

House Bill 2142

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Water Resources Department)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Increases certain fees charged by Water Resources Department. Creates fee for additional points of appropriation included in application for approval of change to existing water right or permit.

Declares emergency, effective July 1, 2021.

A BILL FOR AN ACT

Relating to fees charged by the Water Resources Department; creating new provisions; amending ORS 536.050, 537.150, 537.610, 537.620 and 539.081; and declaring an emergency.

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

SECTION 1. ORS 536.050 is amended to read:

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

(a) For examining an application for a permit:

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

(i) A base fee of [~~\$930~~] **\$1,090** for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) [~~\$350~~] **\$410** for the first second-foot or fraction thereof appropriated under the permit;

(iii) [~~\$350~~] **\$410** for each additional second-foot or fraction thereof appropriated under the permit;

(iv) [~~\$350~~] **\$410** for each additional use, point of diversion or point of appropriation included in the application;

(v) If appropriating stored water, [~~\$35~~] **\$41** for the first acre-foot or fraction thereof up to 20 acre-feet, plus [~~\$1.20~~] **\$1.40** for each additional acre-foot or fraction thereof; and

(vi) If appropriating ground water, in addition to any other fees, [~~\$410~~] **\$480** for each application filed.

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

(i) A base fee of [~~\$930~~] **\$1,090**;

(ii) [~~\$35~~] **\$41** for the first acre-foot or fraction thereof up to 20 acre-feet, plus [~~\$1.20~~] **\$1.40** for each additional acre-foot or fraction thereof; and

(iii) [~~\$140~~] **\$160** for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of [~~\$520~~] **\$610**; and

(ii) [~~\$35~~] **\$41** for the first acre-foot or fraction thereof up to 20 acre-feet, plus [~~\$1.20~~] **\$1.40** for each additional acre-foot or fraction thereof.

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

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

- 1 (A) A base fee of [~~\$520~~] **\$610** for recording the permit; and
- 2 (B) An additional fee of [~~\$670~~] **\$790** if the permit is issued pursuant to a final order that contains
- 3 provisions requested by the applicant for mitigating impacts to the proposed water source.
- 4 (c) For filing and recording the assignment or partial assignment of a water right application,
- 5 permit or license under ORS 537.220 or 537.635, [~~\$100~~] **\$120**.
- 6 (d) For copying records in the department, [~~\$2.30~~] **\$2.70** for the first page and [~~60~~] **70** cents for
- 7 each additional page.
- 8 (e) For certifying copies, documents, records or maps, [~~\$12~~] **\$14** for each certificate.
- 9 (f) For a blueprint copy of any map or drawing, the actual cost of the work.
- 10 (g) For a computer-generated map, the actual cost of the work.
- 11 (h) For examining an application for approval of a change to an existing water right or permit:
- 12 (A) A base fee of [~~\$1,160~~] **\$1,360** for a change to a single water right or permit;
- 13 (B) [~~\$930~~] **\$1,090** for each additional type of change requested;
- 14 (C) For a request for a change in place of use or type of use or for a water exchange under ORS
- 15 540.533, [~~\$350~~] **\$410** for each second-foot or fraction thereof requested beyond the first second-foot;
- 16 (D) [~~\$520~~] **\$610** for each additional water right or permit included in the application; [~~and~~]
- 17 (E) An additional fee of [~~\$410~~] **\$480** per application, if the application is for an additional point
- 18 of appropriation, a change in a point of appropriation or a change from surface water to ground
- 19 water or for substitution as described in ORS 540.524[.]; **and**
- 20 **(F) \$410 for each additional point of appropriation included in the application.**
- 21 (i) For examining an application for a temporary change in place of use under ORS 540.523, for
- 22 a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the
- 23 point of diversion to allow for the appropriation of ground water or a change of a primary right to
- 24 a supplemental right under ORS 540.570, a base fee of [~~\$810~~] **\$950** for the first water right or permit,
- 25 plus [~~\$260~~] **\$310** for each additional water right or permit included in the application and:
- 26 (A) For nonirrigation uses, [~~\$200~~] **\$230** for each second-foot or fraction thereof requested beyond
- 27 the first second-foot; or
- 28 (B) For irrigation uses, [~~\$2.30~~] **\$2.70** per acre of land irrigated or, if the application and required
- 29 map are submitted to the department in a department-approved digital format, [~~60~~] **70** cents per acre
- 30 of land irrigated.
- 31 (j) For submitting a protest to the department:
- 32 (A) [~~\$810~~] **\$950** if the protest is by a nonapplicant; and
- 33 (B) [~~\$410~~] **\$480** if the protest is by an applicant.
- 34 (k) For filing an application for extension of time within which irrigation or other works shall
- 35 be completed or a water right perfected, [~~\$670~~] **\$780**.
- 36 (L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the
- 37 Water Resources Commission.
- 38 (m) For filing, examining and certifying a petition under ORS 541.329, [~~\$410~~] **\$480** plus 10 cents
- 39 per acre of water involved in the application. For purposes of computing this fee, when any acreage
- 40 within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in
- 41 that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a
- 42 district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining
- 43 and certifying the petition.
- 44 (n) For requesting standing under ORS 537.153, 537.621 or 543A.120, [~~\$230~~] **\$270**.
- 45 (o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130,

1 [~~\$580~~] **\$680**.

2 (p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order
 3 for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to
 4 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, [~~\$30~~] **\$35**.

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

6 (A) A base fee of [~~\$410~~] **\$480**; and

7 (B) [~~\$35~~] **\$41** for each acre-foot or fraction thereof.

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

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

11 (A) A base fee of [~~\$840~~] **\$990** for the first well substitution; and

12 (B) A fee of [~~\$410~~] **\$480** for each additional well substitution.

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

15 (A) A base fee of [~~\$1,160~~] **\$1,360** for the first water right that is part of the allocation; and

16 (B) An additional fee of [~~\$410~~] **\$480** for each water right that is part of the allocation beyond
 17 the first water right.

18 (u) For submitting a water management and conservation plan pursuant to rules of the com-
 19 mission:

20 (A) [~~\$580~~] **\$680**, if the plan is submitted by an agricultural water supplier;

21 (B) [~~\$1,040~~] **\$1,220**, if the plan is submitted by a municipal water supplier serving a population
 22 of 1,000 or fewer persons; or

23 (C) [~~\$2,090~~] **\$2,450**, if the plan is submitted by a municipal water supplier serving a population
 24 of more than 1,000 persons.

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

26 (A) [~~\$520~~] **\$610** for an application for a lease with four or more landowners or four or more
 27 water rights; or

28 (B) [~~\$350~~] **\$410** for all other applications.

29 (w) For examining an application for an in-stream water right lease renewal, [~~\$130~~] **\$150**.

30 (x) For submitting a claim of beneficial use under a permit or transfer having a priority date
 31 of July 9, 1987, or later, [~~\$200~~] **\$230**.

32 (y) For submitting a request no later than 60 days after cancellation of a permit under ORS
 33 537.260 to reinstate the permit, [~~\$520~~] **\$610**.

34 (z) For submitting a request for a basin program exception under ORS 536.295, [~~\$670~~] **\$780**.

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

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

39 (A) [~~\$100~~] **\$120** for a dam with a low hazard rating.

40 (B) [~~\$200~~] **\$230** for a dam with a significant hazard rating.

41 (C) [~~\$670~~] **\$790** for a dam with a high hazard rating.

42 (D) If the dam owner fails to pay an annual fee on or before six months after the billing date,
 43 a late fee of [~~\$120~~] **\$140**.

44 (b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the de-
 45 partment may, after giving the dam owner notice by certified mail, place a lien on the real property

1 where the dam is located for the fees owed by the dam owner.

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

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

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

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

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

14 (5) The director may waive all or part of a fee for a change to a water right permit under ORS
15 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allo-
16 cation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

17 (a) Made pursuant to ORS 537.348;

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

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

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

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

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

29 **SECTION 2.** ORS 537.150 is amended to read:

30 537.150. (1) Within 15 days after receiving an application, the Water Resources Department shall
31 determine whether the application contains the information listed under ORS 537.140 (1) and is
32 complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the
33 department determines that the application is incomplete or defective or that not all fees have been
34 paid, the department shall return the fees paid and the application.

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

40 (3) If an application is complete and not defective, the department shall determine whether the
41 proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter
42 538, the department shall reject the application and return all fees to the applicant with an expla-
43 nation of the statutory prohibition.

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

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

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

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

6 (5) Upon completion of the initial review and no later than 30 days after determining an appli-
7 cation to be complete and not defective as described in subsection (1) of this section, the department
8 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the
9 date of mailing within which to notify the department to stop processing the application or to pro-
10 ceed with the application. If the applicant notifies the department to stop processing the application,
11 the department shall return the application and all fees paid in excess of [~~\$260~~] **\$310**. If the depart-
12 ment receives no timely response from the applicant, the department shall proceed with the appli-
13 cation.

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

19 (7) Within 30 days after the public notice under subsection (6) of this section, any person inter-
20 ested in the application shall submit written comments to the department. Any person who asks to
21 receive a copy of the department's proposed final order shall submit to the department the fee re-
22 quired under ORS 536.050 (1).

23 **SECTION 3.** ORS 537.610 is amended to read:

24 537.610. (1) The Water Resources Commission shall accept all registration statements referred
25 to in ORS 537.605 completed and returned to the commission in proper form, endorse on the regis-
26 tration statement the date of the return and record each statement. Upon recording the statement,
27 the commission shall issue to the registrant a certificate as evidence that the registration is com-
28 pleted.

29 (2) The issuance of the certificate of registration serves as prima facie evidence that the regis-
30 trant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent
31 and in the manner disclosed in the recorded registration statement and in the certificate of regis-
32 tration.

33 (3) A certificate of registration issued under this section may not be construed as a final de-
34 termination of any matter stated in the certificate of registration. The right of the registrant to
35 appropriate ground water under a certificate of registration is subject to determination under ORS
36 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right cer-
37 tificate issued. A right to appropriate ground water under a certificate of registration has a tenta-
38 tive priority from the date when the construction of the well was begun.

39 (4) The commission shall adopt by rule the process and standards by which the commission will
40 recognize changes in the place of use, type of use or point of appropriation for claims to appropriate
41 ground water registered under this section. The commission shall adopt fees not to exceed [~~\$1,450~~]
42 **\$1,820** for actions taken to modify a certificate of registration.

43 **SECTION 4.** ORS 537.620 is amended to read:

44 537.620. (1) The Water Resources Department shall accept all applications for permits submitted
45 under ORS 537.615 in proper form.

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

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

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

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

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

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

21 (5) Upon completion of the initial review and no later than 30 days after determining an appli-
 22 cation to be complete and not defective as described in subsection (2) of this section, the department
 23 shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the
 24 date of mailing within which to notify the department to stop processing the application or to pro-
 25 ceed with the application. If the applicant notifies the department to stop processing the application,
 26 the department shall return the application and all fees paid in excess of [~~\$260~~] **\$310**. If the depart-
 27 ment receives no timely response from the applicant, the department shall proceed with the appli-
 28 cation.

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

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

38 **SECTION 5.** ORS 539.081 is amended to read:

39 539.081. (1) At the time the owner or registrant submits a registration statement under ORS
 40 539.240 or, if a registration statement is not filed, when a statement and proof of claim is filed pur-
 41 suant to notice by the Water Resources Director under ORS 539.030, the owner or registrant shall
 42 pay a fee as follows:

43 (a) If for irrigation use, [~~\$2.30~~] **\$2.70** for each acre of irrigated lands up to 100 acres and
 44 [~~\$1.20~~] **\$1.40** for each acre in excess of 100 acres. The minimum fee for any owner or registrant for
 45 irrigation use shall be [~~\$120~~] **\$140**.

1 (b) If for power use, [~~\$2.30~~] **\$2.70** for each theoretical horsepower up to 100 horsepower, [90
 2 cents] **\$1.10** for each horsepower in excess of 100 up to 500 horsepower, [60] **70** cents for each
 3 horsepower in excess of 500 horsepower up to 1,000 horsepower and [40] **50** cents for each horse-
 4 power in excess of 1,000 horsepower, as set forth in the proof. The minimum fee for any owner or
 5 registrant for power use shall be [~~\$350~~] **\$410**.

6 (c) If for mining or any other use, [~~\$580~~] **\$680** for the first second-foot or fraction of the first
 7 second-foot and [~~\$120~~] **\$140** for each additional second-foot.

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

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

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

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

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

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

27 **SECTION 6. If this 2021 Act becomes law after July 1, 2021, the Legislative Assembly**
 28 **intends that this 2021 Act shall apply retroactively to July 1, 2021. Fees charged by the Water**
 29 **Resources Department consistent with the amendments to ORS 536.050, 537.150, 537.610,**
 30 **537.620 and 539.081 by sections 1 to 5 of this 2021 Act, for services provided on or after July**
 31 **1, 2021, and prior to the effective date of this 2021 Act are ratified and declared valid.**

32 **SECTION 7. This 2021 Act being necessary for the immediate preservation of the public**
 33 **peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect**
 34 **on July 1, 2021.**

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