

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 hearing 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) If, 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 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. If, 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. 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.

(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.

(8) 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.

(9) Upon issuing a final order, the director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid