

D R A F T

SUMMARY

Establishes Water Rights Appeals Board to consider appeals of certain decisions regarding water right permits and transfers.

A BILL FOR AN ACT

Relating to a water rights appeals board; creating new provisions; amending ORS 536.050, 536.750, 537.147, 537.153, 537.170, 537.175, 537.343, 537.621, 537.622, 537.625, 537.627, 537.628, 537.629, 540.520, 540.524, 540.530, 540.537 and 543.765; and repealing ORS 537.173 and 537.626.

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

WATER RIGHTS APPEALS BOARD

SECTION 1. It is the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving water permits and transfers, and that those decisions be made consistently with sound principles governing judicial review. It is the intent of the Legislative Assembly in enacting sections 1 to 13 of this 2023 Act to accomplish these objectives.

SECTION 2. (1) There is hereby created a Water Rights Appeals Board consisting of one regional office in each of the five regions established by the Water Resources Department, with five positions for each regional office. Board members shall be appointed by the Governor subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. The board shall consist of a board chairperson

1 chosen by the board members and other board members as the Gov-
2 ernor considers necessary. The members of the board shall serve terms
3 of four years. A member is eligible for reappointment. The salaries of
4 the members shall be fixed by the Governor unless otherwise provided
5 for by law. The salary of a member of the board shall not be reduced
6 during the period of service of the member.

7 (2) The Governor may at any time remove any member of the board
8 for inefficiency, incompetence, neglect of duty, malfeasance in office
9 or unfitness to render effective service. Before removal the Governor
10 shall give the member a copy of the charges against the member and
11 shall fix the time when the member can be heard in defense against
12 the charges, which may not be less than 10 days thereafter. The
13 hearing must be open to the public and must be conducted in the same
14 manner as a contested case under ORS chapter 183. The decision of the
15 Governor to remove a member of the board shall be subject to judicial
16 review in the same manner as provided for review of contested cases
17 under ORS 183.480 to 183.540.

18 (3) Board members appointed under subsection (1) of this section
19 must:

20 (a) Be members in good standing of the Oregon State Bar.

21 (b) Have experience with, and expertise in, water law.

22 **SECTION 3.** (1) The Water Rights Appeals Board shall have offices
23 in each of the five regions established by the Water Resources De-
24 partment.

25 (2) For the convenience of one or more of the parties, the board
26 may hold hearings by telephone.

27 **SECTION 4.** (1) A regional office of the Water Rights Appeals Board
28 shall conduct review proceedings upon petitions filed in the manner
29 prescribed in section 6 of this 2023 Act.

30 (2) In conducting review proceedings the members of the board for
31 the regional office may sit together or separately as the board chair-

1 person shall decide.

2 (3) The board chairperson shall apportion the business of the board
3 among the members of the board. Each member shall have the power
4 to hear and issue orders on petitions filed with the board and on all
5 issues arising under those petitions.

6 (4) The board shall adopt rules governing the conduct of review
7 proceedings brought before it under sections 6 to 10 of this 2023 Act.

8 **SECTION 5.** (1) Except as provided in subsections (2) and (3) of this
9 section, a regional office of the Water Rights Appeals Board shall have
10 exclusive jurisdiction to review a protested proposed final order issued
11 under ORS 537.153 or 537.621 or a protested proposed approval under
12 ORS 540.520, 540.524, 540.530 or 540.531, in the manner provided in
13 sections 6 to 10 of this 2023 Act.

14 (2) The jurisdiction of a regional office of the board:

15 (a) Is limited to those cases in which the petitioner has exhausted
16 all remedies available by right before petitioning the board for review.

17 (b) Is subject to the provisions of section 11 of this 2023 Act relating
18 to judicial review by the Court of Appeals.

19 (c) Is limited to actions arising in the region of the regional office.

20 (3) Notwithstanding subsection (1) of this section, the circuit courts
21 of this state retain jurisdiction to enforce orders of a regional office
22 of the board in appropriate proceedings brought by the board or a
23 party to the board proceeding resulting in the order.

24 **SECTION 6.** (1) Review of decisions described in section 5 (1) of this
25 2023 Act under sections 6 to 10 of this 2023 Act shall be commenced by
26 filing a notice of intent to appeal with the appropriate regional office
27 of the Water Rights Appeals Board.

28 (2) A person may petition a regional office of the board for review
29 of a decision described in section 5 (1) of this 2023 Act if the person:

30 (a) Filed a notice of intent to appeal the decision as provided in
31 subsection (1) of this section; and

1 (b) Appeared before the Water Resources Department in writing.

2 (3) If the department makes a decision described in section 5 (1) of
3 this 2023 Act without providing a hearing, or the department makes a
4 decision described in section 5 (1) of this 2023 Act that is different from
5 the proposal described in the notice of hearing to such a degree that
6 the notice of the proposed action did not reasonably describe the
7 department's final actions, a person adversely affected by the decision
8 may appeal the decision to the appropriate regional office of the board
9 under this section:

10 (a) Within 21 days of actual notice where notice is required; or

11 (b) Within 21 days of the date a person knew or should have known
12 of the decision where no notice is required.

13 (4) The appeal period described in subsection (3) of this section may
14 not exceed three years after the date of the decision.

15 (5)(a) Within 21 days after a notice of intent to appeal has been filed
16 with the appropriate regional office of the board under subsection (1)
17 of this section, any person described in paragraph (b) of this sub-
18 section may intervene in and be made a party to the review proceeding
19 by filing a motion to intervene and by paying a filing fee of \$100.

20 (b) Persons who may intervene in and be made a party to the review
21 proceedings are:

22 (A) The applicant who initiated the action before the department;
23 or

24 (B) Persons who appeared before the department orally or in writ-
25 ing.

26 (c) Failure to comply with the deadline or to pay the filing fee set
27 forth in paragraph (a) of this subsection shall result in denial of a
28 motion to intervene.

29 (6) If a state agency whose order, rule, ruling, policy or other action
30 is at issue is not a party to the proceeding, it may file a brief with the
31 regional office of the board as if it were a party. The brief shall be due

1 on the same date the respondent's brief is due and shall be accompa-
2 nied by a filing fee of \$100.

3 (7) A notice of intent to appeal a decision described in section 5 (1)
4 of this 2023 Act shall be filed not later than 21 days after the date the
5 decision sought to be reviewed becomes final. Copies of the notice of
6 intent to appeal shall be served upon the department and the applicant
7 of record, if any, in the department proceeding. The notice shall be
8 served and filed in the form and manner prescribed by rule of the
9 board and shall be accompanied by a filing fee of \$300. If a petition for
10 review is not filed with the regional office of the board as required in
11 subsections (8) and (9) of this section, the regional office of the board
12 shall award the filing fee to the department.

13 (8)(a) Within 21 days after service of the notice of intent to appeal,
14 the department shall transmit to the regional office of the board the
15 original or a certified copy of the entire record of the proceeding under
16 review. By stipulation of all parties to the review proceeding the re-
17 cord may be shortened. The regional office of the board may require
18 or permit subsequent corrections to the record. However, the board
19 shall issue an order on a motion objecting to the record within 60 days
20 of receiving the motion. If the regional office of the board denies a
21 petitioner's objection to the record, the regional office of the board
22 may establish a new deadline for the petition for review to be filed that
23 may not be less than 14 days from the later of the original deadline
24 for the brief or the date of denial of the petitioner's record objection.

25 (b) Within 10 days after service of a notice of intent to appeal, the
26 regional office of the board shall provide notice to the petitioner and
27 the respondent of their option to enter into mediation pursuant to
28 section 13 of this 2023 Act. Any person moving to intervene shall be
29 provided such notice within seven days after a motion to intervene is
30 filed. The notice required by this paragraph shall be accompanied by
31 a statement that mediation information or assistance may be obtained

1 **from the department.**

2 **(9) A petition for review of the decision must be filed with the re-**
3 **gional office of the board as required by the board under subsection**
4 **(11) of this section.**

5 **(10) The petition shall include a copy of the decision sought to be**
6 **reviewed and shall state:**

7 **(a) The facts that establish that the petitioner has standing.**

8 **(b) The date of the decision.**

9 **(c) The issues the petitioner seeks to have reviewed.**

10 **(11)(a) The board shall adopt rules establishing deadlines for filing**
11 **petitions and briefs and for oral argument.**

12 **(b) At any time subsequent to the filing of a notice of intent and**
13 **prior to the date set for filing the record, the department may with-**
14 **draw its decision for purposes of reconsideration. If the department**
15 **withdraws an order for purposes of reconsideration, it shall, within**
16 **such time as the board may allow, affirm, modify or reverse its deci-**
17 **sion. If the petitioner is dissatisfied with the department action after**
18 **withdrawal for purposes of reconsideration, the petitioner may refile**
19 **the notice of intent and the review must proceed upon the revised or-**
20 **der. An amended notice of intent is not required if the department,**
21 **on reconsideration, affirms the order or modifies the order with only**
22 **minor changes.**

23 **(12) The regional office of the board shall issue a final order within**
24 **77 days after the date of transmittal of the record. If the order is not**
25 **issued within 77 days the applicant may apply in Marion County or the**
26 **circuit court of the county where the application was filed for a writ**
27 **of mandamus to compel the regional office of the board to issue a final**
28 **order.**

29 **(13) Upon entry of its final order, the regional office of the board:**

30 **(a) May, in its discretion, award costs to the prevailing party in-**
31 **cluding the cost of preparation of the record if the prevailing party is**

1 the department whose decision is under review.

2 (b) Shall award reasonable attorney fees and expenses to the pre-
3 vailing party against any other party who the regional office of the
4 board finds presented a position or filed any motion without probable
5 cause to believe the position or motion was well-founded in law or on
6 factually supported information.

7 (14) Orders issued under this section may be enforced in appropriate
8 judicial proceedings.

9 (15)(a) The regional office of the board shall provide for the publi-
10 cation of its orders that are of general public interest in the form it
11 deems best adapted for public convenience. The publications shall
12 constitute the official reports of the regional office of the board.

13 (b) Any moneys collected or received from sales by a regional office
14 of the board shall be paid into the Water Rights Appeals Board Publi-
15 cations Account established by section 7 of this 2023 Act.

16 (16) Except for any sums collected for publication of board opinions,
17 all fees collected by a regional office of the board under this section
18 that are not awarded as costs shall be paid over to the State Treasurer
19 to be credited to the General Fund.

20 (17) The board shall track and report on its website:

21 (a) The number of reviews commenced, as described in subsection
22 (1) of this section, the number of reviews commenced for which a pe-
23 tition is filed under subsection (2) of this section and, in relation to
24 each of those numbers, the rate at which the reviews result in a de-
25 cision of a regional office of the board to uphold, reverse or remand
26 a decision. The board shall track and report reviews under this para-
27 graph in categories established by the board.

28 (b) A list of petitioners, the number of reviews commenced and the
29 rate at which the petitioner's reviews have resulted in decisions of a
30 regional office of the board to uphold, reverse or remand a decision.

31 (c) A list of respondents, the number of reviews involving each re-

1 spondent and the rate at which reviews involving the respondent have
2 resulted in decisions of a regional office of the board to uphold, reverse
3 or remand a decision. Additionally, when a respondent is the depart-
4 ment, the board shall track whether the local government appears
5 before the board.

6 (d) A list of reviews, and a brief summary of the circumstances in
7 each review, under which a regional office of the board exercises its
8 discretion to require a losing party to pay the attorney fees of the
9 prevailing party.

10 **SECTION 7.** The Water Rights Appeals Board Publications Account
11 is established in the General Fund. All moneys in the account are ap-
12 propriated continuously to the Water Rights Appeals Board to be used
13 for paying expenses incurred by the board under section 6 (15) of this
14 2023 Act. Disbursements of moneys from the account shall be approved
15 by a member of the board.

16 **SECTION 8.** (1) The appropriate regional office of the Water Rights
17 Appeals Board shall review the decision described in section 5 (1) of
18 this 2023 Act and prepare a final order affirming, reversing or re-
19 manding the decision. The regional office of the board shall adopt
20 rules defining the circumstances in which it will reverse rather than
21 remand a decision that is not affirmed.

22 (2)(a) Review of a decision under sections 6 to 10 of this 2023 Act
23 must be confined to the record.

24 (b) In the case of disputed allegations of standing,
25 unconstitutionality of the decision, ex parte contacts or other proce-
26 dural irregularities not shown in the record that, if proved, would
27 warrant reversal or remand, the regional office of the board may take
28 evidence and make findings of fact on those allegations. The regional
29 office of the board shall be bound by any finding of fact of the Water
30 Resources Department for which there is substantial evidence in the
31 whole record.

1 **(3) Issues shall be limited to those raised by any participant before**
2 **the department.**

3 **(4) A petitioner may raise new issues to the regional office of the**
4 **board if the department made a decision that is different from the**
5 **proposal described in the notice to such a degree that the notice of the**
6 **proposed action did not reasonably describe the department’s final**
7 **action.**

8 **(5)(a) Whenever the findings, order and record are sufficient to al-**
9 **low review, and to the extent possible consistent with the time re-**
10 **quirements of section 6 (12) of this 2023 Act, the regional office of the**
11 **board shall decide all issues presented to it when reversing or re-**
12 **manding a decision.**

13 **(b) Whenever the findings are defective because of failure to recite**
14 **adequate facts or legal conclusions or failure to adequately identify the**
15 **standards or their relation to the facts, but the parties identify rele-**
16 **vant evidence in the record which clearly supports the decision or a**
17 **part of the decision, the regional office of the board shall affirm the**
18 **decision or the part of the decision supported by the record and re-**
19 **mand the remainder to the department, with direction indicating ap-**
20 **propriate remedial action.**

21 **(6) A regional office of the board may decide cases before it by**
22 **means of memorandum decisions and shall prepare full opinions only**
23 **in such cases as it deems proper.**

24 **SECTION 9.** (1) **The following periods of delay shall be excluded**
25 **from the 77-day period within which the Water Rights Appeals Board**
26 **must make a final decision on a petition under section 6 (12) of this**
27 **2023 Act:**

28 **(a) Any period of delay resulting from a motion, including but not**
29 **limited to a motion disputing the constitutionality of the decision,**
30 **standing, ex parte contacts or other procedural irregularities not**
31 **shown in the record.**

1 (b) Any reasonable period of delay resulting from a request for a
2 stay under section 10 of this 2023 Act.

3 (c) Any reasonable period of delay resulting from a continuance
4 granted by a member of the board on the member's own motion or at
5 the request of one of the parties, if the member granted the contin-
6 uance on the basis of findings that the ends of justice served by
7 granting the continuance outweigh the best interest of the public and
8 the parties in having a decision within 77 days.

9 (2) No period of delay resulting from a continuance granted by the
10 board under subsection (1)(c) of this section shall be excludable under
11 this section unless the regional office of the board sets forth in the
12 record, either orally or in writing, its reasons for finding that the ends
13 of justice served by granting the continuance outweigh the best in-
14 terests of the public and the other parties in a decision within the 77
15 days. The factors the regional office of the board shall consider in de-
16 termining whether to grant a continuance under subsection (1)(c) of
17 this section in any case are as follows:

18 (a) Whether the failure to grant a continuance in the proceeding
19 would be likely to make a continuation of the proceeding impossible
20 or result in a miscarriage of justice; or

21 (b) Whether the case is so unusual or so complex, due to the num-
22 ber of parties or the existence of novel questions of fact or law, that
23 it is unreasonable to expect adequate consideration of the issues
24 within the 77-day time limit.

25 (3) No continuance under subsection (1)(c) of this section shall be
26 granted because of general congestion of the calendar of the regional
27 office of the board or lack of diligent preparation or attention to the
28 case by any member of the regional office of the board or any party.

29 **SECTION 10.** Upon application of the petitioner, the regional office
30 of the Water Rights Appeals Board may grant a stay of a decision
31 under review if the petitioner demonstrates:

1 (1) A colorable claim of error in the decision under review; and

2 (2) That the petitioner will suffer irreparable injury if the stay is
3 not granted.

4 **SECTION 11.** (1) Any party to a proceeding before a regional office
5 of the Water Rights Appeals Board under sections 6 to 10 of this 2023
6 Act may seek judicial review of a final order issued in those pro-
7 ceedings.

8 (2) Notwithstanding the provisions of ORS 183.480 to 183.540, judicial
9 review of orders issued under sections 6 to 10 of this 2023 Act is solely
10 as provided in this section.

11 (3)(a) Jurisdiction for judicial review of proceedings under sections
12 6 to 10 of this 2023 Act is conferred upon the Court of Appeals. Pro-
13 ceedings for judicial review are instituted by filing a petition in the
14 Court of Appeals. The petition must be filed within 21 days following
15 the date the regional office of the board delivered or mailed the order
16 upon which the petition is based.

17 (b) Filing of the petition, as set forth in paragraph (a) of this sub-
18 section, and service of a petition on all persons identified in the peti-
19 tion as adverse parties of record in proceeding of the regional office
20 of the board is jurisdictional and may not be waived or extended.

21 (4) The petition must state the nature of the order the petitioner
22 desires reviewed. Copies of the petition must be served by first class,
23 registered or certified mail on the regional office of the board and all
24 other parties of record in the proceeding.

25 (5) Within seven days after service of the petition, the regional of-
26 fice of the board shall transmit to the court the original or a certified
27 copy of the entire record of the proceeding under review, but, by
28 stipulation of all parties to the review proceeding, the record may be
29 shortened. The court may tax a party that unreasonably refuses to
30 stipulate to limit the record for the additional costs. The court may
31 require or permit subsequent corrections or additions to the record

1 when deemed desirable. Except as specifically provided in this sub-
2 section, the court may not tax the cost of the record to the petitioner
3 or any intervening party. However, the court may tax such costs and
4 the cost of transcription of record to a party filing a frivolous petition
5 for judicial review.

6 (6) Petitions and briefs must be filed within time periods and in a
7 manner established by the Court of Appeals by rule.

8 (7)(a) The court shall hear oral argument within 49 days of the date
9 of transmittal of the record.

10 (b) The court may hear oral argument more than 49 days from the
11 date of transmittal of the record provided the court determines that
12 the ends of justice served by holding oral argument on a later day
13 outweigh the best interests of the public and the parties. The court
14 may not hold oral argument more than 49 days from the date of
15 transmittal of the record because of general congestion of the court
16 calendar or lack of diligent preparation or attention to the case by any
17 member of the court or any party.

18 (c) The court shall set forth in writing a determination to hear oral
19 argument more than 49 days from the date the record is transmitted,
20 together with the reasons for its determination, and shall provide a
21 copy to the parties. The court shall schedule oral argument as soon
22 as practicable thereafter.

23 (d) In making a determination under paragraph (b) of this sub-
24 section, the court shall consider:

25 (A) Whether the case is so unusual or complex, due to the number
26 of parties or the existence of novel questions of law, that 49 days is
27 an unreasonable amount of time for the parties to brief the case and
28 for the court to prepare for oral argument; and

29 (B) Whether the failure to hold oral argument at a later date likely
30 would result in a miscarriage of justice.

31 (8) Judicial review of an order issued under sections 6 to 10 of this

1 **2023 Act must be confined to the record. The court may not substitute**
2 **its judgment for that of the board as to any issue of fact.**

3 **(9) The court may affirm, reverse or remand the order. The court**
4 **shall reverse or remand the order only if it finds:**

5 **(a) The order to be unlawful in substance or procedure, but error**
6 **in procedure is not cause for reversal or remand unless the court finds**
7 **that substantial rights of the petitioner were prejudiced thereby;**

8 **(b) The order to be unconstitutional; or**

9 **(c) The order is not supported by substantial evidence in the whole**
10 **record as to facts found by the board under section 8 (2) of this 2023**
11 **Act.**

12 **(10) The Court of Appeals shall issue a final order on the petition**
13 **for judicial review with the greatest possible expediency.**

14 **(11) If the order of the regional office of the board is remanded by**
15 **the Court of Appeals or the Supreme Court, the regional office of the**
16 **board shall respond to the court's appellate judgment within 30 days.**

17 **(12) A party must file with the regional office of the board an**
18 **undertaking with one or more sureties insuring that the party will pay**
19 **all costs, disbursements and attorney fees awarded against the party**
20 **by the Court of Appeals if:**

21 **(a) The party appealed a decision of the regional office of the board**
22 **to the Court of Appeals; and**

23 **(b) In making the decision being appealed to the Court of Appeals,**
24 **the regional office of the board awarded attorney fees and expenses**
25 **against that party under section 6 (13)(b) of this 2023 Act.**

26 **(13) The undertaking described in subsection (12) of this section**
27 **must be filed with the regional office of the board and served on the**
28 **opposing parties within 10 days after the date the petition was filed**
29 **with the Court of Appeals.**

30 **SECTION 12. (1) The Court of Appeals shall issue a final order on**
31 **a petition for review filed under section 11 of this 2023 Act within 91**

1 **days after oral argument on the petition.**

2 **(2) The following periods of delay shall be excluded from the 91-day**
3 **period within which the court must issue a final order on a petition:**

4 **(a) Any period of delay resulting from a motion properly before the**
5 **court; or**

6 **(b) Any reasonable period of delay resulting from a continuance**
7 **granted by the court on the court's own motion or at the request of**
8 **one of the parties, if the court granted the continuance on the basis**
9 **of findings that the ends of justice served by granting the continuance**
10 **outweigh the best interest of the public and the parties in having a**
11 **decision within 91 days.**

12 **(3) No period of delay resulting from a continuance granted by the**
13 **court under subsection (2)(b) of this section shall be excludable under**
14 **this section unless the court sets forth, in the record, either orally or**
15 **in writing, its reasons for finding that the ends of justice served by**
16 **granting the continuance outweigh the best interests of the public and**
17 **the other parties in a decision within the 91 days. The factors the court**
18 **shall consider in determining whether to grant a continuance under**
19 **subsection (2)(b) of this section in any case are as follows:**

20 **(a) Whether the failure to grant a continuance in the proceeding**
21 **would be likely to make a continuation of the proceeding impossible**
22 **or result in a miscarriage of justice; or**

23 **(b) Whether the case is so unusual or so complex, due to the num-**
24 **ber of parties or the existence of novel questions of fact or law, that**
25 **it is unreasonable to expect adequate consideration of the issues**
26 **within the 91-day time limit.**

27 **(4) No continuance under subsection (2)(b) of this section shall be**
28 **granted because of general congestion of the court calendar or lack**
29 **of diligent preparation or attention to the case by any member of the**
30 **court or any party.**

31 **SECTION 13. All parties to an appeal may at any time prior to a**

1 **final decision by the Court of Appeals under section 12 of this 2023 Act**
2 **stipulate that the appeal proceeding be stayed for any period of time**
3 **agreeable to the parties and the regional office of the Water Rights**
4 **Appeals Board, or the court, to allow the parties to enter mediation.**
5 **Following mediation, the regional office of the board, or the court,**
6 **may, at the request of the parties, dismiss the appeal or remand the**
7 **decision to the regional office of the board or the Water Resources**
8 **Department with specific instructions for entry of a final decision on**
9 **remand. If the parties fail to agree to a stipulation for remand or**
10 **dismissal through mediation within the time the appeal is stayed, the**
11 **appeal shall proceed with such reasonable extension of appeal dead-**
12 **lines as the regional office of the board or Court of Appeals considers**
13 **appropriate.**

14
15 **AMENDMENTS TO EXISTING APPEALS PROCESS**

16
17 **SECTION 14.** ORS 537.153 is amended to read:

18 537.153. (1) Within 60 days after the Water Resources Department pro-
19 ceeds with the application under ORS 537.150 (5), the department shall com-
20 plete application review and issue a proposed final order approving or
21 denying the application or approving the application with modifications or
22 conditions. The department may request the applicant to provide additional
23 information needed to complete the review. If the department requests addi-
24 tional information, the request shall be specific and shall be sent to the ap-
25 plicant by registered mail. The department shall specify a date by which the
26 information must be returned, which shall be not less than 10 days after the
27 department mails the request to the applicant. If the department does not
28 receive the information or a request for a time extension under ORS 537.175
29 by the date specified in the request, the department may reject the applica-
30 tion and may refund fees in accordance with ORS 536.050 (4)(a). The time
31 period specified by the department in a request for additional information

1 shall allow the department to comply with the 60-day time limit established
2 by this subsection.

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

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

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

16 (A) The specific public interest under ORS 537.170 [(8)] (5) that would be
17 impaired or detrimentally affected; and

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

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

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

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

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

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

31 (e) An assessment of whether the proposed use would impair or be detri-

1 mental to the public interest as provided in ORS 537.170;

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

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

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

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

13 (5) Any person who supports a proposed final order may request standing
14 for purposes of participating in any [*contested case*] proceeding on the pro-
15 posed final order **by the Water Rights Appeals Board under sections 1**
16 **to 13 of this 2023 Act** or for judicial review of a final order. A request for
17 standing shall be in writing and shall be accompanied by the fee established
18 under ORS 536.050 (1)(n).

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

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

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

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

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

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

30 (f) The protest fee required under ORS 536.050.

31 (7) Requests for standing and protests on the proposed final order shall

1 be submitted within 45 days after publication of the notice of the proposed
2 final order in the weekly notice published by the department. Any person
3 who asks to receive a copy of the department's final order shall submit to
4 the department the fee required under ORS 536.050 (1)(p), unless the person
5 has previously requested copies and paid the required fee under ORS 537.150
6 (7), the person is a protestant and has paid the fee required under ORS
7 536.050 (1)(j) or the person has standing and has paid the fee under ORS
8 536.050 (1)(n).

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

11 (a) Issue a final order as provided under ORS 537.170 [(6)] (3); or

12 (b) [*Schedule a contested case hearing*] **Refer the case to the appropriate**
13 **regional office of the Water Rights Appeals Board** if a protest has been
14 submitted and if:

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

17 (B) Within 30 days after the close of the period for submitting protests,
18 the applicant requests [*a contested case hearing*] **review by the appropriate**
19 **regional office of the Water Rights Appeals Board.**

20 **SECTION 15.** ORS 537.170 is amended to read:

21 537.170. [(1) *Within 45 days after the Water Resources Director schedules*
22 *a contested case hearing under ORS 537.153 (8), the Water Resources Depart-*
23 *ment shall hold the contested case hearing. The issues to be considered in the*
24 *contested case hearing shall be limited to issues identified by the administra-*
25 *tive law judge.*]

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

29 [(a) *The applicant;*]

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

31 [(c) *Any person who timely filed a request for standing under ORS 537.153*

1 (5) and who requests to intervene in the contested case hearing prior to the
2 start of the proceeding.]

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

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

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

7 [(4)] (1) If applicable, an application to appropriate water for the gener-
8 ation of electricity submitted under ORS 537.140 shall be included in the
9 consolidated review and hearings process under ORS 543.255.

10 [(5)] (2) Each person submitting a protest or a request for standing shall
11 raise all reasonably ascertainable issues and submit all reasonably available
12 arguments supporting the person's position by the close of the protest period.
13 Failure to raise a reasonably ascertainable issue in a protest or in a hearing
14 or failure to provide sufficient specificity to afford the Water Resources De-
15 partment an opportunity to respond to the issue precludes judicial review
16 based on that issue.

17 [(6)] (3) If, [after the contested case hearing or, if a hearing is not held,]
18 after the close of the period allowed to file a protest, the **Water Resources**
19 Director determines that the proposed use does not comply with the stan-
20 dards set forth in ORS 543.017 or rules adopted by the Water Resources
21 Commission under ORS 543.017 or would otherwise impair or be detrimental
22 to the public interest, the director shall issue a final order rejecting the
23 application or modifying the proposed final order to conform to the public
24 interest. If, [after the contested case hearing or, if a hearing is not held,] after
25 the close of the period allowed to file a protest, the director determines that
26 the proposed use would not impair or be detrimental to the public interest,
27 the director shall issue a final order approving the application or otherwise
28 modifying the proposed final order. A final order may set forth any of the
29 provisions or restrictions to be included in the permit concerning the use,
30 control and management of the water to be appropriated for the project, in-
31 cluding, but not limited to, a specification of reservoir operation and mini-

1 mum releases to protect the public interest.

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

3 [(a)] (4) Where the final order modifies the proposed final order, the ap-
4 plicant may request [*and*] **that** the department [*shall schedule a contested*
5 *case hearing as provided under subsection (3) of this section*] **refer the case**
6 **to the appropriate regional office of the Water Rights Appeals Board**
7 by submitting the information required for a protest under ORS 537.153 (6)
8 within 14 days after the director issues the final order. However, the issues
9 on which [*a contested case hearing*] **review by the regional office of the**
10 **board** may be requested and conducted under this [*paragraph*] **subsection**
11 shall be limited to issues based on the modifications to the proposed final
12 order.

13 [(b) *Only the applicant or a protestant may appeal the provisions of the*
14 *final order in the manner established in ORS chapter 183 for appeal of order*
15 *other than contested cases.*]

16 [(8)] (5) If the presumption of public interest under ORS 537.153 (2) is
17 overcome, then before issuing a final order, the director or the commission,
18 if applicable, shall make the final determination of whether the proposed use
19 or the proposed use as modified in the proposed final order would impair or
20 be detrimental to the public interest by considering:

21 (a) Conserving the highest use of the water for all purposes, including
22 irrigation, domestic use, municipal water supply, power development, public
23 recreation, protection of commercial and game fishing and wildlife, fire pro-
24 tection, mining, industrial purposes, navigation, scenic attraction or any
25 other beneficial use to which the water may be applied for which it may have
26 a special value to the public.

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

28 (c) The control of the waters of this state for all beneficial purposes, in-
29 cluding drainage, sanitation and flood control.

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

31 (e) The prevention of wasteful, uneconomic, impracticable or unreasonable

1 use of the waters involved.

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

4 (g) The state water resources policy formulated under ORS 536.295 to
5 536.350 and 537.505 to 537.534.

6 [(9)] (6) Upon issuing a final order, the director shall notify the applicant
7 and each person who submitted written comments or protests or otherwise
8 requested notice of the final order and send a copy of the final order to any
9 person who requested a copy and paid the fee required under ORS 536.050
10 (1)(p).

11 **SECTION 16. ORS 537.173 is repealed.**

12 **SECTION 17.** ORS 537.175 is amended to read:

13 537.175. (1) Except as provided in subsection (2) of this section, the Water
14 Resources Department shall issue a final order **on**, or [*schedule a contested*
15 *case hearing on*] **refer to the appropriate regional office of the Water**
16 **Rights Appeals Board the case regarding**, an application for a water right
17 referred to in ORS 537.140 or 537.400 within 180 days after the department
18 proceeds with the application under ORS 537.150 (5).

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

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

24 [(a) *Within 270 days after scheduling the hearing for a contested case pro-*
25 *ceeding that involves three or more parties not including the department;*
26 *and*]

27 [(b) *Within 180 days after scheduling the hearing for all other contested*
28 *case proceedings.*]

29 [(4)] (3) If the applicant does not request an extension under subsection
30 (2) of this section and the department fails to issue a proposed final order
31 **on**, or [*schedule a contested case hearing on*] **refer to the appropriate re-**

1 **gional office of the board the case regarding**, an application for a water
2 right within 180 days after the department proceeds with the application
3 under ORS 537.150 (5), the applicant may apply in the Circuit Court for
4 Marion County for a writ of mandamus to compel the department to issue
5 a final order **on**, or [*schedule a contested case hearing on*] **refer to the ap-**
6 **propriate regional office of the board the case regarding**, an application
7 for a water right. If the application is for an out-of-stream use, the writ of
8 mandamus shall compel the department to issue a water right permit, unless
9 the department shows by affidavit that to issue a permit may result in harm
10 to an existing water right holder.

11 **SECTION 18.** ORS 537.621 is amended to read:

12 537.621. (1) Within 60 days after the Water Resources Department pro-
13 ceeds with the application under ORS 537.620 (5), the department shall com-
14 plete application review and issue a proposed final order approving or
15 denying the application or approving the application with modifications or
16 conditions. The department may request the applicant to provide additional
17 information needed to complete the review. If the department requests addi-
18 tional information, the request shall be specific and shall be sent to the ap-
19 plicant by registered mail. The department shall specify a date by which the
20 information must be returned, which shall be not less than 10 days after the
21 department mails the request to the applicant. If the department does not
22 receive the information or a request for a time extension under ORS 537.627
23 by the date specified in the request, the department may reject the applica-
24 tion and may refund fees in accordance with ORS 536.050 (4)(a). The time
25 period specified by the department in a request for additional information
26 shall allow the department to comply with the 60-day time limit established
27 by this subsection.

28 (2) In reviewing the application under subsection (1) of this section, the
29 department shall determine whether the proposed use will ensure the pres-
30 ervation of the public welfare, safety and health as described in ORS 537.525.
31 The department shall presume that a proposed use will ensure the preserva-

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

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

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

13 (A) The specific aspect of the public welfare, safety and health under ORS
14 537.525 that would be impaired or detrimentally affected; and

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

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

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

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

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

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

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

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

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

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

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

6 (4) In establishing the flow rate and duty of water allowed, the depart-
7 ment may consider a general basin-wide standard, but first shall evaluate
8 information submitted by the applicant to demonstrate the need for a flow
9 rate and duty higher than the general standard. If the applicant provides
10 such information, the department shall authorize the requested rate and duty
11 except upon specific findings related to the application to support a deter-
12 mination that a lesser amount is needed. If the applicant does not provide
13 information to demonstrate the need for a flow rate and duty higher than the
14 general basin-wide standard, the department may apply the general standards
15 without specific findings related to the application.

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

21 (6) Any person who supports a proposed final order may request standing
22 for purposes of participating in any [*contested case*] proceeding on the pro-
23 posed final order **before a regional office of the Water Rights Appeals**
24 **Board**, or for judicial review of a final order. A request for standing shall
25 be in writing and shall be accompanied by the fee established under ORS
26 536.050 (1)(n).

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

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

30 (b) A description of the protestant's interest in the proposed final order,
31 and if the protestant claims to represent the public interest, a precise state-

1 ment of the public interest represented;

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

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

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

7 (f) The protest fee required under ORS 536.050.

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

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

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

20 (b) [*Schedule a contested case hearing*] **Refer the case to the appropriate**
21 **regional office of the board** if a protest has been submitted and if:

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

24 (B) Within 30 days after the close of the period for submitting protests,
25 the applicant requests [*a contested case hearing*] **review by the appropriate**
26 **regional office of the board.**

27 **SECTION 19.** ORS 537.622 is amended to read:

28 537.622. [(1) *Within 45 days after the Water Resources Director schedules*
29 *a contested case hearing under ORS 537.621 (9), the Water Resources Depart-*
30 *ment shall hold the contested case hearing. The issues to be considered in the*
31 *contested case hearing shall be limited to issues identified by the administra-*

1 *tive law judge.]*

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

5 *[(a) The applicant;]*

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

7 *[(c) Any person who timely filed a request for standing under ORS 537.621*
8 *(6) and who requests to intervene in the contested case hearing prior to the*
9 *start of the proceeding.]*

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

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

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

14 *[(4)]* Each person submitting a protest or a request for standing shall raise
15 all reasonably ascertainable issues and submit all reasonably available ar-
16 guments supporting the person's position by the close of the protest period.
17 Failure to raise a reasonably ascertainable issue in a protest or in a hearing
18 or failure to provide sufficient specificity to afford the Water Resources De-
19 partment an opportunity to respond to the issue precludes judicial review
20 based on that issue.

21 **SECTION 20.** ORS 537.625 is amended to read:

22 537.625. (1) If, *[after the contested case hearing or, if a hearing is not*
23 *held,]* after the close of the period allowed to file a protest, the Water Re-
24 sources Director determines that the proposed use does not ensure the pres-
25 ervation of the public welfare, safety and health as described in ORS 537.525,
26 the director shall issue a final order rejecting the application or modifying
27 the proposed final order as necessary to ensure the preservation of the public
28 welfare, safety and health as described in ORS 537.525. If, *[after the contested*
29 *case hearing or, if a hearing is not held,]* after the close of the period allowed
30 to file a protest, the director determines that the proposed use would ensure
31 the preservation of the public welfare, safety and health as described in ORS

1 537.525, the director shall issue a final order approving the application or
2 otherwise modifying the proposed final order. A final order may set forth any
3 of the provisions or restrictions to be included in the permit concerning the
4 use, control and management of the water to be appropriated for the project.

5 (2) *[If a contested case hearing is not held:]*

6 [(a)] Where the final order modifies the proposed final order, the applicant
7 may request *[and]* **that** the Water Resources Department *[shall schedule a*
8 *contested case hearing as provided under ORS 537.622 (3)]* **refer the case to**
9 **the appropriate regional office of the Water Rights Appeals Board** by
10 submitting the information required for a protest under ORS 537.621 (7)
11 within 14 days after the director issues the final order. However, the issues
12 on which *[a contested case hearing]* **review by a regional office of the**
13 **board** may be requested and conducted under this *[paragraph]* **subsection**
14 shall be limited to issues based on the modifications to the proposed final
15 order.

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

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

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

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

1 (c) The control of the waters of this state for all beneficial purposes, in-
2 cluding drainage, sanitation and flood control.

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

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

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

8 (g) The state water resources policy.

9 (4) Upon issuing a final order, the Water Resources Department shall
10 notify the applicant and each person who submitted written comments or
11 protests or otherwise requested notice of the final order and send a copy of
12 the final order to any person who requested a copy and paid the fee required
13 under ORS 536.050 (1)(p).

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

16 (6) If the use of water under the permit is for operation of a mining op-
17 eration as defined in ORS 517.952:

18 (a) Review of the application and approval or denial of the application
19 shall be coordinated with the consolidated application process under ORS
20 517.952 to 517.989. However, such review and approval or denial shall take
21 into consideration all policy considerations for the appropriation of water
22 as set forth in this chapter and ORS chapter 536.

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

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

30 **SECTION 21. ORS 537.626 is repealed.**

31 **SECTION 22. ORS 537.627 is amended to read:**

1 537.627. (1) Except as provided in subsection (2) of this section, the Water
2 Resources Department shall issue a final order **on**, or [*schedule a contested*
3 *case hearing on*] **refer to the appropriate regional office of the Water**
4 **Rights Appeals Board the case regarding**, an application for a water right
5 referred to in ORS 537.615 within 180 days after the department proceeds
6 with the application under ORS 537.620 (5).

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

10 (3) If the applicant does not request an extension under subsection (2) of
11 this section and the department fails to issue a proposed final order **on**, or
12 [*schedule a contested case hearing on*] **refer to the appropriate regional**
13 **office of the board the case regarding**, an application for a water right
14 within 180 days after the department proceeds with the application under
15 ORS 537.620 (5), the applicant may apply in the Circuit Court for Marion
16 County for a writ of mandamus to compel the department to issue a final
17 order **on**, or [*schedule a contested case hearing on*] **refer to the appropriate**
18 **regional office of the board the case regarding**, an application for a wa-
19 ter right. The writ of mandamus shall compel the department to issue a wa-
20 ter right permit, unless the department shows by affidavit that to issue a
21 permit may result in harm to an existing water right holder.

22 **SECTION 23.** ORS 537.628 is amended to read:

23 537.628. [(1)] The Water Resources Department may approve an applica-
24 tion for less ground water than applied for or upon terms, conditions and
25 limitations necessary for the protection of the public welfare, safety and
26 health. In any event the department shall not approve the application for
27 more ground water than is applied for or than can be applied to a beneficial
28 use. No application shall be approved when the same will deprive those
29 having prior rights of appropriation for a beneficial use of the amount of
30 water to which they are lawfully entitled.

31 [(2) *If a contested case hearing is held, the department shall issue a final*

1 *order:]*

2 *[(a) Within 270 days after scheduling the hearing for a contested case pro-*
3 *ceeding that involves three or more parties not including the department;*
4 *and]*

5 *[(b) Within 180 days after scheduling the hearing for all other contested*
6 *case proceedings.]*

7 **SECTION 24.** ORS 537.629 is amended to read:

8 537.629. (1) When an application discloses the probability of wasteful use
9 or undue interference with existing wells or that any proposed use or well
10 will impair or substantially interfere with existing rights to appropriate
11 surface water by others, or that any proposed use or well will impair or
12 substantially interfere with existing rights to appropriate ground water for
13 the beneficial use of the water for its thermal characteristics, the Water
14 Resources Department may impose conditions or limitations in the permit to
15 prevent the same or reject the same after hearing, or, in the department's
16 discretion, request the Water Resources Commission to initiate a rulemaking
17 proceeding to declare the affected area a critical ground water area under
18 ORS 537.730 to 537.740.

19 (2)(a) When an application discloses the probability that a proposed use
20 or well will impair or interfere with the ability to extract heat from a well
21 with a bottom hole temperature of at least 250 degrees Fahrenheit, the de-
22 partment may:

23 (A) Approve the permit;

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

26 (C) *[After a hearing under ORS 537.622,]* Reject the application; or

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

29 (b) In deciding whether to issue, deny or condition a permit under this
30 subsection, the department shall consider any orders or permits applicable
31 to the ground water reservoir issued by the State Geologist or the governing

1 board of the State Department of Geology and Mineral Industries under ORS
2 chapter 522.

3 **SECTION 25.** ORS 540.520 is amended to read:

4 540.520. (1)(a) Except when the application is made under ORS 541.327 or
5 when an application for a temporary transfer is made under ORS 540.523, if
6 the holder of a water use subject to transfer for irrigation, domestic use,
7 manufacturing purposes, or other use, for any reason desires to change the
8 place of use, the point of diversion, or the use made of the water, an appli-
9 cation to make such change, as the case may be, shall be filed with the
10 Water Resources Department.

11 (b) A holder of a water right certificate that authorizes the storage of
12 water may change the type of use identified in the water right certificate,
13 as described in this section.

14 (2) The application required under subsection (1) of this section shall in-
15 clude:

16 (a) The name of the owner;

17 (b) The previous use of the water;

18 (c) A description of the premises upon which the water is used;

19 (d) A description of the premises upon which it is proposed to use the
20 water;

21 (e) The use that is proposed to be made of the water;

22 (f) The reasons for making the proposed change; and

23 (g) Evidence that the water has been used over the past five years ac-
24 cording to the terms and conditions of the owner's water right certificate
25 or that the water right is not subject to forfeiture under ORS 540.610.

26 (3) If the application required under subsection (1) of this section is nec-
27 essary to allow a change in a water right pursuant to ORS 537.348, is nec-
28 essary to complete a project funded under ORS 541.932, or is approved by the
29 State Department of Fish and Wildlife as a change that will result in a net
30 benefit to fish and wildlife habitat, the department, at the discretion of the
31 Water Resources Director, may waive or assist the applicant in satisfying the

1 requirements of subsection (2)(c) and (d) of this section. The assistance pro-
2 vided by the department may include, but need not be limited to, development
3 of an application map.

4 (4) If the application is to change the point of diversion, the transfer shall
5 include a condition that the holder of the water right provide a proper fish
6 screen at the new point of diversion, if requested by the State Department
7 of Fish and Wildlife.

8 (5) Upon the filing of the application the department shall give notice by
9 publication in a newspaper having general circulation in the area in which
10 the water rights are located, for a period of at least two weeks and not less
11 than one publication each week. The notice shall include the date on which
12 the last notice by publication will occur. The cost of the publication shall
13 be paid by the applicant in advance to the department. In applications for
14 only a change in place of use or for a change in the point of diversion of less
15 than one-fourth mile, and where there are no intervening diversions between
16 the old diversion of the applicant and the proposed new diversion, no news-
17 paper notice need be published. The department shall include notice of such
18 applications in the weekly notice published by the department.

19 (6) Within 30 days after the last publication of a newspaper notice of the
20 proposed transfer or the mailing of the department's weekly notice, which-
21 ever is later, any person may file, jointly or severally, with the department,
22 a protest against approval of the application.

23 (7) If a timely protest is filed, or in the opinion of the Water Resources
24 Director a hearing is necessary to determine whether the proposed changes
25 as described by the application would result in injury to existing water
26 rights, the department shall *[hold a hearing on the matter]* **refer the case**
27 **to the appropriate regional office of the Water Rights Appeals Board.**
28 *[Notice and conduct of the hearing shall be under the provisions of ORS*
29 *chapter 183, pertaining to contested cases, and shall be held in the area where*
30 *the rights are located unless all parties and persons who filed a protest under*
31 *this subsection stipulate otherwise.]*

1 (8) An application for a change of use under this section is not required
2 if the beneficial use authorized by the water use subject to transfer is irri-
3 gation and the owner of the water right uses the water for incidental agri-
4 cultural, stock watering and other uses related to irrigation use, so long as
5 there is no increase in the rate, duty, total acreage benefited or season of
6 use.

7 (9) A water right transfer under subsection (1) of this section is not re-
8 quired for a general industrial use that was not included in a water right
9 certificate issued for a specific industrial use if:

10 (a) The quantity of water used for the general industrial use is not
11 greater than the rate allowed in the original water right and not greater
12 than the quantity of water diverted to satisfy the authorized specific use
13 under the original water right;

14 (b) The location where the water is to be used for general industrial use
15 was owned by the holder of the original water right at the time the water
16 right permit was issued; and

17 (c) The person who makes the change in water use provides the following
18 information to the Water Resources Department:

19 (A) The name and mailing address of the person using water under the
20 water right;

21 (B) The water right certificate number;

22 (C) A description of the location of the industrial facility owned by the
23 holder of the original water right at the time the water right permit was
24 issued; and

25 (D) A description of the general industrial use to be made of the water
26 after the change.

27 **SECTION 26.** ORS 540.524 is amended to read:

28 540.524. (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an
29 application submitted to the Water Resources Department, the holder of both
30 a primary water right originating from a surface water source and a sup-
31 plemental water right permit or certificate originating from a ground water

1 source may substitute the use of the supplemental water right for the pri-
2 mary water right. A substitution may not be made under this subsection if
3 the use of the supplemental water right results in an enlargement or expan-
4 sion of the primary water right. This subsection does not authorize a change
5 in place of use, type of use, point of diversion or point of appropriation.

6 (2) An application required under subsection (1) of this section shall be
7 submitted on forms provided by the department. The department may request
8 additional information if necessary to assist with the injury evaluation. Each
9 application shall be submitted with the fee described in ORS 536.050 (1)(s).

10 (3) Upon receiving an application under subsection (1) of this section, the
11 department shall provide notice, accept protests and [*conduct hearings on*
12 *protests*] **refer cases to the appropriate regional offices of the Water**
13 **Rights Appeals Board** in the manner described in ORS 540.520 (5), (6) and
14 (7).

15 (4) The Water Resources Director shall issue an order approving or de-
16 nying the substitution. If the proposed substitution will result in injury to
17 other water rights, the director shall prohibit or condition the use to avoid
18 or mitigate the injury. The director shall issue an order approving or deny-
19 ing the substitution within 90 days after the department receives an appli-
20 cation under subsection (1) of this section.

21 (5) For the purpose of ORS 540.610, a substituted primary surface water
22 right shall be treated as a supplemental water right, and a substituted sup-
23 plemental ground water right shall be treated as a primary water right.

24 (6) A completed and approved substitution of a supplemental ground water
25 right for a primary surface water right under this section may be terminated
26 upon a request by the water right holder or by an order of the director if the
27 director determines that the use of the ground water as the primary water
28 right causes injury to other water rights. Upon termination, the substituted
29 primary and supplemental water rights shall revert back to their original
30 status.

31 **SECTION 27.** ORS 540.530 is amended to read:

1 540.530. (1)(a) If[, *after hearing or examination,*] the Water Resources
2 Commission finds that a proposed change can be effected without injury to
3 existing water rights, the commission shall make [*an*] **a proposed** order ap-
4 proving the transfer and fixing a time limit within which the approved
5 changes may be completed.

6 (b) If[, *after hearing or examination,*] the commission finds that a proposed
7 change in point of diversion cannot be effected without injury to existing
8 water rights, upon receipt by the commission of an affidavit consenting to
9 the change from every holder of an affected water right, the commission may
10 make [*an*] **a proposed** order approving the transfer and fixing a time limit
11 within which the approved changes may be completed.

12 (c) If[, *after hearing or examination,*] the commission finds that a proposed
13 change in point of diversion cannot be effected without injury to an in-
14 stream water right granted pursuant to a request under ORS 537.336 or an
15 in-stream water right created pursuant to ORS 537.346 (1), the Water Re-
16 sources Department may consent to the change only upon a recommendation
17 that the department do so from the agency that requested the in-stream wa-
18 ter right. The agency that requested the in-stream water right may recom-
19 mend that the department consent to the change only if the change will
20 result in a net benefit to the resource consistent with the purposes of the
21 in-stream water right.

22 (d)(A) If an in-stream water right would be injured by a proposed change
23 under paragraph (c) of this subsection, the department shall obtain a rec-
24 ommendation from the agency that requested the in-stream water right. If the
25 recommendation of the agency is to consent to the change, the department
26 shall provide public notice of the recommendation and, consistent with state
27 laws regarding cooperation with Indian tribes in the development and im-
28 plementation of state agency programs that affect tribes or rights and privi-
29 leges of tribes, the department shall consult with affected Indian tribes.

30 (B) The recommendation of an agency under this paragraph must be in
31 writing and, if the recommendation is to consent to the change, must de-

1 scribe the extent of the injury to the in-stream water right, the effect on the
2 resource and the net benefit that will occur as a result of the proposed
3 change. The recommendation may include any proposed conditions that are
4 necessary to ensure that the proposed change will be consistent with the
5 recommendation.

6 (C) In determining whether a net benefit will result from the proposed
7 change, the recommendation of an agency must include an analysis of the
8 cumulative impact of any previous changes under paragraphs (b) and (c) of
9 this subsection that allow injury to the affected in-stream water right.

10 (D) A person may comment on the recommendation of an agency. The
11 comment must be in writing and must be received by the department within
12 30 days after publication of notice under this paragraph. If a written com-
13 ment received by the department requests a meeting on the proposed change,
14 the department and the agency that requested the in-stream water right shall
15 hold a joint public meeting within 90 days of the receipt of the comment
16 requesting a meeting.

17 (e)(A) If, after review of public comments and consultation with the
18 agency that requested the in-stream water right, the agency that requested
19 the in-stream water right does not withdraw its recommendation to consent
20 to the change, the department may approve the change consistent with the
21 requirements of paragraphs (b) and (c) of this subsection.

22 (B) [An] **A proposed** order approving a change under paragraph (c) of
23 this subsection shall include written findings on the extent of the injury to
24 the in-stream water right, the effect on the resource and the net benefit that
25 will occur as a result of the change. The **proposed** order shall include any
26 conditions necessary to ensure that the change will be consistent with the
27 findings and ensure that the change will result in a continued net benefit
28 to the resource consistent with the purposes of the in-stream water right.

29 (C) In determining whether a net benefit will result from the change, the
30 **proposed** order of the department must include an analysis of the cumulative
31 impact of any previous changes approved under paragraphs (b) and (c) of this

1 subsection that allow injury to the affected in-stream water right.

2 (f) The time allowed by the commission for completion of an authorized
3 change under paragraphs (a) to (e) of this subsection may not be used when
4 computing a five-year period of nonuse under the provisions of ORS 540.610
5 (1).

6 (2)(a) If a certificate covering the water right has been previously issued,
7 the commission shall cancel the previous certificate or, if for an irrigation
8 district, the commission may modify the previous certificate and, when
9 proper proof of completion of the authorized changes has been filed with the
10 commission, issue a new certificate or, if for an irrigation district, modify
11 the previous certificate, preserving the previously established priority of
12 rights and covering the authorized changes. If only a portion of the water
13 right covered by the previous certificate is affected by the changes, a sepa-
14 rate new certificate may be issued to cover the unaffected portion of the
15 water right.

16 (b) If the change authorized under subsection (1) of this section is neces-
17 sary to allow a change in a water right pursuant to ORS 537.348, is necessary
18 to complete a project funded under ORS 541.932, or is approved by the State
19 Department of Fish and Wildlife as a change that will result in a net benefit
20 to fish and wildlife habitat, the Water Resources Department, at the dis-
21 cretion of the Water Resources Director, may waive or assist the applicant
22 in satisfying any of the proof of completion requirements of paragraph (a)
23 of this subsection. The assistance provided by the department may include,
24 but need not be limited to, development of a final proof survey map and
25 claim of beneficial use.

26 (3) Upon receiving notification of the merger or consolidation of municipi-
27 pal water supply entities, or the formation of a water authority under ORS
28 chapter 450, the commission shall cancel the previous certificates of the en-
29 tities replaced by the merger, consolidation or formation and issue a new
30 certificate to the newly formed municipality or water authority. The new
31 certificate shall preserve the previously established priority of rights of the

1 replaced entities and shall allow beneficial use of the water on any lands
2 acquired in the merger, consolidation or formation.

3

4

CONFORMING AMENDMENTS

5

6 **SECTION 28.** ORS 536.050 is amended to read:

7 536.050. (1) The Water Resources Department may collect the following
8 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
11 application for a hydroelectric project:

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

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

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

18 (iv) \$410 for each additional use, point of diversion or point of appropri-
19 ation included in the application;

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

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

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

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

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

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

30 (C) To exclusively appropriate stored water:

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

1 (ii) \$41 for the first acre-foot or fraction thereof up to 20 acre-feet, plus
2 \$1.40 for each additional acre-foot or fraction thereof.

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

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

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

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

11 (d) For copying records in the department, \$2.70 for the first page and 70
12 cents for each additional page.

13 (e) For certifying copies, documents, records or maps, \$14 for each certifi-
14 cate.

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

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

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

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

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

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

25 (D) \$610 for each additional water right or permit included in the appli-
26 cation;

27 (E) An additional fee of \$480 per application, if the application is for an
28 additional point of appropriation, a change in a point of appropriation or a
29 change from surface water to ground water or for substitution as described
30 in ORS 540.524; and

31 (F) \$410 for each additional point of appropriation included in the appli-

1 cation.

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

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

11 (B) For irrigation uses, \$2.70 per acre of land irrigated or, if the appli-
12 cation and required map are submitted to the department in a department-
13 approved digital format, 70 cents per acre of land irrigated.

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

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

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

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

19 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee estab-
20 lished by rule by the Water Resources Commission.

21 (m) For filing, examining and certifying a petition under ORS 541.329,
22 \$480 plus 10 cents per acre of water involved in the application. For purposes
23 of computing this fee, when any acreage within a quarter quarter of a section
24 is involved, the 10 cents per acre shall apply to all acres in that quarter
25 quarter of a section. Notwithstanding the fee amount established in this
26 paragraph, a district notifying the department under ORS 541.327 (4) shall
27 pay the actual cost of filing, examining and certifying the petition.

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

29 (o) For participating in a contested case proceeding under ORS [537.170,
30 537.622 or] 543A.130, \$680.

31 (p) Except for an applicant, for obtaining a copy of both a proposed final

1 order and a final order for a water right application under ORS 537.140 to
2 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued
3 under ORS 537.230, 537.248 or 537.630, \$35.

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

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

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

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

9 (s) For examining an application for a substitution made under ORS
10 540.524:

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

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

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

15 (A) A base fee of \$1,360 for the first water right that is part of the allo-
16 cation; and

17 (B) An additional fee of \$480 for each water right that is part of the al-
18 location beyond the first water right.

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

21 (A) \$680, if the plan is submitted by an agricultural water supplier;

22 (B) \$1,220, if the plan is submitted by a municipal water supplier serving
23 a population of 1,000 or fewer persons; or

24 (C) \$2,450, if the plan is submitted by a municipal water supplier serving
25 a population of more than 1,000 persons.

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

28 (A) \$610 for an application for a lease with four or more landowners or
29 four or more water rights; or

30 (B) \$410 for all other applications.

31 (w) For examining an application for an in-stream water right lease re-

1 newal, \$150.

2 (x) For submitting a claim of beneficial use under a permit or transfer
3 having a priority date of July 9, 1987, or later, \$230.

4 (y) For submitting a request no later than 60 days after cancellation of
5 a permit under ORS 537.260 to reinstate the permit, \$610.

6 (z) For submitting a request for a basin program exception under ORS
7 536.295, \$780.

8 (aa) For processing an application under ORS 537.225 for an assignment
9 of water right to one or more landowners and issuance of replacement water
10 right permits, the actual cost of the work.

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

14 (A) \$120 for a dam with a low hazard rating.

15 (B) \$230 for a dam with a significant hazard rating.

16 (C) \$790 for a dam with a high hazard rating.

17 (D) If the dam owner fails to pay an annual fee on or before six months
18 after the billing date, a late fee of \$140.

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

23 (3) Notwithstanding the fees established under subsection (1) of this sec-
24 tion, the commission may establish lower examination and permit fees by
25 rule for:

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

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

31 (4)(a) The director may refund all or part of a fee paid to the department

1 under this section if the director determines that a refund of the fee is ap-
2 propriate in the interests of fairness to the public or necessary to correct
3 an error of the department.

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

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

13 (a) Made pursuant to ORS 537.348;

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

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

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

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

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

27 **SECTION 29.** ORS 536.750 is amended to read:

28 536.750. (1) Notwithstanding any provision of ORS chapters 536 to 543A,
29 after a declaration that a severe, continuing drought exists, the Water Re-
30 sources Commission may:

31 (a) Issue without first conducting a hearing [*under ORS 537.170*], a tem-

1 porary permit for an emergency use of water;

2 (b) Allow a temporary change in use, place of use or point of diversion
3 of water without complying with the notice and waiting requirements under
4 ORS 540.520;

5 (c) Notwithstanding the priority of water rights, grant preference of use
6 to rights for human consumption or stock watering use;

7 (d) Waive the notice requirements under ORS 537.753 and the report re-
8 quired under ORS 537.762;

9 (e) Allow a temporary exchange of water without giving notice as re-
10 quired under ORS 540.535; and

11 (f) Utilize an expedited notice and waiting requirement established by
12 rule for the substitution of a supplemental ground water right for a primary
13 water right under drought conditions in place of the notice and waiting re-
14 quirement provided in ORS 540.524.

15 (2) The commission by rule may establish procedures for carrying out the
16 provisions of this section and a schedule of fees that must accompany a re-
17 quest under subsection (1) of this section.

18 **SECTION 30.** ORS 536.750, as amended by section 5, chapter 610, Oregon
19 Laws 2021, is amended to read:

20 536.750. (1) Notwithstanding any provision of ORS chapters 536 to 543A,
21 after a declaration that a severe, continuing drought exists, the Water Re-
22 sources Commission may:

23 (a) Issue without first conducting a hearing [*under ORS 537.170*], a tem-
24 porary permit for an emergency use of water;

25 (b) Allow a temporary change in use, place of use or point of diversion
26 of water without complying with the notice and waiting requirements under
27 ORS 540.520;

28 (c) Notwithstanding the priority of water rights, grant preference of use
29 to rights for human consumption or stock watering use;

30 (d) Waive the notice requirements under ORS 537.753 and the start card
31 required under ORS 537.762;

1 (e) Allow a temporary exchange of water without giving notice as re-
2 quired under ORS 540.535; and

3 (f) Utilize an expedited notice and waiting requirement established by
4 rule for the substitution of a supplemental ground water right for a primary
5 water right under drought conditions in place of the notice and waiting re-
6 quirement provided in ORS 540.524.

7 (2) The commission by rule may establish procedures for carrying out the
8 provisions of this section and a schedule of fees that must accompany a re-
9 quest under subsection (1) of this section.

10 **SECTION 31.** ORS 537.147 is amended to read:

11 537.147. (1) Notwithstanding the process for applying for a water right
12 permit established in ORS 537.150 to 537.230, a person may, pursuant to this
13 section, apply to the Water Resources Department for a water right permit
14 to use stored water. A person applying under this section for a water right
15 permit to use stored water shall submit:

16 (a) A fee, in the amount required by ORS 536.050 for applications to ap-
17 propriate stored water.

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

21 (c) Evidence that the proposed use of the stored water is one of the au-
22 thorized uses under the water right permit, certificate or decree that allows
23 the storage of water.

24 (2) If an applicant provides, to the satisfaction of the department, the fee
25 and the information required by subsection (1) of this section, the department
26 may, after public notice and a 30-day opportunity to submit comments on the
27 application, issue a water right permit upon determining that no public in-
28 terest issues as identified in ORS 537.170 [(8)] (5) have been raised through
29 the comments submitted.

30 (3) If the department determines that public interest issues have been
31 identified, then the department shall treat the application under this section

1 as an application under ORS 537.150 and perform the public interest review
2 required by ORS 537.153 (2).

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

5 (a) Fish screens and by-pass devices and fish passage as may be required
6 by the State Department of Fish and Wildlife; and

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

9 (5) Within 10 days of issuing a water right permit under this section, the
10 department shall provide notice of the permit issuance in the weekly notice
11 published by the department and to persons who have submitted comments
12 pursuant to subsection (2) of this section.

13 **SECTION 32.** ORS 537.343 is amended to read:

14 537.343. (1) A proposed final order issued under ORS 537.170 [(6)] (3) for
15 an in-stream water right certificate may include any condition the Water
16 Resources Director considers necessary, but which is consistent with the in-
17 tent of ORS 537.332 to 537.360. The proposed final order may:

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

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

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

22 (2) If the director reduces or rejects the in-stream water right as re-
23 quested, or conditions the in-stream water right, the director shall include
24 a statement of findings that sets forth the basis for the reduction, rejection
25 or conditions. The director shall be the final authority in determining the
26 level of in-stream flow necessary to protect the public use.

27 (3) After the director issues a final order approving an in-stream water
28 right, the Water Resources Department shall issue a certificate for an in-
29 stream water right according to the provisions of ORS 537.341.

30 **SECTION 33.** ORS 540.537 is amended to read:

31 540.537. (1) The Water Resources Commission shall issue an order allow-

1 ing an exchange unless the commission finds any of the following:

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

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

4 (c) The proposed exchange would adversely affect the public interest as
5 determined under ORS 537.170 [(8)] (5).

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

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

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

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

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

16 (c) Upon finding that any other termination condition specified in the
17 original order has occurred; or

18 (d) Upon attainment of a termination date specified in the original ex-
19 change order.

20 (4) For purposes of subsection (3) of this section, the time fixed for im-
21 plementing the exchange shall include any extension granted by the com-
22 mission for good cause shown.

23 **SECTION 34.** ORS 543.765 is amended to read:

24 543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder
25 of a water right may apply to the Water Resources Department for a certifi-
26 cate to use water for hydroelectric purposes within an artificial delivery
27 system under the applicant's existing water right. If the proposed hydro-
28 electric project meets the applicable capacity limitation under this sub-
29 section and meets either the qualifications for a Federal Energy Regulatory
30 Commission exemption from licensing or similar qualifications of another
31 federal agency responsible for authorizing the project, the applicant may use

1 the expedited application process under this section regardless of which fed-
2 eral agency issues the authorization. To qualify under this subsection:

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

6 (b) For in-conduit projects, the capacity may not exceed 15 megawatts for
7 a nonmunicipal facility or 40 megawatts for a municipal facility. Projects
8 described in this paragraph must comply with subsection (5)(b) of this sec-
9 tion.

10 (2) An application, which shall be on a form provided by the Water Re-
11 sources Department, for a hydroelectric certificate under this section must
12 include:

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

16 (b) A copy of either a Federal Energy Regulatory Commission exemption
17 application or a similar application submitted to the federal agency respon-
18 sible for authorizing the project, if applicable.

19 (c) A proposed schedule of annual water use and an estimate of the max-
20 imum power generation of the proposed hydroelectric project.

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

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

27 (f) An application processing fee of \$500. The department shall deposit
28 fees collected under this section into the Water Resources Department Hy-
29 droelectric Fund established pursuant to ORS 536.015.

30 (g) A map or drawing and all other data concerning the proposed hydro-
31 electric project, as may be prescribed by the department. The map or drawing

1 must be of sufficient quality and scale to establish the location of the ex-
2 isting point of diversion and the proposed location of the hydroelectric
3 project.

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

8 (i) Evidence that the water has been used over the past five years ac-
9 cording to the terms and conditions of the applicant's existing water right
10 described in paragraph (a) of this subsection.

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

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

16 (b) The Water Resources Department may issue a final order and certif-
17 icate to use water for hydroelectric purposes upon making a final determi-
18 nation that the proposed hydroelectric use does not impair, or is not
19 detrimental to, the public interest in the manner provided in ORS 537.170
20 [(8)] (5).

21 (4) If the Water Resources Department determines that public interest
22 issues have been identified, the department shall issue a final order denying
23 the application. The department shall also issue a final order denying the
24 application if the department identifies issues related to the public interest.
25 If the applicant does not appeal the final order as provided in ORS chapter
26 183 and, within one year of the department's final order denying the
27 applicant's application, files an application with the department for a pre-
28 liminary permit to operate a hydroelectric project as provided in ORS 537.130
29 and 543.210, the applicant shall receive a credit toward the applicant's ap-
30 plication fees in the amount of \$500.

31 (5) At a minimum, a certificate issued under this section must contain the

1 following conditions:

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

5 (b) If the application is for a hydroelectric project that is to be installed
6 in or on a conduit delivery system, the certificate does not need to include
7 a requirement for fish passage at the diversion point for the conduit delivery
8 system if:

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

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

13 (C) The conduit delivery system is operated for the distribution of water
14 for agricultural, municipal or industrial consumption; and

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

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

23 (d) That use of water be limited by rate, duty, season and any other lim-
24 itations of the applicant's existing water right described in subsection (2)(a)
25 of this section.

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

27 (f) That the restrictions established in ORS 543.660 shall apply as condi-
28 tions of use to a certificate issued under this section to a district as defined
29 in ORS 543.655.

30 (g) That a certificate issued under this section shall be invalidated upon
31 a change in the point of diversion of the existing water right described in

1 subsection (2)(a) of this section.

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

5 (i) Any other conditions the Water Resources Department deems neces-
6 sary to protect the public interest.

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

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

14 (8) Upon request, the State Department of Fish and Wildlife and the
15 Water Resources Department shall arrange a preapplication meeting with a
16 person to discuss the requirements associated with the installation of a hy-
17 droelectric project in an artificial delivery system.

18 (9) A certificate issued under this section may not have its own priority
19 date. The Water Resources Department may not regulate for or against any
20 certificate issued under this section based on the priority date of the certif-
21 icate.

22 (10) A certificate issued under this section does not grant a right to divert
23 water for hydroelectric purposes.

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

26 (12) A certificate issued under this section is subject to review 50 years
27 after the date of issuance and pursuant to the terms described in this section.

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

30 (14)(a) If a certificate contains a condition described in subsection (5)(b)
31 of this section for annual payments, the payment shall be collected as pro-

1 vided in paragraph (c) of this subsection. Except as provided in paragraph
2 (b) of this subsection, the annual payment amount must be:

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

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

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

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

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

17 (c) The Water Resources Department shall collect the fee on behalf of the
18 State Department of Fish and Wildlife and forward the fee moneys for cred-
19 iting to the Fish Passage Restoration Subaccount created under ORS 497.141.

20 (15)(a) Notwithstanding subsection (14) of this section, a certificate for a
21 project to install hydroelectric generating equipment as described in sub-
22 section (5)(b) of this section may provide for the termination of annual pay-
23 ments being made under subsection (14) of this section if, after the date the
24 project commences operation:

25 (A) The project provides for fish passages;

26 (B) There is an agreement between the applicant and the State Depart-
27 ment of Fish and Wildlife providing for fish passages associated with the
28 project; or

29 (C) A waiver or exemption has been issued under ORS 509.585 for the
30 project.

31 (b) A certificate for a project to install hydroelectric generating equip-

1 ment as described in subsection (5)(b) of this section does not need to include
2 a condition for the making of annual payments under subsection (14) of this
3 section if:

4 (A) There is an agreement between the applicant and the State Depart-
5 ment of Fish and Wildlife providing for the conduit delivery system to have
6 fish passages associated with the project; or

7 (B) A waiver or exemption has been issued under ORS 509.585 for the
8 project.

9 (16) If a certificate under this section is issued, the certificate holder must
10 pay fees consistent with the fees described in ORS 543.078. Failure to pay a
11 required fee invalidates a certificate issued under this section.

12 (17) The Water Resources Department shall issue invoices for fees re-
13 quired under this section, and the state shall have a preference lien for de-
14 linquent fees, as provided in ORS 543.082.

15 (18) An applicant for a certificate issued under this section must provide
16 evidence of a Federal Energy Regulatory Commission exemption or approval
17 under a similar process by the federal agency responsible for authorizing the
18 project before a certificate can be issued, if applicable.

19 (19) Nothing in this section shall alter the preference of municipalities
20 in ORS 543.260 (3) and 543.270.

21

22

APPLICABILITY

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24 **SECTION 35. Sections 1 to 13 of this 2023 Act, the amendments to**
25 **ORS 536.050, 536.750, 537.147, 537.153, 537.170, 537.175, 537.343, 537.621,**
26 **537.622, 537.625, 537.627, 537.628, 537.629, 540.520, 540.524, 540.530, 540.537**
27 **and 543.765 by sections 14, 15, 17 to 20 and 22 to 34 of this 2023 Act and**
28 **the repeal of ORS 537.173 and 537.626 by sections 16 and 21 of this 2023**
29 **Act apply to decisions made by the Water Resources Department on**
30 **or after the effective date of this 2023 Act.**

31

CAPTIONS

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SECTION 36. The unit captions used in this 2023 Act are provided for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.
