

# House Bill 3108

Sponsored by Representatives OWENS, HELM (Pre-session filed.)

## 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**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: Tells OWRD to make changes to how certain permits about aquifers are reviewed. (Flesch Readability Score: 63.4).

Requires the Water Resources Department to implement additional rules and requirements for the review of limited license applications for an aquifer storage and recovery permit.

## A BILL FOR AN ACT

1  
2 Relating to aquifer storage and recovery permits; amending ORS 536.050 and 537.534.

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

4 **SECTION 1.** ORS 537.534 is amended to read:

5 537.534. (1) In accordance with this section, the Water Resources Commission shall establish  
6 rules for the permitting and administration of aquifer storage and recovery projects. The rules shall  
7 establish the Water Resources Department as the sole permitting agency for the projects, but the  
8 Department of Environmental Quality and the Oregon Health Authority may comment on permits  
9 for a project and recommend conditions to be included on the permit. When necessary, the applicant  
10 also shall obtain land use and development approval from a local government.

11 (2) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission shall es-  
12 tablish by rule a procedure to allow a person to obtain a limited license to store and use water in-  
13 jected into an underground aquifer for aquifer storage and recovery testing purposes for a short  
14 term or fixed duration after the person complies with the notice provision set forth in ORS 537.144.  
15 The rules shall provide a 30-day public comment period before issuance of a limited license. **In re-**  
16 **viewing a limited license application** the Water Resources Department:

17 (a) **Shall consider only the comments relating to impacts and issues that could arise**  
18 **during the five-year testing period described in this section.**

19 (b) May attach conditions to the limited license regarding monitoring, sampling and rates of  
20 recovery up to 100 percent of the injection quantity. **Any conditions imposed may not be based**  
21 **on issues that occur beyond the five-year testing period.**

22 (c) **May impose conditions on** aquifer storage and recovery under a limited license [*may be*  
23 *conditioned by the Water Resources Department*] to protect existing ground water rights that rely  
24 upon the receiving aquifer and the injection source water.

25 (d) [*The Water Resources Department*] May revoke or modify the limited license to use the stored  
26 water acquired under a limited license if that use causes injury to any other water right or to a  
27 minimum perennial streamflow.

28 (e) [*The Water Resources Director*] May issue a limited license for aquifer storage and recovery  
29 purposes for a term of not more than five years. The license may be renewed if the applicant dem-  
30 onstrates further testing is necessary.

**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       **(f) May not recommend or consider requiring additional modeling, monitoring or capital**  
 2 **investments prior to approving a limited license application unless the department or agency**  
 3 **reviewing the permit is able to provide evidence that demonstrates:**

4       **(A) Irreparable harm to ground water degradation will occur at the rate and volume**  
 5 **identified in the limited license during the five-year testing period;**

6       **(B) Degradation will result in an immediate irreparable threat to public health and safety**  
 7 **or irreparable environmental harm;**

8       **(C) Degradation or immediate irreparable harm is guaranteed to occur within the five-**  
 9 **year testing period;**

10       **(D) Degradation or immediate irreparable harm is not likely to occur in the future under**  
 11 **baseline conditions should recharge not be allowed; or**

12       **(E) Degradation or immediate irreparable harm can not be mediated or mitigated for**  
 13 **during the testing period or following completion of recharge testing.**

14       (3) To obtain a limited license for aquifer storage and recovery, the applicant shall provide to  
 15 the Water Resources Department:

16       (a) Well construction information;

17       (b) Test results of the quality of the injection source water;

18       (c) Test results of the quality of the receiving aquifer water;

19       (d) The proposed injected water storage time, recovery rates and recovery schedule;

20       (e) Preliminary hydrogeologic information including a description of the aquifer, estimated flow  
 21 direction and rate of movement, allocation of surface water, springs or wells within the area affected  
 22 by aquifer storage and recovery wells;

23       (f) The fee established by rule by the commission pursuant to ORS 536.050 (1)(L); and

24       (g) Any other information required by rule of the commission.

25       **(4) Information required to be submitted under subsection (3) of this section is limited**  
 26 **to the portion of the aquifer that may be affected by the application's proposal over the**  
 27 **five-year testing period.**

28       **(5) The department shall issue a proposed final order or initial decision on the limited**  
 29 **license application described in subsections (3) and (4) of this section no later than 200 days**  
 30 **after a completed application has been received. An applicant may file a writ of mandamus**  
 31 **and seek awards of attorney fees if the department fails to issue a final order or initial de-**  
 32 **cision within 200 days of submitting a complete application.**

33       [(4)] **(6) Only after completion of a test program under a limited license issued under subsection**  
 34 **(3) of this section may the applicant apply for a permanent aquifer storage and recovery permit.**  
 35 Each application for an aquifer storage and recovery permit shall be accompanied by the fee set  
 36 forth in ORS 536.050 for examination of an application for a permit to store water. The Water Re-  
 37 sources Department shall be the sole permitting agency for the project and may place conditions  
 38 on the permit consistent with rules adopted by the commission, but the Department of Environ-  
 39 mental Quality and the Oregon Health Authority may review, comment on and recommend condi-  
 40 tions to be included on the permit. When necessary, the applicant shall obtain land use and  
 41 development approval from a local government. Where existing water rights for the injection source  
 42 water have been issued, the Water Resources Department shall receive comments from interested  
 43 parties or agencies, but the public interest review standards shall apply only to the matters raised  
 44 by the aquifer storage and recovery permit application in the same manner as any new water right  
 45 application, not to the underlying water rights. If new water rights for injection source water and

1 aquifer storage and recovery are necessary, then the public interest review standards shall apply  
 2 to the new permit application in the same manner as any new water right application. The Water  
 3 Resources Director may refer policy matters to the commission for decision.

4 [(5)] (7) The commission shall adopt rules consistent with this section to implement an aquifer  
 5 storage and recovery program. The rules shall include:

6 (a) Requirements for reporting and monitoring the aquifer storage and recovery project aquifer  
 7 impacts and for constituents reasonably expected to be found in the injection source water.

8 (b) Provisions that allow any person operating an aquifer storage and recovery project under a  
 9 permit, upon approval by the Water Resources Department, to recover up to 100 percent of the  
 10 water stored in the aquifer storage facility if valid scientific data gathered during operations under  
 11 the limited license or permit demonstrate that the injected source water is not lost through mi-  
 12 gration or other means and that ground water otherwise present in the aquifer has not been irre-  
 13 trievably lost as a result of aquifer storage or retrieval. The Water Resources Department may place  
 14 such other conditions on withdrawal of stored water necessary to protect the public health and en-  
 15 vironment, including conditions allowing reconsideration of the permit to comply with ORS 537.532.

16 (c) The procedure for allowing the Department of Environmental Quality and the Oregon Health  
 17 Authority to comment on and recommend permit conditions.

18 [(6)] (8) The use of water under a permit as injection source water for an aquifer storage and  
 19 recovery project up to the limits allowed in subsection [(5)(b)] (7)(b) of this section shall not affect  
 20 the priority date of the water right permit or otherwise affect the right evidenced by the permit.

21 [(7)] (9) The holder of a permit for aquifer storage and recovery shall apply for a transfer or  
 22 change of use if the use of recovered water is different from that which is allowed in the source  
 23 water permit or certificate.

24 **SECTION 2.** ORS 536.050 is amended to read:

25 536.050. (1) The Water Resources Department may collect the following fees in advance:

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

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

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

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

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

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

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

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

38 (B) To store water under ORS 537.400 or 537.534 [(4)] (6):

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

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

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

43 (C) To exclusively appropriate stored water:

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

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

1 acre-foot or fraction thereof.

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

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

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

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

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

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

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

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

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

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

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

17 (C) For a request for a change in place of use or type of use or for a water exchange under ORS  
18 540.533, \$410 for each second-foot or fraction thereof requested beyond the first second-foot;

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

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

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

24 (i) For examining an application for a temporary change in place of use under ORS 540.523, for  
25 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the  
26 point of diversion to allow for the appropriation of ground water or a change of a primary right to  
27 a supplemental right under ORS 540.570, a base fee of \$950 for the first water right or permit, plus  
28 \$310 for each additional water right or permit included in the application and:

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

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

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

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

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

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

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

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

- 1 and certifying the petition.
- 2 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, \$270.
- 3 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,  
4 \$680.
- 5 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order  
6 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to  
7 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$35.
- 8 (q) For examining an application to store water under ORS 537.409:  
9 (A) A base fee of \$480; and  
10 (B) \$41 for each acre-foot or fraction thereof.
- 11 (r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established  
12 by the Water Resources Director under ORS 543A.410.
- 13 (s) For examining an application for a substitution made under ORS 540.524:  
14 (A) A base fee of \$990 for the first well substitution; and  
15 (B) A fee of \$480 for each additional well substitution.
- 16 (t) For examining an application for an allocation of conserved water under ORS 537.455 to  
17 537.500:  
18 (A) A base fee of \$1,360 for the first water right that is part of the allocation; and  
19 (B) An additional fee of \$480 for each water right that is part of the allocation beyond the first  
20 water right.
- 21 (u) For submitting a water management and conservation plan pursuant to rules of the com-  
22 mission:  
23 (A) \$680, if the plan is submitted by an agricultural water supplier;  
24 (B) \$1,220, if the plan is submitted by a municipal water supplier serving a population of 1,000  
25 or fewer persons; or  
26 (C) \$2,450, if the plan is submitted by a municipal water supplier serving a population of more  
27 than 1,000 persons.
- 28 (v) For examining a new application for an in-stream water right lease under ORS 537.348:  
29 (A) \$610 for an application for a lease with four or more landowners or four or more water  
30 rights; or  
31 (B) \$410 for all other applications.
- 32 (w) For examining an application for an in-stream water right lease renewal, \$150.
- 33 (x) For submitting a claim of beneficial use under a permit or transfer having a priority date  
34 of July 9, 1987, or later, \$230.
- 35 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS  
36 537.260 to reinstate the permit, \$610.
- 37 (z) For submitting a request for a basin program exception under ORS 536.295, \$780.
- 38 (aa) For processing an application under ORS 537.225 for an assignment of water right to one  
39 or more landowners and issuance of replacement water right permits, the actual cost of the work.
- 40 (2)(a) The department may charge a dam owner an annual fee based upon the dam's hazard  
41 rating as determined by the department. The fees the department may charge the dam owner are:  
42 (A) \$120 for a dam with a low hazard rating.  
43 (B) \$230 for a dam with a significant hazard rating.  
44 (C) \$790 for a dam with a high hazard rating.  
45 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,

1 a late fee of \$140.

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

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

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

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

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

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

17 (5) The director may waive all or part of a fee for a change to a water right permit under ORS  
18 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-  
19 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

20 (a) Made pursuant to ORS 537.348;

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

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

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

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

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

32