

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

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

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of \$260. If the department receives no timely response from the applicant, the department shall proceed with the application.

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

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1). [Amended by 1985 c.673 §28; 1993 c.557 §2; 1995 c.416 §9; 2007 c.267 §2; 2009 c.819 §§6,13; 2013 c.644 §§3,4; 2017 c.571 §§3,4]

537.153 Review of application; proposed final order; presumption that use will not impair or be detrimental to public interest; standing; protest; final order; contested case hearing. (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 or in a finding of the department that shows:

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

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

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

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

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

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

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

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