

(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).

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

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

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

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

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing. [1995 c.416 §11; 1997 c.446 §2; 1997 c.587 §5; 2007 c.188 §2; 2009 c.819 §§7,14; 2013 c.644 §5]

Note: 537.153, 537.173 and 537.175 were added to and made a part of 537.145 to 537.240 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.160 Approval for beneficial use; agreement authorizing use of ditch for waste or seepage water. (1) Subject to the provisions of subsections (2) and (3) of this section, and of ORS 537.170 and 537.190, the Water Resources Department shall approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights.

(2) The department may not approve an application for a permit to appropriate waste or seepage water, which is to be carried through an existing ditch or canal not owned wholly by the applicant until the applicant files with the department an agreement between the applicant and the owner of the ditch or canal, authorizing its use by the applicant to carry the water.

(3) The department shall reject every application for a permit to appropriate water to develop hydroelectric power if the department finds that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017. [Amended by 1985 c.569 §18; 1985 c.673 §197; 1995 c.416 §12]

537.170 Contested case hearing on application; final order; appeal. (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