finding that any other termination condition specified in the original order has oc-
27 curred; or

28 (d) Upon attainment of a termination date specified in the original exchange order.

29 (4) For purposes of subsection (3) of this section, the time fixed for implementing the exchange
30 shall include any extension granted by the commission for good cause shown.

31 **SECTION 17.** ORS 537.575 is amended to read:

32 537.575. Any permit granted or application for a permit approved under ORS 537.510, 537.520,
33 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to and still valid and in
34 effect on August 3, 1955, is considered to be a permit issued under ORS 537.625. Any application for
35 a permit under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and
36 537.600 prior to, pending and not yet approved on August 3, 1955, shall be governed as an applica-
37 tion for a permit under ORS 537.615, 537.620, 537.621[, 537.622] and 537.625.

38 **SECTION 18.** ORS 537.629 is amended to read:

39 537.629. (1) When an application discloses the probability of wasteful use or undue interference
40 with existing wells or that any proposed use or well will impair or substantially interfere with ex-
41 isting rights to appropriate surface water by others, or that any proposed use or well will impair
42 or substantially interfere with existing rights to appropriate ground water for the beneficial use of
43 the water for its thermal characteristics, the Water Resources Department may impose conditions
44 or limitations in the permit to prevent the same or reject the same after hearing, or, in the
45 department's discretion, request the Water Resources Commission to initiate a rulemaking proceed-

1 ing to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

2 (2)(a) When an application discloses the probability that a proposed use or well will impair or
 3 interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250
 4 degrees Fahrenheit, the department may:

5 (A) Approve the permit;

6 (B) Impose conditions or limitations in the permit to prevent the probable interference or
 7 impairment;

8 (C) After a hearing under [ORS 537.622] **section 1 of this 2023 Act**, reject the application; or

9 (D) Request the commission to initiate a rulemaking proceeding to declare the affected area a
 10 critical ground water area under ORS 537.730 to 537.740.

11 (b) In deciding whether to issue, deny or condition a permit under this subsection, the depart-
 12 ment shall consider any orders or permits applicable to the ground water reservoir issued by the
 13 State Geologist or the governing board of the State Department of Geology and Mineral Industries
 14 under ORS chapter 522.

15 **SECTION 19.** ORS 543.765 is amended to read:

16 543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may
 17 apply to the Water Resources Department for a certificate to use water for hydroelectric purposes
 18 within an artificial delivery system under the applicant's existing water right. If the proposed hy-
 19 droelectric project meets the applicable capacity limitation under this subsection and meets either
 20 the qualifications for a Federal Energy Regulatory Commission exemption from licensing or similar
 21 qualifications of another federal agency responsible for authorizing the project, the applicant may
 22 use the expedited application process under this section regardless of which federal agency issues
 23 the authorization. To qualify under this subsection:

24 (a) For a project that is to be built as part of an existing dam, the capacity may not exceed five
 25 megawatts. Subsection (5)(b) of this section does not apply to a project described in this paragraph.

26 (b) For in-conduit projects, the capacity may not exceed 15 megawatts for a nonmunicipal facil-
 27 ity or 40 megawatts for a municipal facility. Projects described in this paragraph must comply with
 28 subsection (5)(b) of this section.

29 (2) An application, which shall be on a form provided by the Water Resources Department, for
 30 a hydroelectric certificate under this section must include:

31 (a) The certificate number, or decree reference if no confirming certificate has been issued, of
 32 the applicant's existing water right associated with the proposed hydroelectric project.

33 (b) A copy of either a Federal Energy Regulatory Commission exemption application or a similar
 34 application submitted to the federal agency responsible for authorizing the project, if applicable.

35 (c) A proposed schedule of annual water use and an estimate of the maximum power generation
 36 of the proposed hydroelectric project.

37 (d) A statement by the applicant that the amount of water used by the proposed hydroelectric
 38 project will not exceed the amount authorized and used under the applicant's existing water right
 39 for beneficial use without waste.

40 (e) A statement that the applicant owns or otherwise controls the water conveyance system.

41 (f) An application processing fee of \$500. The department shall deposit fees collected under this
 42 section into the Water Resources Department Hydroelectric Fund established pursuant to ORS
 43 536.015.

44 (g) A map or drawing and all other data concerning the proposed hydroelectric project, as may
 45 be prescribed by the department. The map or drawing must be of sufficient quality and scale to es-

1 establish the location of the existing point of diversion and the proposed location of the hydroelectric
2 project.

3 (h) If the water to be used for the proposed hydroelectric project is delivered by a public entity
4 other than the applicant for a certificate under this section, a statement from that entity that the
5 entity will be able to deliver water as described in the application.

6 (i) Evidence that the water has been used over the past five years according to the terms and
7 conditions of the applicant's existing water right described in paragraph (a) of this subsection.

8 (3) If an applicant provides the information required by subsection (2) of this section:

9 (a) The Water Resources Department shall provide notice to both the State Department of Fish
10 and Wildlife and the public, and provide a 30-day period for public comment.

11 (b) The Water Resources Department may issue a final order and certificate to use water for
12 hydroelectric purposes upon making a final determination that the proposed hydroelectric use does
13 not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 [(8)]
14 (3).

15 (4) If the Water Resources Department determines that public interest issues have been identi-
16 fied, the department shall issue a final order denying the application. The department shall also is-
17 sue a final order denying the application if the department identifies issues related to the public
18 interest. If the applicant does not appeal the final order as provided in ORS chapter 183 and, within
19 one year of the department's final order denying the applicant's application, files an application with
20 the department for a preliminary permit to operate a hydroelectric project as provided in ORS
21 537.130 and 543.210, the applicant shall receive a credit toward the applicant's application fees in
22 the amount of \$500.

23 (5) At a minimum, a certificate issued under this section must contain the following conditions:

24 (a) Except as provided in paragraph (b) of this subsection, fish screens, by-pass devices and fish
25 passages as required by the State Department of Fish and Wildlife.

26 (b) If the application is for a hydroelectric project that is to be installed in or on a conduit de-
27 livery system, the certificate does not need to include a requirement for fish passage at the diversion
28 point for the conduit delivery system if:

29 (A) The hydroelectric generating equipment for the project is not located on a dam;

30 (B) The hydroelectric generating equipment for the project is installed within or at the end of
31 a conduit delivery system;

32 (C) The conduit delivery system is operated for the distribution of water for agricultural, mu-
33 nicipal or industrial consumption; and

34 (D) Except as provided in subsection (15) of this section, the certificate includes a condition for
35 the making of annual payments under subsection (14) of this section.

36 (c) That use of water be limited to periods when the applicant's existing water right is put to
37 beneficial use without waste and that the amount used is not greater than the quantity of water
38 diverted to satisfy the authorized specific use under the existing water right described in subsection
39 (2)(a) of this section.

40 (d) That use of water be limited by rate, duty, season and any other limitations of the applicant's
41 existing water right described in subsection (2)(a) of this section.

42 (e) That the applicant measure and report the quantity of water diverted.

43 (f) That the restrictions established in ORS 543.660 shall apply as conditions of use to a certif-
44 icate issued under this section to a district as defined in ORS 543.655.

45 (g) That a certificate issued under this section shall be invalidated upon a change in the point

1 of diversion of the existing water right described in subsection (2)(a) of this section.

2 (h) That the right to use water under a certificate issued under this section is invalidated if the
3 federal exemption or authorization related to the certificate is canceled or invalidated.

4 (i) Any other conditions the Water Resources Department deems necessary to protect the public
5 interest.

6 (6) The Water Resources Department shall conduct a review of certificates issued under this
7 section and shall issue a final order and a superseding certificate that corresponds to any changes
8 or adjustments made to the applicant's existing water right described in subsection (2)(a) of this
9 section.

10 (7) Subsection (5)(b) of this section does not affect any requirement for fish passage applicable
11 to a project that is otherwise required by law.

12 (8) Upon request, the State Department of Fish and Wildlife and the Water Resources Depart-
13 ment shall arrange a preapplication meeting with a person to discuss the requirements associated
14 with the installation of a hydroelectric project in an artificial delivery system.

15 (9) A certificate issued under this section may not have its own priority date. The Water Re-
16 sources Department may not regulate for or against any certificate issued under this section based
17 on the priority date of the certificate.

18 (10) A certificate issued under this section does not grant a right to divert water for hydro-
19 electric purposes.

20 (11) A certificate issued under this section may not be included in the determination of injury
21 to other water rights pursuant to ORS chapter 540.

22 (12) A certificate issued under this section is subject to review 50 years after the date of issu-
23 ance and pursuant to the terms described in this section.

24 (13) Failure to fully develop and put to use a certificate issued under this section within five
25 years of issuance invalidates the hydroelectric certificate.

26 (14)(a) If a certificate contains a condition described in subsection (5)(b) of this section for an-
27 nual payments, the payment shall be collected as provided in paragraph (c) of this subsection. Ex-
28 cept as provided in paragraph (b) of this subsection, the annual payment amount must be:

29 (A) Except as provided in subparagraph (D) of this paragraph, for the first five years, four times
30 the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

31 (B) Except as provided in subparagraph (D) of this paragraph, for the 6th through 10th years,
32 eight times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

33 (C) Except as provided in subparagraph (D) of this paragraph, after the 10th year, 15 times the
34 base hydropower fee amount assessed for the project under ORS 543.078 for the year.

35 (D) \$100 for any year in which the base hydropower fee amount assessed for the project under
36 ORS 543.078 is less than \$100.

37 (b) If the certificate is for a hydroelectric project that will operate on a partial-year basis, the
38 fee shall be three-fifths of the amount established in paragraph (a) of this subsection.

39 (c) The Water Resources Department shall collect the fee on behalf of the State Department of
40 Fish and Wildlife and forward the fee moneys for crediting to the Fish Passage Restoration Subac-
41 count created under ORS 497.141.

42 (15)(a) Notwithstanding subsection (14) of this section, a certificate for a project to install hy-
43 droelectric generating equipment as described in subsection (5)(b) of this section may provide for the
44 termination of annual payments being made under subsection (14) of this section if, after the date
45 the project commences operation:

- 1 (A) The project provides for fish passages;
- 2 (B) There is an agreement between the applicant and the State Department of Fish and Wildlife
- 3 providing for fish passages associated with the project; or
- 4 (C) A waiver or exemption has been issued under ORS 509.585 for the project.
- 5 (b) A certificate for a project to install hydroelectric generating equipment as described in
- 6 subsection (5)(b) of this section does not need to include a condition for the making of annual pay-
- 7 ments under subsection (14) of this section if:
- 8 (A) There is an agreement between the applicant and the State Department of Fish and Wildlife
- 9 providing for the conduit delivery system to have fish passages associated with the project; or
- 10 (B) A waiver or exemption has been issued under ORS 509.585 for the project.
- 11 (16) If a certificate under this section is issued, the certificate holder must pay fees consistent
- 12 with the fees described in ORS 543.078. Failure to pay a required fee invalidates a certificate issued
- 13 under this section.
- 14 (17) The Water Resources Department shall issue invoices for fees required under this section,
- 15 and the state shall have a preference lien for delinquent fees, as provided in ORS 543.082.
- 16 (18) An applicant for a certificate issued under this section must provide evidence of a Federal
- 17 Energy Regulatory Commission exemption or approval under a similar process by the federal agency
- 18 responsible for authorizing the project before a certificate can be issued, if applicable.
- 19 (19) Nothing in this section shall alter the preference of municipalities in ORS 543.260 (3) and
- 20 543.270.

21
22 **CAPTIONS**
23

24 **SECTION 20. The unit captions used in this 2023 Act are provided only for the conven-**
25 **ience of the reader and do not become part of the statutory law of this state or express any**
26 **legislative intent in the enactment of this 2023 Act.**
27
