LC 661
2013 Regular Session
69000-006
9/5/12 (CDT/ps)

D R A F T

SUMMARY

Increases certain fees charged by Water Resources Department.
Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to fees charged by the Water Resources Department; creating new provisions; amending ORS 536.050, 537.150, 537.153, 537.610, 537.620, 537.621, 539.081 and 543A.120; repealing section 18, chapter 819, Oregon Laws 2009; and declaring an emergency.

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

SECTION 1. ORS 536.050 is amended to read:

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

(a) For examining an application for a permit:

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

(i) A base fee of [*$700*] **$800** for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) [*$250*] **$300** for the first second-foot or fraction thereof appropriated under the permit;

(iii) [*$250*] **$300** for each additional second-foot or fraction thereof appropriated under the permit;

(iv) [*$250*] **$300** for each additional use, point of diversion or point of appropriation included in the application;

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.

(v) If appropriating stored water, [*$25*] **$30** for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof; and

(vi) If appropriating ground water, in addition to any other fees, [*$300*] **$350** for each application filed.

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

(i) A base fee of [*$700*] **$800**;

(ii) [*$25*] **$30** for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof; and

(iii) [*$100*] **$125** for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of [*$400*] **$450**; and

(ii) [*$25*] **$30** for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

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

(A) A base fee of [*$400*] **$450** for recording the permit; and

(B) An additional fee of [*$500*] **$575** if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, [*$75*] **$85**.

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

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

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

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

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

water right or permit:

(A) A base fee of [*$900*] **$1,000** for a change to a single water right or permit;

(B) [*$700*] **$800** for each additional type of change requested;

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, [*$250*] **$300** for each second-foot or fraction thereof requested beyond the first second-foot;

(D) [*$400*] **$450** for each additional water right or permit included in the application; and

(E) An additional fee of [*$300*] **$350** per application, if the application is for an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of [*$600*] **$700** for the first water right or permit, plus [*$200*] **$225** for each additional water right or permit included in the application and:

(A) For nonirrigation uses, [*$150*] **$175** for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, $2 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 50 cents per acre of land irrigated.

(j) For submitting a protest to the department:

(A) [*$600*] **$700** if the protest is by a nonapplicant; and

(B) [*$300*] **$350** if the protest is by an applicant.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, [*$500*] **$575**.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee estab-

lished by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, [*$300*] **$350** plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, [*$150*] **$200**.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, [*$350*] **$500**.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, [*$20*] **$25**.

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

(A) A base fee of [*$300*] **$350**; and

(B) [*$25*] **$30** for each acre-foot or fraction thereof.

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

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

(A) A base fee of [*$630*] **$725** for the first well substitution; and

(B) A fee of [*$300*] **$350** for each additional well substitution.

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

(A) A base fee of [*$850*] **$1,000** for the first water right that is part of the allocation; and

(B) An additional fee of [*$300*] **$350** for each water right that is part of the allocation beyond the first water right.

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

(A) [*$400*] **$500**, if the plan is submitted by an agricultural water supplier;

(B) [*$800*] **$900**, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) [*$1,600*] **$1,800**, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

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

(A) [*$400*] **$450** for an application for a lease with four or more landowners or four or more water rights; or

(B) [*$250*] **$300** for all other applications.

(w) For examining an application for an in-stream water right lease renewal, [*$100*] **$110**.

(x) For submitting a claim of beneficial use under a permit **or transfer** having a priority date of July 9, 1987, or later, [*$150*] **$175**.

(y) For submitting a request no later than 60 days after cancellation of a permit under ORS 537.260 to reinstate the permit, [*$400*] **$450**.

(z) For submitting a request for a basin program exception under ORS 536.295, [*$500*] **$575**.

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

(A) [*$75*] **$85** for a dam with a low hazard rating.

(B) [*$150*] **$170** for a dam with a significant hazard rating.

(C) [*$500*] **$575** for a dam with a high hazard rating.

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

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

fees owed by the dam owner.

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

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

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

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

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

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

(a) Made pursuant to ORS 537.348;

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

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

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

(7) All moneys received under this section, less any amounts refunded

under subsection (4) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

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

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

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

(a) For examining an application for a permit:

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

(i) A base fee of [*$500*] **$800** for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) [*$200*] **$300** for the first second-foot or fraction thereof appropriated under the permit;

(iii) [*$100*] **$300** for each additional second-foot or fraction thereof appropriated under the permit;

(iv) [*$200*] **$300** for each additional use, point of diversion or point of appropriation included in the application; [*and*]

(v) If appropriating stored water, [*$20*] **$30** for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof[.]**; and**

(vi) If appropriating ground water, in addition to any other fees, $350 for each application filed.

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

(i) A base fee of [*$500*] **$800**; [*and*]

(ii) [*$20*] **$30** for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof[.]**; and**

(iii) $125 for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of [*$250*] **$450**; and

(ii) [*$15*] **$30** for the first acre-foot or fraction thereof up to [*10*] **20** acre-feet, plus $1 for each additional acre-foot or fraction thereof.

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

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

(A) A base fee of $450 for recording the permit; and

(B) An additional fee of $575 if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, [*$50*] **$85**.

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

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

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

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

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

(A) A base fee of [*$400*] **$1,000** for a change to a single water right or permit;

(B) [*$400*] **$800** for each additional type of change requested;

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, [*$200*] **$300** for each second-foot or fraction thereof requested beyond the first second-foot; [*and*]

(D) [*$200*] **$450** for each additional water right or permit included in the application[.]**; and**

(E) An additional fee of $350 per application, if the application is for

an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of [*$200*] **$700** for the first water right or permit, plus [*$50*] **$225** for each additional water right or permit included in the application and:

(A) For nonirrigation uses, [*$80*] **$175** for each second-foot or fraction thereof requested beyond the first second-foot; or

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

[*(j) For submitting a protest to the department, $350.*]

(j) For submitting a protest to the department:

(A) $700 if the protest is by a nonapplicant; and

(B) $350 if the protest is by an applicant.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, [*$350*] **$575**.

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

(m) For filing, examining and certifying a petition under ORS 541.329, [*$250*] **$350** plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

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

[*$100*] **$200**.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, [*$250*] **$500**.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, [*$10*] **$25**.

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

(A) A base fee of [*$80*] **$350**; and

(B) [*$20*] **$30** for each acre-foot or fraction thereof.

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

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

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

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

(A) A base fee of $725 for the first well substitution; and

(B) A fee of $350 for each additional well substitution.

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

(A) A base fee of $1,000 for the first water right that is part of the allocation; and

(B) An additional fee of $350 for each water right that is part of the allocation beyond the first water right.

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

(A) [*$250*] **$500**, if the plan is submitted by an agricultural water supplier;

(B) [*$500*] **$900**, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) [*$1,000*] **$1,800**, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

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

(A) [*$200*] **$450** for an application for a lease with four or more landowners or four or more water rights; or

(B) [*$100*] **$300** for all other applications.

(w) For examining an application for an in-stream water right lease renewal, [*$50*] **$110**.

(x) For submitting a claim of beneficial use under a permit or transfer having a priority date of July 9, 1987, or later, $175.

(y) For submitting a request no later than 60 days after cancellation of a permit under ORS 537.260 to reinstate the permit, $450.

(z) For submitting a request for a basin program exception under ORS 536.295, $575.

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

(A) $85 for a dam with a low hazard rating.

(B) $170 for a dam with a significant hazard rating.

(C) $575 for a dam with a high hazard rating.

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

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

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

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

or less; or

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

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

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

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

(a) Made pursuant to ORS 537.348;

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

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

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

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

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

by ORS 536.015.

SECTION 3. ORS 537.150 is amended to read:

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

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

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

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

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

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

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

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its

preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of [*$200*] **$225**. If the department receives no timely response from the applicant, the department shall proceed with the application.

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

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

SECTION 4. ORS 537.150, as amended by section 13, chapter 819, Oregon Laws 2009, is amended to read:

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

(2) Upon determining that an application contains the information listed under ORS 537.140 (1) and is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued

in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

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

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

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

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

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

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of [*$150*] **$225**. If the department receives no timely response from the applicant, the department shall proceed with the application.

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

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

SECTION 5. ORS 537.153, as amended by section 14, chapter 819, Oregon Laws 2009, is amended to read:

537.153. (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.150 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The department may request the applicant to provide additional information needed to complete the review. If the department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The department shall specify a date by which the information must be returned, which shall be not less than 10 days after the department mails the request to the applicant. If the department does not receive the information or a request for a time extension under ORS 537.175 by the date specified in the request, the department may reject the application and may refund fees in accordance with ORS 536.050 [*(3)(a)*] **(4)(a)**. The time period specified by the department in a request for additional information shall allow the department to comply with the 60-day time limit established by this subsection.

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

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

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

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

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

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

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

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

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

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

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

(f) A draft permit, including any proposed conditions, or a recommendation to deny the application;

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

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

(4) The department shall mail copies of the proposed final order to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also shall publish notice of the

proposed final order by publication in the weekly notice published by the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 6. ORS 537.610 is amended to read:

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

(2) The issuance of the certificate of registration serves as prima facie evidence that the registrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and in the certificate of registration.

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

(4) The commission shall adopt by rule the process and standards by which the commission will recognize changes in the place of use, type of use or point of appropriation for claims to appropriate ground water registered under this section. The commission shall adopt fees not to exceed [*$1,125*] **$1,250** for actions taken to modify a certificate of registration.

SECTION 7. ORS 537.610, as amended by section 15, chapter 819, Oregon Laws 2009, is amended to read:

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

(2) The issuance of the certificate of registration serves as prima facie evidence that the registrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and in the certificate of registration.

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

(4) The commission shall adopt by rule the process and standards by which the commission will recognize changes in the place of use, type of use or point of appropriation for claims to appropriate ground water registered under this section. The commission shall adopt fees not to exceed [*$500*] **$1,250** for actions taken to modify a certificate of registration.

SECTION 8. ORS 537.620 is amended to read:

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

(2) Within 15 days after receiving the application, the department shall determine whether the application contains the information listed under ORS 537.615 (2) and is complete and not defective, including the payment of all

fees required under ORS 537.615 (5). If the department determines that the application is incomplete or defective or that not all fees have been paid, the department shall return the fees paid and the application to the applicant to remedy the defect. If an application is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application.

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

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

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

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

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

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (2) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of [*$200*] **$225**. If the department receives no timely response from the applicant, the department shall proceed

with the application.

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

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

SECTION 9. ORS 537.620, as amended by section 16, chapter 819, Oregon Laws 2009, is amended to read:

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

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

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

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

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

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

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

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (2) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of [*$150*] **$225**. If the department receives no timely response from the applicant, the department shall proceed with the application.

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

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

SECTION 10. ORS 537.621, as amended by section 17, chapter 819, Oregon Laws 2009, is amended to read:

537.621. (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.620 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The department may request the applicant to provide additional information needed to complete the review. If the department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The department shall specify a date by which the information must be returned, which shall be not less than 10 days after the department mails the request to the applicant. If the department does not receive the information or a request for a time extension under ORS 537.627 by the date specified in the request, the department may reject the application and may refund fees in accordance with ORS 536.050 [*(3)(a)*] **(4)(a)**. The time period specified by the department in a request for additional information shall allow the department to comply with the 60-day time limit established by this subsection.

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

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

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

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

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

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

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

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

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

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

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

(f) A draft permit, including any proposed conditions, or a recommendation to deny the application;

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

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

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

(4) In establishing the flow rate and duty of water allowed, the department may consider a general basin-wide standard, but first shall evaluate information submitted by the applicant to demonstrate the need for a flow rate and duty higher than the general standard. If the applicant provides

such information, the department shall authorize the requested rate and duty except upon specific findings related to the application to support a determination that a lesser amount is needed. If the applicant does not provide information to demonstrate the need for a flow rate and duty higher than the general basin-wide standard, the department may apply the general standards without specific findings related to the application.

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

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

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

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

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

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

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

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

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

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

final order in the weekly notice published by the department. Any person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS 536.050 (1)(n).

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

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

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

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

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

SECTION 11. ORS 539.081 is amended to read:

539.081. (1) At the time the owner or registrant submits a registration statement under ORS 539.240 or, if a registration statement is not filed, when a statement and proof of claim is filed pursuant to notice by the Water Resources Director under ORS 539.030, the owner or registrant shall pay a fee as follows:

(a) If for irrigation use, $2 for each acre of irrigated lands up to 100 acres and $1 for each acre in excess of 100 acres. The minimum fee for any owner or registrant for irrigation use shall be [*$30*] **$100**.

(b) If for power use, $2 for each theoretical horsepower up to 100 horsepower, [*50*] **75** cents for each horsepower in excess of 100 up to 500 horsepower, [*35*] **50** cents for each horsepower in excess of 500 horsepower up to 1,000 horsepower and [*25*] **35** cents for each horsepower in excess of 1,000 horsepower, as set forth in the proof. The minimum fee for any owner or registrant for power use shall be [*$200*] **$300**.

(c) If for mining or any other use, [*$200*] **$500** for the first second-foot or fraction of the first second-foot and [*$50*] **$100** for each additional second-foot.

(2) The fees under subsection (1) of this section shall not apply to any federally recognized Indian tribe, or to the United States acting as trustee for such a tribe, claiming, under ORS 539.010, an undetermined vested right to the use of surface water for any nonconsumptive and nondiverted in-stream use to satisfy tribal hunting, fishing or gathering rights.

(3) If the registration statement shows that the water right was initiated by making application for a permit under the provisions of ORS chapter 537, the owner or registrant shall be given credit for the money paid as examination and recording fees. A credit under this subsection shall be allowed only if the application under ORS chapter 537 was for a permit to appropriate water to be applied to the same parcel of land or for the same use as set forth in the registration statement.

(4) All fees paid under this section shall be deposited into the General Fund of the State Treasury and credited to an account of the Water Resources Department. The fees shall be used to pay for the expenses of the department to:

(a) Register claims to undetermined vested rights or federal reserved rights under ORS 539.230 and 539.240; and

(b) Determine claims filed or registered under ORS 539.230 and 539.240.

(5) No registration statement or statement and proof of claim shall be accepted for filing unless the registration statement or claim is accompanied by the fee in the amount set forth in this section. If the federal government is determined to be immune from the payment of such fees, the director may elect to accept a federal claim for filing without the accompanying fees.

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

543A.120. (1) A proposed final order prepared by a Hydroelectric Application Review Team and submitted to the Water Resources Department under ORS 543A.040, 543A.055 or 543A.105 shall be based on the application of

the standards set forth in ORS 543A.025 and shall reflect the complete review of the water right application for compliance with applicable statutes and rules.

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

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

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

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

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

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

(f) A draft certificate, including any proposed conditions, or a recommendation to deny the application; and

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

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

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

(5) Any person may submit a protest against a proposed final order. A

protest shall be in writing and shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 13. Section 18, chapter 819, Oregon Laws 2009, is repealed.

SECTION 14. If this 2013 Act does not become effective until after July 1, 2013, the Legislative Assembly intends that the amendments to ORS 536.050, 537.150, 537.153, 537.610, 537.620, 537.621, 539.081 and 543A.120 by sections 2, 4, 5, 7, 9, 10, 11 and 12 of this 2013 Act and any fee amounts established under those amendments apply retroactively to July 1, 2013.

SECTION 15. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.