

B-Engrossed House Bill 3544

Ordered by the House June 19
Including House Amendments dated April 16 and June 19

Sponsored by Representatives HELM, OWENS

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act creates a standard process for contested cases about the use of water. (Flesch Readability Score: 65.7).

Establishes uniform processes for hearing contested case proceedings relating to the use of water.

A BILL FOR AN ACT

Relating to water; creating new provisions; and amending ORS 536.050, 536.750, 537.140, 537.147, 537.153, 537.170, 537.175, 537.225, 537.227, 537.295, 537.297, 537.343, 537.409, 537.420, 537.445, 537.470, 537.621, 537.622, 537.625, 537.628, 537.629, 540.520, 540.524, 540.537, 540.560, 540.641, 543.255 and 543.765.

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

UNIFORM PROCESS FOR CONTESTED CASES

SECTION 1. Sections 2 and 3 of this 2025 Act are added to and made a part of ORS chapter 536.

SECTION 2. (1) As used in this section and section 3 of this 2025 Act, "contested case" has the meaning given that term in ORS 183.310.

(2) This section and section 3 of this 2025 Act and rules adopted thereunder apply to:

(a) A contested case proceeding under a provision of ORS chapter 537 or 540 that references this section.

(b) A contested case proceeding on an application related to the use of water under a provision of ORS chapter 537, 540 or 541 in which the contested case proceeding is provided for in rule or order and the rule or order refers to this section.

(3) The Water Resources Commission and the Office of Administrative Hearings shall establish a uniform process for hearing contested cases that is consistent with this section and with ORS chapter 183. The contested case proceeding must be conducted in accordance with applicable provisions of ORS chapter 183 that govern contested cases, except as otherwise provided in this section and section 3 of this 2025 Act and administrative rules adopted under this section and section 3 of this 2025 Act, or as specified in ORS chapters 537, 540 and 541.

(4) The Water Resources Department, in consultation with the Office of Administrative

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

Hearings, shall establish one or more default hearing schedules that govern contested case hearings and provide that the process, from a referral for a hearing to a completion of the hearing, must be completed in not more than 180 days, except as provided in subsection (5) of this section. The default schedule must include deadlines for discovery requests and responses and motions to compel discovery and may include other deadlines.

(5) The Office of Administrative Hearings may allow an extension of the hearing schedule only under the following circumstances:

(a) The department, after consulting with the parties, requests a different schedule for a particular contested case;

(b) The chief administrative law judge, upon referral, determines that adhering to the default schedule is not feasible in a particular contested case; or

(c) The administrative law judge assigned to the case determines that modifying the default schedule for a particular contested case serves the public interest, is necessary to provide due process or is in the interest of justice.

(6) An administrative law judge shall, to the greatest extent practicable, give preference to testimony being provided orally rather than in writing.

(7) The administrative law judge shall determine the venue for conducting the hearing, subject to the approval of the Water Resources Department, and shall give preference to conducting a hearing by a remote method.

(8) The department, after consultation with the parties, may request that the Office of Administrative Hearings authorize the assignment of a settlement administrative law judge. If the office assigns a settlement administrative law judge to a case, the parties have 60 days after the date of the referral to reach a settlement of the case before continuing to a hearing. If the department refers the case for review with a settlement administrative law judge and the case does not resolve within 60 days after the date of the referral, the case proceeds to a contested case hearing and the contested case hearing must be completed within 180 days after the end of the 60-day period, except as provided in subsection (5) of this section.

(9) The commission shall establish standard timelines for the department to rule on a request for party status.

(10) The commission may adopt rules necessary to implement this section.

SECTION 3. (1) To initiate a contested case proceeding that is subject to this section and section 2 of this 2025 Act:

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

(b) Unless a timeline is otherwise specified under ORS chapter 537, 540 or 541, the protest must be submitted within 45 days after publication of the notice of the proposed final order in a weekly public notice of the Water Resources Department or, if weekly public notice is not required, within 45 days after issuance of notice of the proposed final order.

(c) The protest must:

(A) Be in writing;

(B) Include the name, address and telephone number of the protestant;

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

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

(E) Raise an issue with sufficient specificity to allow response to the issue, as described in subsection (3)(b) of this section;

(F) Identify any citation of legal authority supporting the protest, if known; and

(G) Include the protest fee required under ORS 536.050.

(2) If a protest is submitted as described in subsection (5) of this section, within 30 days after the deadline for filing a protest:

(a) Any person who supports the proposed final order may file a request for party status for the purpose of participating in any contested case proceeding on the proposed final order or for judicial review of a final order resulting from the proposed final order.

(b) The request for party status must:

(A) Be in writing.

(B) Meet all requirements established in rule by the Water Resources Commission.

(C) Include the fees described in ORS 536.050 (1)(n) and (o).

(3) In a contested case proceeding under this section:

(a) A hearing need not occur if:

(A) All issues in the contested case are resolved as part of a settlement;

(B) The protest is withdrawn; or

(C) The protestant defaults.

(b) A protest must raise an issue with sufficient specificity to allow response to the issue. To raise an issue with sufficient specificity, the protest must:

(A) Identify the recommended findings of fact, conclusions of law or conditions of approval to which the protestant objects; and

(B) Explain how the issues raised in the protest are within the jurisdiction of the department.

(c) Not later than the end of the protest period, each person that submits a protest shall raise all reasonably ascertainable issues and submit all reasonably available arguments that support the person's position.

(d) A failure to raise a reasonably ascertainable issue in a protest or a failure to provide sufficient specificity to afford the department an opportunity to respond to the issue precludes judicial review of that issue.

(4) If no protest on a proposed final order that is subject to this section and section 2 of this 2025 Act is timely received, as a matter of law, the proposed final order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest, with no further action required by the department.

(5) Notwithstanding subsection (4) of this section, not more than 33 days after the close of the time period for submitting a protest, the department may withdraw a proposed final order for reconsideration and issuance of a superseding proposed final order.

(6) The department shall refund the fees described in ORS 536.050 (1)(o) if party status is denied.

(7) The Water Resources Commission may adopt rules necessary to implement this section.

CONTESTED CASES

SECTION 4. ORS 537.140 is amended to read:

1 537.140. (1)(a) Each application for a permit to appropriate water shall be made to the Water
2 Resources Department on a form prescribed by the department and shall set forth:

3 (A) The name and mailing address of the applicant;

4 (B) The source of water supply including the name and mailing address of any owner of the land
5 upon which the source of the water supply is located;

6 (C) The nature and amount of the proposed use;

7 (D) The location and description of the proposed ditch, canal or other work, including the name
8 and mailing address of the owner of any lands that are not owned by the applicant and that are
9 crossed by the proposed ditch, canal or other work even if the applicant has obtained written au-
10 thorization or an easement from the owner;

11 (E) A statement declaring whether the applicant has written authorization or an easement per-
12 mitting access to nonowned land crossed by the proposed ditch, canal or other work;

13 (F) The time within which it is proposed to begin construction;

14 (G) The time required for completion of the construction;

15 (H) The time for the complete application of the water to the proposed use; and

16 (I) Any other information required in the application form that is necessary to evaluate the ap-
17 plication as established by statute and rule.

18 (b) If for agricultural purposes, the application shall give the legal subdivisions of the land and
19 the acreage to be irrigated, as near as may be.

20 (c) Except as provided in subsection (2) of this section, if for power purposes, the application
21 shall give the nature of the works by means of which the power is to be developed, the head and
22 amount of water to be utilized, and the uses to which the power is to be applied.

23 (d) If for construction of a reservoir, the application shall give the height of dam, the capacity
24 of the reservoir, and the uses to be made of the impounded waters.

25 (e) If for municipal water supply, the application shall give the present population to be served,
26 and, as near as may be, the future requirements of the city.

27 (f) If for mining purposes, the application shall give the nature of the mines to be served, and
28 the methods of supplying and utilizing the water.

29 (2) Any person who has applied to the Federal Energy Regulatory Commission for a preliminary
30 permit or an exemption from licensing shall, at the same time, apply to the Water Resources De-
31 partment for a permit to appropriate water for a hydroelectric project. An applicant for a permit to
32 appropriate water for a new hydroelectric project shall submit to the department a complete copy
33 of any application for the project filed with the Federal Energy Regulatory Commission or other
34 federal agency. If the copy of the federal application is filed with the department at the same time
35 it is filed with the federal agency, at the department's discretion such copy may fulfill the require-
36 ments for an application under subsection (1) of this section.

37 (3) Each application shall be accompanied by any map or drawing and all other data concerning
38 the proposed project and the applicant's ability and intention to construct the project, as may be
39 prescribed by the Water Resources Commission. The accompanying data shall be considered a part
40 of the application.

41 (4) The map or drawing required to accompany the application shall be of sufficient quality and
42 scale to establish the location of the proposed point of diversion and the proposed place of use
43 identified by tax lot, township, range, section and nearest quarter-quarter section along with a no-
44 tation of the acreage of the proposed place of use, if appropriate. In addition, the department shall
45 accept locational coordinate information, including latitude and longitude as established by a global

positioning system. If the application is for a water right for a municipal use, the map need not identify the proposed place of use by tax lot.

(5) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050 (1).

(6) If the proposed use of the water is for operation of a mining operation as defined in ORS 517.952, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

[(7) Notwithstanding any provision of ORS chapter 183, an application for a permit to appropriate water shall be processed in the manner set forth in ORS 537.120 to 537.360. Nothing in ORS chapter 183 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS chapter 183 conflicts with a provision set forth in ORS 537.120 to 537.360, the provisions in ORS 537.120 to 537.360 shall control.]

SECTION 5. ORS 537.153 is amended to read:

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

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

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

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest under *[subsection (6) of this]* section **3 of this 2025 Act** or in a finding of the department that shows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(f) The protest fee required under ORS 536.050.]

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

(5) A person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and has paid the fee required under ORS 537.150 (7), the person is a protestant and has paid the fee required under ORS 536.050 (1)(j) or the person has party status and has paid the fees required under ORS 536.050 (1)(n) and (o).

(6) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section.

[(8)] (7) Within 60 days after the close of the period for receiving protests, if a protest was timely submitted, the Water Resources Director shall:

(a) Issue a final order as provided under ORS 537.170 [(6); or] (1) or (2), if the applicant has not filed a protest and the director finds that there are no significant issues related to the

proposed use of water;

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

(c) Provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the contested case to the Office of Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

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

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

SECTION 6. ORS 537.170 is amended to read:

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

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

[(a) The applicant;]

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

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

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

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

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

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

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

[(6)] (1) If a protest of a proposed final order issued under ORS 537.153 is filed under section 3 of this 2025 Act and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the **Water Resources** Director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the director shall issue a final order rejecting the application or modifying the proposed final order to conform to the public interest.

(2) If a protest of a proposed final order issued under ORS 537.153 is filed under section 3 of this 2025 Act and, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use would not impair or be detrimental to the public interest, the director shall issue a final order approving the application or otherwise modifying the proposed final order.

(3) A final order may set forth any of the provisions or restrictions to be included in the permit

concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(4) An interlocutory appeal under ORS 183.480 (3) is not allowed in a contested case proceeding under this section.

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

[(a) Where the final order modifies the proposed final order, the applicant may request and the department shall schedule a contested case hearing as provided under subsection (3) of this section by submitting the information required for a protest under ORS 537.153 (6) within 14 days after the director issues the final order. However, the issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.]

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

(5) If a contested case hearing is not held under ORS 537.153 (7)(a) where the final order modifies the proposed final order, the applicant, a person granted party status or a protestant may submit a protest under section 2 or 3 of this 2025 Act within 14 days after the director issues the final order, except that the issues on which a contested case hearing may be requested and conducted under this subsection are limited to issues based on the modifications to the proposed final order. The department must hold a hearing if the protestant is an applicant.

(6) If a protest of a proposed final order issued under ORS 537.153 is filed under section 3 of this 2025 Act by a person other than the applicant and, as described in ORS 537.153 (7)(a), the director issues a final order without holding a contested case hearing, a protestant may appeal the provisions of the final order in the manner established in ORS chapter 183 for appeal of orders in other than contested cases.

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

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

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

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

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

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

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

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

1 [(9)] (8) Upon issuing a final order, the director shall notify the applicant and each person who
 2 submitted written comments or protests or otherwise requested notice of the final order and send
 3 a copy of the final order to any person who requested a copy and paid the fee required under ORS
 4 536.050 (1)(p).

5 **SECTION 7.** ORS 537.175 is amended to read:

6 537.175. (1) Except as provided in subsection (2) of this section, the Water Resources Department
 7 shall issue a final order or schedule a contested case hearing on an application for a water right
 8 referred to in ORS 537.140 or 537.400 within 180 days after the department proceeds with the ap-
 9 plication under ORS 537.150 (5).

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

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

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

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

16 [(4)] (3) If the applicant does not request an extension under subsection (2) of this section and
 17 the department fails to issue a proposed final order or schedule a contested case hearing on an ap-
 18 plication for a water right within 180 days after the department proceeds with the application under
 19 ORS 537.150 (5), the applicant may apply in the Circuit Court for Marion County for a writ of
 20 mandamus to compel the department to issue a final order or schedule a contested case hearing on
 21 an application for a water right. If the application is for an out-of-stream use, the writ of mandamus
 22 shall compel the department to issue a water right permit, unless the department shows by affidavit
 23 that to issue a permit may result in harm to an existing water right holder.

24 **SECTION 8.** ORS 537.225 is amended to read:

25 537.225. (1) Notwithstanding ORS 537.220 and 537.635, except as provided in subsection [(6)] (7)
 26 of this section, a record landowner holding a water right permit for an irrigation, nursery, temper-
 27 ature control, stock watering or agricultural water use that has a subsequent completion date may
 28 apply for assignment of all or part of the water right permit and for the issuance of a replacement
 29 water right permit that reflects that assignment. To obtain the assignment and replacement water
 30 right permits, the applicant shall submit an application to the Water Resources Department that
 31 includes, at a minimum:

32 (a) A map prepared by a certified water right examiner and meeting department mapping stan-
 33 dards that identifies the authorized place of use, rate of use, any applicable acre-feet allowances, tax
 34 lots and points of diversion or appropriation;

35 (b) A copy of the deed showing that the applicant is an owner of the land;

36 (c) An affidavit certifying that the water right has not been conveyed or withheld;

37 (d) A statement by the applicant that the most recent water use under the permit, if any, has
 38 been exercised within relevant terms and conditions of the permit; and

39 (e)(A) Agreements to the assignment and to the request for the issuance of replacement water
 40 right permits submitted jointly or individually by all owners of the land to which the water right is
 41 appurtenant; or

42 (B) An assignment of interest and request for the issuance of replacement water right permits
 43 submitted by one or more of the owners of land to which the water right is appurtenant and infor-
 44 mation identifying the names, addresses and proportionate interests for those owners not submitting
 45 the assignment and request.

(2) In addition to the application contents described in subsection (1) of this section, the department may require that the applicant provide any additional information the department deems appropriate to determining whether to approve the application.

(3) Upon receiving an application under subsection (1) of this section, the department shall determine and notify the applicant of the fees payable under ORS 536.050 for processing the application. Upon receipt of the appropriate processing fees, the department shall:

(a) Verify the address of each owner of the lands identified on the map contained in the application;

(b) Verify that the deed supplied with the application matches the property proposed for assignment;

(c) Prepare a statement that the proposed replacement water right permits will not result in the enlargement of the original water right, a proposed final order and drafts of replacement water right permits;

(d) No later than one week prior to the date of the weekly notice described in paragraph (e) of this subsection, mail copies of the application, the map, the existing water right permit, the proposed final order and the draft replacement water right permits to each owner of land to which the existing water right is appurtenant; and

(e) Provide public notice of the application in the weekly notice published by the department.

(4) The department shall allow comment on the application for 30 days following public notice of the application in the weekly notice published by the department. Any protest against the proposed final order must be submitted no later than 45 days after the date of the weekly notice published by the department. *[A protest must be filed in the manner provided in ORS 537.227.]*

(5) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section, except that the issues raised in a protest must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with this section.

[(5)] (6) If the department determines that an application under subsection (1) of this section to assign all or part of a water right permit has been properly filed, and that the issuance of replacement water right permits will not result in the enlargement of the original water right or otherwise cause injury to other water right holders, the department shall issue one or more replacement water right permits to reflect the assignment. The replacement water right permits:

(a) Must have the same conditions as the replaced water right permit, including but not limited to priority date, source of water and type of use;

(b) May not add or change a point of diversion or point of appropriation;

(c) May not result in the enlargement of the water use authorized under the replaced water right permit;

(d) Must apportion the rate, and if applicable the duty, in proportion to the amount of land to which the water right is appurtenant; and

(e) Must identify the land to which the replacement water right permit is appurtenant and the owner of that land.

[(6)] (7) This section does not apply to municipal or quasi-municipal permits or to permits held by a unit of local government, including but not limited to permits held by a port or water authority or a district. As used in this subsection, "unit of local government" has the meaning given that term in ORS 190.003 and "district" has the meaning given that term in ORS 540.505.

SECTION 9. ORS 537.227 is amended to read:

537.227. [(1) A record landowner, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right assignment under ORS 537.225. The protest must be in writing and received by the department within the time provided under ORS 537.225 (4). The protest must be accompanied by the protest fee required under ORS 536.050 and include:]

[(a) The name, address and telephone number of the person filing the protest; and]

[(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.]

[(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225.]

[(3)] **(1) In addition to any other authority the Water Resources Department may have,** if a protest is properly filed, the department may work with the applicant for the water right assignment and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. [The department may:]

[(a) Reissue a proposed final order;]

[(b) Issue a final order; or]

[(c) Refer the matter for a contested case hearing.]

[(4) If the department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the department an opportunity for response is not subject to review at the contested case hearing.]

[(5)] **(2) Notwithstanding ORS 183.310, and sections 2 and 3 of this 2025 Act,** the parties to a contested case hearing held under this section are limited to:

(a) The applicant for the water right assignment; and

(b) Persons that timely filed a protest against the proposed order under ORS 537.225 (4).

SECTION 10. ORS 537.295 is amended to read:

537.295. (1) If the holder of a permit to appropriate water for hydroelectric purposes under this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the holder continues to qualify as a municipal applicant, or if the holder of the permit has assigned ownership of the permit to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the permit.

[(2) A proceeding to cancel a permit under subsection (1) of this section shall be conducted according to the provisions under ORS chapter 183 for a contested case hearing.]

(2) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section.

SECTION 11. ORS 537.297 is amended to read:

537.297. (1) If the owner of a certificate to appropriate water for hydroelectric purposes under this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the owner continues to qualify as a municipal applicant, or if the holder of the certificate has assigned ownership of the certificate to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the certificate.

[*(2) A proceeding to cancel a certificate under subsection (1) of this section shall be conducted according to the provisions under ORS chapter 183 for a contested case hearing.*]

(2) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section.

SECTION 12. ORS 537.409 is amended to read:

537.409. (1) In lieu of the process set forth in ORS 537.140 to 537.211 for applying for a water right permit, an owner of a reservoir may submit an application to the Water Resources Department to issue a water right permit under ORS 537.211 or a certificate under ORS 537.250 according to the process set forth in this section if the reservoir:

(a) Has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height;

(b) Does not injure any existing water right;

(c) Does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and

(d) Is not prohibited under ORS 390.835.

(2) An application for a water right permit for a reservoir under subsection (1) of this section shall provide sufficient information to demonstrate compliance with the criteria set forth in subsection (1) of this section. The application shall:

(a) Include the quantity of water to be stored by the reservoir, a map indicating the location of the reservoir and the source of the water used to fill the reservoir; and

(b) Be accompanied by the fee established in ORS 536.050 (1)(q).

(3) The map required under subsection (2) of this section need not be prepared by a water right examiner certified under ORS 537.798. The map submitted with the application shall comply with standards established by the Water Resources Commission.

(4) Within 60 days after receiving an application under subsection (1) of this section, the Water Resources Department shall provide public notice of the application in the manner the department determines to be the most appropriate.

(5) Within 60 days after the department provides public notice under subsection (4) of this section, any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir:

(a) Would result in injury to an existing water right; or

(b) Would pose a significant detrimental impact to existing fishery resources.

(6) In accordance with rules established by the Water Resources Commission for an expedited public interest review process for applications submitted under this section or in response to a request under subsection (5) of this section, the department shall conduct a public interest review of the reservoir application. The review shall be limited to issues pertaining to:

(a) Water availability;

(b) Potential detrimental impact to existing fishery resources; and

(c) Potential injury to existing water rights.

(7) Within 180 days after the department receives an application for a permit under subsection (1) of this section, the department shall issue a final order granting or denying the permit or granting the permit with conditions.

(8) If the department issues an order under subsection (7) of this section denying the permit, the applicant may request a contested case hearing, which shall be conducted in accordance with applicable provisions of ORS chapter 183, **sections 2 and 3 of this 2025 Act and rules adopted**

1 **thereunder. The status of an order issued under subsection (7) of this section and for which**
 2 **an applicant has requested a contested case hearing is a proposed final order.**

3 (9) If the department does not find injury or impact under subsection (6) of this section and the
 4 department issues a final order under subsection (7) of this section allowing the issuance of a permit,
 5 the order shall be subject to judicial review of orders in other than contested cases as provided in
 6 ORS chapter 183.

7 (10) Notwithstanding the requirement for a survey under ORS 537.230, a survey of the appro-
 8 priation is not required for a reservoir that has a storage capacity of less than 9.2 acre-feet of water.
 9 For a reservoir qualifying under this subsection, a permittee shall submit to the department a claim
 10 of beneficial use within one year after the date of completion of construction. A claim of beneficial
 11 use for a reservoir qualifying under this subsection shall require only a written affidavit signed by
 12 the permittee that includes the following:

13 (a) The dimensions of the reservoir.

14 (b) The maximum capacity of the reservoir in acre-feet.

15 (c) A map identifying the location of the reservoir. The map shall comply with standards estab-
 16 lished by the Water Resources Commission. The map required under this subsection need not be
 17 prepared by a water right examiner certified under ORS 537.798.

18 (11) Any person applying for a secondary permit for the use of stored water from a reservoir
 19 qualifying under subsection (10) of this section shall submit a survey prepared by a water right ex-
 20 aminer certified under ORS 537.798. The survey required under this subsection shall apply to the
 21 storage reservoir and to the secondary use of the water in the reservoir.

22 **SECTION 13.** ORS 537.420 is amended to read:

23 537.420. Whenever a permit holder fails to comply with the laws of the state and the require-
 24 ments of the permit as to the commencement of work with due diligence, completion of the work
 25 of construction or the application of the water for a beneficial use, and the permit is subject to
 26 cancellation as provided in ORS 537.410 to 537.450, the Water Resources Commission shall, *not less*
 27 *than 30 nor more than 60 days prior to the hearing provided for in ORS 537.445, notify each person*
 28 *who, according to Water Resources department records, is the holder of a water right permit or cer-*
 29 *tificate whose right may be injured by the proposed cancellation. The notice shall require the holder*
 30 *of the permit to appear before the commission at the time and place designated in the notice, and show*
 31 *cause why the permit described in the notice should not be canceled for the reasons therein specified.*
 32 *The notice shall contain a brief statement of the grounds for cancellation and shall be served in ac-*
 33 *cordance with ORS 183.415.]* **issue a proposed final order canceling the permit and serve notice**
 34 **of the proposed final order, in accordance with ORS 183.415, on the holder of the permit that**
 35 **is proposed for cancellation and on each person who, according to Water Resources Depart-**
 36 **ment records, is the holder of a water right permit or certificate whose right may be injured**
 37 **by the proposed cancellation. The notice shall provide a period of 60 days from the date of**
 38 **the mailing of the notice within which to protest the proposed cancellation of the permit.**

39 **SECTION 14.** ORS 537.445 is amended to read:

40 537.445. *[(1) If the Water Resources Commission proposes to cancel a permit or appropriation un-*
 41 *der ORS 537.410 to 537.450, opportunity for hearing shall be accorded as provided in ORS chapter*
 42 *183.]*

43 **(1) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder,**
 44 **apply to a contested case proceeding on a proposed final order issued under ORS 537.410 to**
 45 **537.450.**

(2) If a petition for review of an order canceling a permit or appropriation is filed under ORS 536.075, the **Water Resources** Commission *[shall]* **may** not cancel the permit or appropriation under ORS 537.440 until the petitioner's right of review is exhausted and the order is finally approved.

SECTION 15. ORS 537.470 is amended to read:

537.470. (1) Upon receipt of an application for allocation of conserved water under ORS 537.465, the Water Resources Commission shall give notice of receipt of the application in accordance with ORS 540.520 (5).

(2) The commission shall allocate conserved water as provided in subsection (3) of this section and approve modifications of water rights as provided in subsection *[(6)] (7)* of this section. The commission may not allocate conserved water pursuant to an application under ORS 537.465 if the application is filed more than five years after the conservation measure was implemented.

(3) After determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

[(4) The commission shall notify the applicant and any other person requesting notice, of the action the commission intends to take under subsection (3) of this section. Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the commission.]

(4) The commission shall:

(a) Issue a proposed final order on the application.

(b) Serve the proposed final order in accordance with ORS 183.415.

(c) Provide notice of the proposed final order to any other person requesting notice.

(5) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section.

[(5)] (6) The modification of water rights under an allocation of conserved water may not require a separate request for transfer under ORS 540.520.

[(6)] (7) After the commission completes the allocation of conserved water under subsection (3) of this section, the commission shall issue orders for proposed new certificates covering the changes in the original water rights. Once the conservation project is completed, separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates indicating the priority of rights as set forth in ORS 537.485 shall be issued to cover the right to the use of the allocated water.

SECTION 16. ORS 537.621 is amended to read:

537.621. (1) Within 60 days after the Water Resources Department proceeds with the application

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

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

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

(b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest under *[subsection (7) of this]* section **3 of this 2025 Act** or in a finding of the department that shows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[(f) The protest fee required under ORS 536.050.]

(6) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section.

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

[(9)] **(8)** Within 60 days after the close of the period for receiving protests, **if a timely protest was submitted**, the Water Resources Director shall:

(a) Issue a final order as provided under ORS 537.625 (1), **if the applicant has not filed a protest and the director finds that there are no significant issues related to the proposed use of water**; *[or]*

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

(c) Provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the case to the Office of Administrative Hearings for a hearing and notice that parties may provide settlement proposals.

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

[(B) Within 30 days after the close of the period for submitting protests, the applicant requests a

1 *contested case hearing.]*

2 **SECTION 17.** ORS 537.622 is amended to read:

3 537.622. *[(1) Within 45 days after the Water Resources Director schedules a contested case hearing*
 4 *under ORS 537.621 (9), the Water Resources Department shall hold the contested case hearing. The*
 5 *issues to be considered in the contested case hearing shall be limited to issues identified by the ad-*
 6 *ministrative law judge.]*

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

9 *[(a) The applicant;]*

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

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

13 *[(3) The] A contested case **proceeding under ORS 537.621 (8)** [proceeding] shall be conducted*
 14 *in accordance with the applicable provisions of ORS chapter 183 **and sections 2 and 3 of this 2025***
 15 ***Act,** except[:]*

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

17 *[(b)] **that** an interlocutory appeal under ORS 183.480 (3) [shall not be] **is not** allowed.*

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

23 **SECTION 18.** ORS 537.625 is amended to read:

24 537.625. (1) If, after the contested case hearing or, if a hearing is not held, after the close of the
 25 period allowed to file a protest, the Water Resources Director determines that the proposed use **that**
 26 **is the subject of an application filed under ORS 537.615** does not ensure the preservation of the
 27 public welfare, safety and health as described in ORS 537.525, the director shall issue a final order
 28 rejecting the application or modifying the proposed final order as necessary to ensure the preser-
 29 vation of the public welfare, safety and health as described in ORS 537.525. If, after the contested
 30 case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the
 31 director determines that the proposed use would ensure the preservation of the public welfare,
 32 safety and health as described in ORS 537.525, the director shall issue a final order approving the
 33 application or otherwise modifying the proposed final order. A final order may set forth any of the
 34 provisions or restrictions to be included in the permit concerning the use, control and management
 35 of the water to be appropriated for the project.

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

37 *[(a) Where the final order modifies the proposed final order, the applicant may request and the*
 38 *Water Resources Department shall schedule a contested case hearing as provided under ORS 537.622*
 39 *(3) by submitting the information required for a protest under ORS 537.621 (7) within 14 days after the*
 40 *director issues the final order. However, the issues on which a contested case hearing may be requested*
 41 *and conducted under this paragraph shall be limited to issues based on the modifications to the pro-*
 42 *posed final order.]*

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

45 **(2) If a contested case hearing is not held under ORS 537.621 (8)(a) where the final order**

1 **modifies the proposed final order, the applicant, a person that requested party status or a**
 2 **protestant may submit a protest under section 2 or 3 of this 2025 Act within 14 days after**
 3 **the director issues the final order, except that the issues on which a contested case hearing**
 4 **may be requested and conducted under this subsection are limited to issues that are based**
 5 **on the modifications to the proposed final order. The Water Resources Department must**
 6 **hold a hearing if the protestant is an applicant.**

7 **(3) If a protest is filed by a person other than the applicant and, as provided in ORS**
 8 **537.621 (8)(a), the director issues a final order without holding a contested case hearing, a**
 9 **protestant may appeal the provisions of the final order in the manner established in ORS**
 10 **chapter 183 for appeal of orders in other than contested cases.**

11 [(3)] (4) If the presumption of public welfare, safety and health under ORS 537.621 (2) is over-
 12 come, then before issuing a final order, the director or the Water Resources Commission, if appli-
 13 cable, shall make the final determination of whether the proposed use or the proposed use as
 14 modified in the proposed final order would preserve the public welfare, safety and health as de-
 15 scribed in ORS 537.525 by considering:

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

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

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

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

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

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

29 (g) The state water resources policy.

30 [(4)] (5) Upon issuing a final order, the [Water Resources] department shall notify the applicant
 31 and each person who submitted written comments or protests or otherwise requested notice of the
 32 final order and send a copy of the final order to any person who requested a copy and paid the fee
 33 required under ORS 536.050 (1)(p).

34 [(5)] (6) A right to appropriate ground water under a permit has a priority from the date when
 35 the application was filed with the department.

36 [(6)] (7) If the use of water under the permit is for operation of a mining operation as defined
 37 in ORS 517.952:

38 (a) Review of the application and approval or denial of the application shall be coordinated with
 39 the consolidated application process under ORS 517.952 to 517.989. However, such review and ap-
 40 proval or denial shall take into consideration all policy considerations for the appropriation of water
 41 as set forth in this chapter and ORS chapter 536.

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

44 (c) The permit shall include a condition that additional conditions may be added to the use of
 45 water when a water right certificate is issued, or when the use of water is changed pursuant to ORS

540.520 and 540.530 to use for a mining operation.

SECTION 19. ORS 537.628 is amended to read:

537.628. (1) The Water Resources Department may approve an application for less ground water than applied for or upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health.

(2) In any event the department *[shall]* **may** not approve the application for more ground water than is applied for or than can be applied to a beneficial use.

(3) *[No application shall be approved when the same will deprive]* **The department may not approve an application that deprives** those having prior rights of appropriation for a beneficial use of the amount of water to which they are lawfully entitled.

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

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

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

SECTION 20. ORS 540.520 is amended to read:

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

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

(2) The application required under subsection (1) of this section shall include:

(a) The name of the owner;

(b) The previous use of the water;

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

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

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

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

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

(3) If the application required under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and (d) of this section. The assistance provided by the department may include, but need not be limited to, development of an application map.

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

(5) Upon the filing of the application the department shall give notice by publication in a newspaper having general circulation in the area in which the water rights are located, for a period of at least two weeks and not less than one publication each week. The notice shall include the date

on which the last notice by publication will occur. The cost of the publication shall be paid by the applicant in advance to the department. In applications for only a change in place of use or for a change in the point of diversion of less than one-fourth mile, and where there are no intervening diversions between the old diversion of the applicant and the proposed new diversion, no newspaper notice need be published. The department shall include notice of such applications in the weekly notice published by the department.

[(6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or the mailing of the department's weekly notice, whichever is later, any person may file, jointly or severally, with the department, a protest against approval of the application.]

(6) The department shall issue a proposed final order approving or denying the application or approving the application with modifications or conditions. Within 30 days after the publication in the department's weekly public notice any person may file a protest against the proposed final order.

(7) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder, apply to a contested case proceeding on a proposed final order issued under this section.

[(7)] (8) If [a timely protest is filed, or] in the opinion of the Water Resources Director a hearing is necessary to determine whether the proposed changes as described by the application would result in injury to existing water rights, the department shall hold a hearing on the matter. [Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested cases, and shall be held in the area where the rights are located unless all parties and persons who filed a protest under this subsection stipulate otherwise.]

[(8)] (9) An application for a change of use under this section is not required if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

[(9)] (10) A water right transfer under subsection (1) of this section is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

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

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

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

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

(B) The water right certificate number;

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

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

SECTION 21. ORS 540.524 is amended to read:

540.524. (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an application submitted to the Water Resources Department, the holder of both a primary water right originating from a surface water source and a supplemental water right permit or certificate originating from a ground water source may substitute the use of the supplemental water right for the primary water right.

1 A substitution may not be made under this subsection if the use of the supplemental water right
 2 results in an enlargement or expansion of the primary water right. This subsection does not au-
 3 thorize a change in place of use, type of use, point of diversion or point of appropriation.

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

8 [(3) Upon receiving an application under subsection (1) of this section, the department shall provide
 9 notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520 (5),
 10 (6) and (7).]

11 (3) Upon receiving an application under subsection (1) of this section, the department
 12 shall provide public notice and accept protests as described in ORS 540.520.

13 (4) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder,
 14 apply to a contested case proceeding on a proposed final order issued under this section.

15 [(4)] (5) The Water Resources Director shall issue [an] a **proposed final** order approving or
 16 denying the substitution. If the proposed substitution will result in injury to other water rights, the
 17 director shall prohibit or condition the use to avoid or mitigate the injury. The director shall issue
 18 [an] a **proposed final** order approving or denying the substitution within 90 days after the depart-
 19 ment receives an application under subsection (1) of this section.

20 [(5)] (6) For the purpose of ORS 540.610, a substituted primary surface water right shall be
 21 treated as a supplemental water right, and a substituted supplemental ground water right shall be
 22 treated as a primary water right.

23 [(6)] (7) A completed and approved substitution of a supplemental ground water right for a pri-
 24 mary surface water right under this section may be terminated upon a request by the water right
 25 holder or by an order of the director if the director determines that the use of the ground water
 26 as the primary water right causes injury to other water rights. Upon termination, the substituted
 27 primary and supplemental water rights shall revert back to their original status.

28 **SECTION 22.** ORS 540.560 is amended to read:

29 540.560. (1) If the Water Resources Commission considers that a certificate of water right does
 30 not identify the lands to which the right is appurtenant with sufficient specificity for management,
 31 delivery or transfer of that right, the commission may issue [an] a **proposed final** order clarifying
 32 and refining the description of the land to which the water right is appurtenant.

33 (2) [An] A **proposed final** order issued under this section may not reduce the rate, duty or
 34 number of acres stated in the certificate of water right. The sole purpose of an addendum to a water
 35 right certificate is to better define the location of acreage to which the water right is appurtenant,
 36 where the certificate states only that the use is limited to a number of acres within a larger tract.

37 (3) Any **proposed final** order issued under this section shall be served on the legal owner of the
 38 land to which the water right is appurtenant and on the occupant of the land, by certified mail,
 39 return receipt requested. [If the owner or occupant files a written request for a hearing within 30 days
 40 after service of the order, the commission shall conduct a hearing of the matter under ORS 183.413 to
 41 183.484.] **Notwithstanding sections 2 and 3 of this 2025 Act, if the owner or occupant files a**
 42 **written protest within 30 days after issuance of the proposed final order, the commission**
 43 **shall conduct a hearing.**

44 (4) The provisions of sections 2 and 3 of this 2025 Act, and rules adopted thereunder,
 45 apply to a contested case proceeding on a proposed final order issued under this section.

[(4)] (5) A final order under this section shall become an addendum to and shall be filed with the certificate of water right that the order clarifies. For all purposes, the final order shall constitute the description of the land to which the water right is appurtenant.

SECTION 23. ORS 540.641 is amended to read:

540.641. (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Commission may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right **the provisions of sections 2 and 3 of this 2025 Act and the rules adopted thereunder apply** [*with the commission within the 60-day period prescribed in the notice, the commission shall fix a time and place for a hearing on the protest*]. The commission shall cause written notice of the hearing to be given at least 10 days prior to the hearing to the person protesting the cancellation of the water right and to any other person who in the opinion of the commission is an interested party to the proceeding. [*The hearing shall be held by the commission and shall be conducted under the provisions of ORS chapter 183 pertaining to contested cases.*]

(3) After *[the]* a hearing the commission shall enter an order canceling the water right, canceling in part or modifying the water right, or declaring that the water right shall not be canceled or modified.

APPLICABILITY TO COMPLETED APPLICATIONS

SECTION 24. (1) Notwithstanding ORS 536.031 (1), rules adopted under section 2 or 3 of this 2025 Act apply to aspects of a contested case proceeding that occur on or after the effective date of this 2025 Act, for a protest:

(a) That was submitted before, on or after the effective date of this 2025 Act; and

(b) That was not referred to the Office of Administrative Hearings before the effective date of this 2025 Act.

(2) For protests that were pending on or before the effective date of this 2025 Act, the Water Resources Department shall provide to applicants, protestants, persons that submitted a request for standing and persons that have requested or been granted party status notice of the provisions and requirements of sections 2 and 3 of this 2025 Act. Notwithstanding section 3 of this 2025 Act, the department shall provide not less than 90 days after issuance of the notice for:

(a) A person that submitted a request for standing to request party status in an existing contested case proceeding.

(b) A protestant in an existing contested case proceeding to amend the protest as necessary to comply with the provisions of section 3 of this 2025 Act. The amended protest may not add issues not raised in the original protest.

(3) A person that submitted a request for party status before the effective date of this 2025 Act need not amend the request.

APPROPRIATIONS

SECTION 24a. Notwithstanding any other provision of law, the General Fund appropri-

1 **ation made to the Water Resources Department by section 1 (3), chapter _____, Oregon**
2 **Laws 2025 (Enrolled Senate Bill 5543), for the biennium beginning July 1, 2025, for water**
3 **rights and adjudications, is increased by \$226,420 to carry out the provisions of this 2025 Act.**

4
5 **CONFORMING AMENDMENTS**
6

7 **SECTION 25.** ORS 536.050 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (C) To exclusively appropriate stored water:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (n) For requesting standing under ORS [537.153, 537.621 or] 543A.120 **or section 3 of this 2025**
31 **Act**, \$270.

32 (o) For participating in a contested case proceeding under ORS [537.170, 537.622 or] 543A.130
33 **or section 3 of this 2025 Act**, \$680.

34 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
35 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
36 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, \$35.

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

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

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

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

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

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

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

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

537.500:

(A) A base fee of \$1,360 for the first water right that is part of the allocation; and

(B) An additional fee of \$480 for each water right that is part of the allocation beyond the first water right.

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

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

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

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

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

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

(B) \$410 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, \$150.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Made pursuant to ORS 537.348;

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

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

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

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

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

SECTION 26. ORS 536.750 is amended to read:

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

(a) Issue without first conducting a hearing under ORS 537.170 **and section 3 of this 2025 Act**, a temporary permit for an emergency use of water;

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

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

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

(e) Allow a temporary exchange of water without giving notice as required under ORS 540.535; and

(f) Utilize an expedited notice and waiting requirement established by rule for the substitution of a supplemental ground water right for a primary water right under drought conditions [*in place of the notice and waiting requirement provided in ORS 540.524*].

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

SECTION 27. ORS 537.147 is amended to read:

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

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

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

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

(2) If an applicant provides, to the satisfaction of the department, the fee and the information required by subsection (1) of this section, the department may, after public notice and a 30-day op-

portunity to submit comments on the application, issue a water right permit upon determining that no public interest issues as identified in ORS 537.170 [(8)] (5) have been raised through the comments submitted.

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

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

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

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

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

SECTION 28. ORS 537.343 is amended to read:

537.343. (1) A proposed final order issued under ORS 537.170 [(6)] (3) or (5) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

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

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

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

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

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

SECTION 29. ORS 537.629 is amended to read:

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

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

(A) Approve the permit;

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

(C) After a hearing under ORS 537.622 and sections 2 and 3 of this 2025 Act, reject the application; or

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

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

SECTION 30. ORS 540.537 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 31. ORS 543.255 is amended to read:

543.255. (1) Whenever the Water Resources Department receives an application to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.610, the department shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the department; or

(b) Existing hydroelectric projects in the same river basin.

(2) If the department determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the Water Resources Director shall issue an order setting forth the department's determination that there are no cumulative effects and the department's decision that consolidated review is not required.

(3) If the department determines that pending applications or existing projects may have cumulative effects, the Water Resources Commission shall conduct a consolidated review before approving any application in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS chapter 183 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the department and existing hydroelectric projects. In its final order on an

1 application, the commission or the department shall include its findings on cumulative impacts. The
 2 findings of the commission or department under this section must be sufficient to support the
 3 department's decision to approve or deny an application.

4 (4) Any application for a project in the same river basin filed after the commission begins a
 5 consolidated review contested case hearing shall not be reviewed until the commission has issued
 6 final findings on cumulative effects for all projects included in the consolidated review proceeding.

7 (5) At the request of an applicant for a permit to appropriate water for a new hydroelectric
 8 project under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.610, the
 9 commission may immediately upon receiving such application begin the consolidated review pro-
 10 ceeding under subsection (3) of this section.

11 **(6) If applicable, an application to appropriate water for the generation of electricity**
 12 **submitted under ORS 537.140 shall be included in the consolidated review and hearings pro-**
 13 **cess under this section.**

14 **SECTION 32.** ORS 543.765 is amended to read:

15 543.765. (1) Notwithstanding ORS 537.145 and ORS chapter 543:

16 (a) The holder of a water right may apply to the Water Resources Department for a certificate
 17 to use water for hydroelectric purposes within an artificial delivery system under the applicant's
 18 existing water right.

19 (b) A municipal corporation or people's utility district, as defined in ORS 261.010, may apply to
 20 the department for a certificate to use water for hydroelectric purposes within a piped conduit in
 21 an artificial delivery system that is delivering water for municipal uses even if the municipal cor-
 22 poration or people's utility district is not the holder of the underlying municipal water right, if the
 23 municipal corporation or people's utility district obtains from the holder of the underlying municipal
 24 water right, and provides to the department with the application, a written statement authorizing
 25 the municipal corporation or people's utility district to use the water for hydroelectric purposes.

26 (2) If the proposed hydroelectric project meets the applicable capacity limitation under this
 27 subsection and meets either the qualifications for a Federal Energy Regulatory Commission ex-
 28 emption from licensing or similar qualifications of another federal agency responsible for authorizing
 29 the project, the applicant may use the expedited application process under this section regardless
 30 of which federal agency issues the authorization. To qualify under this subsection:

31 (a) For a project that is to be built as part of an existing dam, the capacity may not exceed five
 32 megawatts. Subsection (6)(b) of this section does not apply to a project described in this paragraph.

33 (b) For in-conduit projects, the capacity may not exceed 15 megawatts for a nonmunicipal facil-
 34 ity or 40 megawatts for a municipal facility. Projects described in this paragraph must comply with
 35 subsection (6)(b) of this section.

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

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

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

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

45 (d) A statement by the applicant that the amount of water used by the proposed hydroelectric

1 project will not exceed the amount authorized and used under the applicant's existing water right,
2 or the underlying water right, for beneficial use without waste.

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

4 (f) An application processing fee of \$500. The department shall deposit fees collected under this
5 section into the Water Resources Department Hydroelectric Fund established pursuant to ORS
6 536.015.

7 (g) A map or drawing and all other data concerning the proposed hydroelectric project, as may
8 be prescribed by the department. The map or drawing must be of sufficient quality and scale to es-
9 tablish the location of the existing point of diversion and the proposed location of the hydroelectric
10 project.

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

14 (i) Evidence that the water has been used over the past five years according to the terms and
15 conditions of the applicant's existing water right, or the underlying water right, described in para-
16 graph (a) of this subsection.

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

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

20 (b) The Water Resources Department may issue a final order and certificate to use water for
21 hydroelectric purposes upon making a final determination that the proposed hydroelectric use does
22 not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 [(8)]
23 (5).

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

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

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

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

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

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

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

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

45 (c) That use of water be limited to periods when the applicant's existing water right, or the

underlying water right, is put to beneficial use without waste and that the amount used is not greater than the quantity of water diverted to satisfy the authorized specific use under the existing water right, or the underlying water right, described in subsection (3)(a) of this section.

(d) That use of water be limited by rate, duty, season and any other limitations of the applicant's existing water right, or the underlying water right, described in subsection (3)(a) of this section.

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

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

(g) That a certificate issued under this section shall be invalidated upon a change in the point of diversion of the existing water right, or the underlying water right, described in subsection (3)(a) of this section.

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

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

(7) The Water Resources Department shall conduct a review of certificates issued under this section and shall issue a final order and a superseding certificate that corresponds to any changes or adjustments made to the applicant's existing water right, or the underlying water right, described in subsection (3)(a) of this section.

(8) Subsection (6)(b) of this section does not affect any requirement for fish passage applicable to a project that is otherwise required by law.

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

(10) A certificate issued under this section may not have its own priority date. The Water Resources Department may not regulate for or against any certificate issued under this section based on the priority date of the certificate.

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

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

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

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

(15)(a) If a certificate contains a condition described in subsection (6)(b) of this section for annual payments, the payment shall be collected as provided in paragraph (c) of this subsection. Except as provided in paragraph (b) of this subsection, the annual payment amount must be:

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

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

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

(D) \$100 for any year in which the base hydropower fee amount assessed for the project under

ORS 543.078 is less than \$100.

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

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

(16)(a) Notwithstanding subsection (15) of this section, a certificate for a project to install hydroelectric generating equipment as described in subsection (6)(b) of this section may provide for the termination of annual payments being made under subsection (15) of this section if, after the date the project commences operation:

(A) The project provides for fish passages;

(B) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for fish passages associated with the project; or

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

(b) A certificate for a project to install hydroelectric generating equipment as described in subsection (6)(b) of this section does not need to include a condition for the making of annual payments under subsection (15) of this section if:

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

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

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

(18) The Water Resources Department shall issue invoices for fees required under this section, and the state shall have a preference lien for delinquent fees, as provided in ORS 543.082.

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

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

CAPTIONS

SECTION 33. The unit captions used in this 2025 Act are provided only 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 2025 Act.