

Enrolled
House Bill 2248

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for State Department of Geology and Mineral Industries)

CHAPTER

AN ACT

Relating to mineral resources; creating new provisions; amending ORS 468B.055, 516.070, 517.800, 517.835, 517.840, 517.905, 517.910, 517.915, 517.920, 517.930, 517.952, 517.953, 517.954, 517.956, 517.958, 517.959, 517.961, 517.963, 517.965, 517.967, 517.969, 517.971, 517.973, 517.977, 517.979, 517.982, 517.984, 517.988, 517.989, 517.990, 517.992, 537.140, 537.211, 537.615 and 537.625; repealing ORS 517.935, 517.940 and 517.950; and declaring an emergency.

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

MINERAL RESOURCES

SECTION 1. ORS 517.905 is amended to read:

517.905. (1) ORS 517.910 to 517.989 only apply to surface mines for nonaggregate minerals. [*that do not have a valid operating permit, a certificate of limited exemption or a certificate of total exemption based on the inactivity of a limited exempt site on August 16, 1981.*]

[*(2) ORS 517.910 to 517.989 do not apply to placer mining for gold or silver in which less than 5,000 cubic yards of material per year are extracted.*]

(2) ORS 517.910 to 517.951 do not apply to surface mines for nonaggregate minerals that are subject to the provisions for consolidated operating permits set forth in ORS 517.952 to 517.989.

SECTION 2. ORS 517.910 is amended to read:

517.910. For the purposes of ORS 517.910 to 517.989:

(1) Notwithstanding ORS 517.750 (12), "reclamation" means the employment in a surface mining operation of procedures reasonably designed to minimize as much as practicable the disruption from the surface mining operation or surface mining processing operation[, *including cyanide leaching or any other chemical leaching processing at a processing site removed from the mining site*] and to provide for the rehabilitation of any such surface resources through the use of plant cover, soil stability techniques, [*and through the use of*] measures to protect the surface and subsurface water resources, including but not limited to domestic water use and agricultural water use, and other measures appropriate to the subsequent beneficial use of any land or water resource affected by a surface mining or processing operation.

(2) "Nonaggregate minerals" means coal and metal-bearing ores, including but not limited to ores that contain nickel, cobalt, lead, zinc, gold, molybdenum, uranium, silver, aluminum, chrome, copper or mercury.

SECTION 3. ORS 517.915 is amended to read:

517.915. (1) In addition to any other provision of law, the State Department of Geology and Mineral Industries shall not issue an operating permit until:

(a) The department has received a reclamation plan that contains but is not limited to:

(A) A description of the proposed mining operation;

(B) A description of what is to be mined;

(C) The present use of the land, the planned subsequent beneficial use of the land and a list of plant species to be established;

(D) The measures that will adequately conserve the quantity and quality of the affected aquifers;

(E) A description of any toxic or radioactive materials known to be present in the ore, spoil, tailings, overburden or any other material involved in the mining operation and their approximate concentrations;

(F) A description of how the materials described in subparagraph (E) of this paragraph will be handled during mining and reclamation;

(G) Environmental baseline information as may be required by the department; and

(H) The name and address of the landowner, the owner of the surface estate, the operator and any parent corporations of the operator.

(b) The department has received a performance bond as it may require.

(c) The department finds that reclamation is possible and that the reclamation plan as approved will achieve the reclamation of affected lands.

[2] *The reclamation plan, minus proprietary information, is a public document.*

[3] (2) If the department finds that reclamation cannot be accomplished, it shall not issue an operating permit.

[4] (3) The department shall obtain, whenever possible, a list of plant species suitable for re-seeding in the area pursuant to a reclamation plan and comments on the feasibility of permanent revegetation from the soil and water conservation district in which the mined land is situated.

[5] (4) The department shall consult with *[the soil and water conservation district in which the mined land is situated]* **affected public bodies, as defined in ORS 174.109**, regarding the feasibility of reclamation, with particular attention to possible impacts on ground water aquifers.

SECTION 4. ORS 517.920 is amended to read:

517.920. [(1)] Each application for an operating permit under ORS 517.910 to 517.989 *[or exploration permit under this section and ORS 517.702 to 517.755, 517.790, 517.810 and 517.910]* shall be accompanied by a fee sufficient to cover the costs of the State Department of Geology and Mineral Industries in processing the application *[and monitoring compliance]* as determined by the department.

[(2)] *If the application is for a chemical process mine, the application shall be accompanied by an additional fee at each stage of the process sufficient to cover the costs of the department in maintaining a regulatory permit program that allows for the extraction and processing of metals.*

SECTION 5. ORS 517.930 is amended to read:

517.930. [(1)] Notwithstanding ORS 517.850, if the State Department of Geology and Mineral Industries has reason to believe that the provisions of an operating permit are being violated or that a surface mining operation is being conducted without a valid operating permit, it may inspect such surface mining areas without prior notice.

[(2)] *In addition to the department's authority to inspect under ORS 517.850 and subsection (1) of this section, for a chemical process mine operating under a permit issued under ORS 517.952 to 517.989, a cooperating agency also may inspect the mining operation to assure that the operator is complying with conditions imposed on the operating permit by the cooperating agency under ORS 517.982 (2).*

SECTION 6. ORS 517.952 is amended to read:

517.952. As used in ORS [517.702] **517.952** to 517.989:

(1) "Affected agency" includes permitting agencies, cooperating agencies and commenting agencies.

(2) “Baseline data” means information gathered to characterize the natural and cultural environments of a mining operation site before a mining operation begins.

[(3) “Chemical process mine” means a mining and processing operation for metal-bearing ores that uses chemicals to dissolve metals from ore.]

[(4)] (3) “Commenting agency” means any agency that makes recommendations to the State Department of Geology and Mineral Industries or to a permitting agency regarding permit conditions or whether to approve or deny a permit under the consolidated application process established under ORS 517.952 to 517.989.

[(5)] (4) “Consolidated application” means the single application required under ORS 517.971.

[(6)] (5) “Cooperating agency” means an agency that has statutory responsibility related to a [chemical process mine] **mining operation** but that does not issue a permit for the mining operation.

[(7)] (6) “Environmental evaluation” means an analysis prepared under ORS 517.979 to address specific impacts of the [chemical process mine] **mining operation** to allow affected agencies to develop permit conditions.

(7) “Gravity separation” means the separation of mineral particles, with the aid of water or air, according to the differences in the specific gravities of the particles.

(8) “Mining operation” means a surface or underground mine that processes, produces or reclaims metal ore using a method other than, or in addition to, gravity separation to process the ore.

[(8)] (9) “Mitigation” means the reduction of adverse effects of a proposed [chemical process] mining operation by considering, in the following order:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; or
- (e) Compensating for the impact by replacing or providing comparable substitute resources or environments.

[(9)] (10) “Permitting agency” means an agency that has a separate permitting authority for a [proposed chemical process mine] **mining operation**.

[(10) “Person” means any individual, partnership, corporation, association, public interest organization, the State of Oregon or any political subdivision, board, agency or commission of the State of Oregon.]

[(11)] (11) “Project coordinating committee” means the interagency governmental committee established in accordance with ORS 517.965.

[(12)] (12) “Technical review team” means the interagency group established in accordance with ORS 517.967.

SECTION 7. ORS 517.953 is amended to read:

517.953. Notwithstanding the policy set forth in ORS 517.760, the Legislative Assembly finds and declares that it is the policy of the State of Oregon to protect the environmental, scenic, recreational, social, archaeological and historic resources of this state from unacceptable adverse impacts that may result from [chemical process] mining operations, while permitting operations that comply with the provisions set forth in ORS 517.952 to 517.989 and [assure] **ensure** the protection of the public health, safety, welfare and the environment.

SECTION 8. ORS 517.954 is amended to read:

517.954. ORS 517.952 to 517.989 apply only to [chemical process mines for nonaggregate minerals] **mining operations as defined in ORS 517.952**. ORS 517.952 to 517.989 do not apply to placer mining.

SECTION 9. ORS 517.956 is amended to read:

517.956. [Any chemical process mining operation] **Mining operations** in Oregon shall comply with the following [standards]:

(1) [*Chemical process mining, including extraction, processing and reclamation,*] **Mining operations** shall be undertaken in a manner that minimizes environmental damage through the use of the best available, practicable and necessary technology to ensure compliance with environmental standards.

(2) Protection measures for fish and wildlife shall be consistent with policies of the State Department of Fish and Wildlife, including:

(a) Protective measures to maintain an objective of zero wildlife mortality. All chemical processing solutions and associated waste water shall be covered or contained to preclude access by wildlife or maintained in a condition that is not harmful to wildlife.

(b) On-site and off-site mitigation ensuring that there is no overall net loss of habitat value.

(c) No loss of existing critical habitat of any state or federally listed threatened or endangered species.

(d) Fish and wildlife mortality shall be reported in accordance with a monitoring and reporting plan approved by the State Department of Fish and Wildlife.

(e) The State Department of Fish and Wildlife shall establish by rule standards for review of a proposed [*chemical process*] mining operation for the purpose of developing conditions for fish and wildlife habitat protection that satisfy the terms of this section for inclusion in a consolidated permit by the State Department of Geology and Mineral Industries.

(3) Surface reclamation of a [*chemical process*] mine site shall:

(a) Ensure protection of human health and safety, as well as that of livestock, fish and wildlife;

(b) Ensure environmental protection;

(c) Require certification to the operator, by the State Department of Fish and Wildlife and the State Department of Agriculture, that a self-sustaining ecosystem, comparable to undamaged ecosystems in the area, has been established in satisfaction of the operator's habitat restoration obligations; and

(d) Include backfilling or partial backfilling as determined on a case-by-case basis by the State Department of Geology and Mineral Industries when necessary to achieve reclamation objectives that cannot be achieved through other mitigation activities.

SECTION 10. ORS 517.958 is amended to read:

517.958. Any person proposing to conduct a [*chemical process*] mining operation shall comply with the requirements for the preapplication process set forth in ORS 517.961 to 517.969. The purpose of such process shall be to identify significant issues to be addressed in the consolidated application process set forth in ORS 517.971 to 517.987.

SECTION 11. ORS 517.959 is amended to read:

517.959. (1) Whenever required in ORS 517.952 to 517.989, public notice shall include information sufficient to inform the public of the proposed activity or event and shall include:

(a) Notification to all permitting and cooperating agencies.

(b) Notice by mail to each owner of property located within one-half mile of the perimeter of the proposed site of the mining operation. As used in this paragraph, "owner" means the owner of the title to real property or the contract purchaser of real property of record as shown on the last available complete tax assessment roll.

(c) Notice by mail to persons on the master list.

(d) Notice by mail to mineral claimants for claims located within one-half mile of the proposed [*chemical process*] mining operation or as otherwise required by rule of a permitting or cooperating agency.

(e) Notice by publication in a newspaper of general circulation in the state and in a local newspaper of general circulation in the county or counties in which the proposed [*chemical process*] mining operation is located. Notice by publication shall be given at least once each week for two weeks immediately preceding the action.

(2) The notice provided pursuant to this section shall satisfy any notice requirement of an individual permitting or cooperating agency related to a permit included in the consolidated application process established under ORS 517.952 to 517.989.

(3) As used in this section, “master list” means a consolidated list of all interested parties compiled by the State Department of Geology and Mineral Industries and each permitting and cooperating agency and maintained by the department. Any person may request in writing that the State Department of Geology and Mineral Industries add the person’s name to the agency master list. The State Department of Geology and Mineral Industries may establish a procedure for establishing and maintaining an agency master list, and the governing board of the department may establish a fee to be paid by a person requesting to be added to the master list. The fee shall be sufficient to defray the department’s costs of mailing notices to persons on the master list and maintaining the master list.

SECTION 12. ORS 517.961 is amended to read:

517.961. A prospective applicant for a **mining operation** permit [*to operate a chemical process mining operation*] shall file with the State Department of Geology and Mineral Industries a notice of intent to submit an application and post copies of the notice along the perimeter of the location of the proposed operation. The posting shall be sufficient to inform the public of the intended action and a legal description of the proposed mining operation location and shall comply with requirements adopted by rule by the governing board of the department.

SECTION 13. ORS 517.963 is amended to read:

517.963. Upon receipt of a notice of intent under ORS 517.961, the State Department of Geology and Mineral Industries shall:

(1) Provide notice as required under ORS 517.959. The notice shall be sufficient to inform the public of the nature, size and location of the proposed [*chemical process*] mining operation.

(2) Activate a project coordinating committee for the proposed mining operation and coordinate the participation of federal agencies, affected agencies, local government agencies and the prospective applicant in the activities of the project coordinating committee.

(3) Activate a technical review team for the proposed mining operation.

(4) Identify to the prospective applicant all permitting and cooperating agencies that will be participating in the consolidated application process.

SECTION 14. ORS 517.965 is amended to read:

517.965. A project coordinating committee shall be composed of representatives from the State Department of Geology and Mineral Industries, all permitting and cooperating agencies, local government agencies and affected federal agencies. Each permitting and cooperating agency shall designate an appropriate staff member to **serve on** the committee. The project coordinating committee shall share information and coordinate county, state and federal permitting requirements in order to avoid contradictory requirements, facilitate the exchange of ideas, optimize communication and avoid duplicative effort. If a [*chemical process mine*] **mining operation** is proposed on federal land, the project coordinating committee shall work with the affected federal agency in accordance with a memorandum of agreement established by the department and the federal agency to facilitate the state and federal application process and to coordinate the two processes to the fullest extent possible. In carrying out its responsibilities, the project coordinating committee shall include opportunities for public participation.

SECTION 15. ORS 517.967 is amended to read:

517.967. (1) A technical review team shall be composed of representatives from the State Department of Geology and Mineral Industries and each permitting agency and cooperating agency. The technical review team shall:

(a) Establish methodology guidelines to be followed in the collection of baseline data;

(b) Coordinate with the applicant the use of baseline data collection methodologies as approved by the permitting and cooperating agencies; and

(c) Determine whether the [*chemical process*] mining operation as proposed in the consolidated application complies with [*the standards established in*] ORS 517.956 and any other applicable requirements for a permit listed under ORS 517.971.

(2) Each permitting agency and cooperating agency shall designate an appropriate staff member to serve on the technical review team.

SECTION 16. ORS 517.969 is amended to read:

517.969. (1) Upon receipt of notice from a prospective applicant that the prospective applicant is ready to begin collecting baseline data, the State Department of Geology and Mineral Industries shall:

(a) Provide notice in accordance with ORS 517.959 that the prospective applicant intends to begin baseline data collection and the location where additional background information may be obtained or reviewed.

(b) Within 30 days after receiving the notice from the applicant, conduct two public information meetings. One public meeting shall be conducted in the population center closest to the site of the proposed mining operation and one public meeting shall be conducted in a major population center for the state, as determined by State Department of Geology and Mineral Industries.

(c) Receive written comments from the public and affected agencies for 45 days after receiving notice under this subsection.

(2) The purpose of the public informational meetings and public comment period under subsection (1) of this section shall be to:

(a) Identify the issues raised by the proposed [*chemical process*] mining operation;

(b) Receive information from the public that the State Department of Geology and Mineral Industries and the permitting and cooperating agencies may need to know in order to evaluate the application; and

(c) Determine the data that should be collected during the baseline data collection phase of the consolidated application process to address the issues identified.

(3) Upon receipt of notice under subsection (1) of this section, the technical review team activated under ORS 517.963 shall determine the specific methodologies to be applied by the applicant in collecting baseline data.

(4) The applicant shall collect data according to the methodology established by the permitting and cooperating agencies through the technical review team. The data collected shall be verified by the appropriate agency in accordance with procedures adopted by the agency.

SECTION 17. ORS 517.971 is amended to read:

517.971. Each applicant for a permit to operate a [*chemical process*] mining operation shall submit a consolidated application to the State Department of Geology and Mineral Industries. The department and the permitting and cooperating agencies shall not begin deliberating on whether to issue a permit until the department receives an application fee and a complete consolidated application that includes but is not limited to:

(1) Name and location of the proposed facility.

(2) Name, mailing address and phone number of the applicant and a registered agent for the applicant.

(3) The legal structure of the applicant as filed in the business registry with the Secretary of State and the legal residence of the applicant.

(4) Mineral and surface ownership status of the proposed facility.

(5) Baseline data, including but not limited to environmental, socioeconomic, historical, archaeological conditions, land use designations and special use designations in the area of the state in which the proposed [*chemical process*] mining operation is located.

(6) Appropriate maps, aerial photos, cross sections, plans and documentation.

(7) A proposed:

(a) Mine plan;

(b) Processing plan;

(c) Water budget;

(d) Fish and wildlife protection and mitigation plan;

(e) Operational monitoring and reporting plan;

(f) Reclamation and closure plan;

(g) Plan for controlling water runoff and run on;

(h) Operating plan;

- (i) Solid and hazardous waste management plan;
 - (j) Plan for transporting and storing toxic chemicals;
 - (k) Employee training plan as required by agency rule;
 - (L) Seasonal or short term closure plan;
 - (m) Spill prevention and credible accident contingency plan;
 - (n) Post-closure monitoring and reporting plan; and
 - (o) Identification of special natural areas, including but not limited to areas designated as areas of critical environmental concern, research natural areas, outstanding natural areas and areas designated by the Oregon Natural Areas Plan, as defined in state rules and federal regulations.
- (8) All information required by the permitting agencies to determine whether to issue or deny the following permits as applicable to the proposed operation:
- (a) Surface mining operating permits required under ORS 517.790 and 517.915;
 - (b) Fill and removal permits required under ORS 196.600 to 196.905;
 - (c) Permits to appropriate surface water or ground water under ORS 537.130 and 537.615, to store water under ORS 537.400 and impoundment structure approval under ORS 540.350 to 540.390;
 - (d) National Pollutant Discharge Elimination System permit under ORS 468B.050;
 - (e) Water pollution control facility permit under ORS 468B.050;
 - (f) Air contaminant discharge permit under ORS 468A.040 to 468A.060;
 - (g) Solid waste disposal permit under ORS 459.205;
 - (h) Permit for use of power driven machinery on forestland under ORS 477.625;
 - (i) Permit for placing explosives or harmful substances in waters of the state under ORS 509.140;
 - (j) Hazardous waste storage permit under ORS 466.005 to 466.385;
 - (k) Local land use permits; and
 - (L) Any other state permit required for the [*proposed chemical process*] mining operation.
- (9) All other information required by the department, a permitting agency, a cooperating agency or the technical review team.

SECTION 18. ORS 517.973 is amended to read:

517.973. (1) In addition to any permit fee required by any other permitting agency, each **notice of intent to submit a consolidated application** under ORS [517.971] **517.961** shall be accompanied by an initial fee established by the State Geologist in an amount not to exceed [5606] **\$1,260**.

(2)(a) Annually on the anniversary date of the issuance of each such operating permit, each holder of an operating permit shall pay to the State Department of Geology and Mineral Industries a **renewal** fee established by the State Geologist in an amount not less than [456] **\$2,500**.

(b) In addition to the fee prescribed in paragraph (a) of this subsection, the department may charge an additional amount not to exceed [200] **\$1,200** for inspections made at sites:

- (A) Where surface mining was conducted without the permit required by ORS 517.790;
- (B) Where surface mining has been abandoned; or
- (C) Where surface mining was conducted in an area not described in the surface mining permit.

(3) Subject to the provisions of subsection (5) of this section, the **prospective applicant or applicant** shall pay all expenses incurred by the department and the permitting and cooperating agencies related to the consolidated application process under ORS 517.952 to 517.989. These expenses may include legal expenses, expenses incurred in processing and evaluating the consolidated application, issuing a permit or final order and expenses of hiring a third party contractor under ORS 517.979 and 517.980.

(4) [*Every applicant submitting a consolidated application under ORS 517.952 to 517.989 shall submit the fee required under subsection (1) of this section to the department at the same time as the consolidated application is filed under ORS 517.971. To the extent possible, the full cost of the process set forth in ORS 517.952 to 517.989 shall be paid from the application fee paid under this section. However, if such*] **If the costs exceed the fee, the prospective applicant or applicant** shall pay any excess costs shown in an itemized statement prepared by the department. In no event shall the department and permitting and cooperating agencies incur evaluation expenses in excess of 110 percent of the fee initially paid unless the department provides prior notification to the **prospective**

applicant or applicant and a detailed projected budget the department believes necessary to complete the process or a portion of the process under ORS 517.952 to 517.989. If the costs are less than the fee paid, the excess shall be refunded to the **prospective applicant or** applicant.

(5) All expenses incurred by the department and the permitting and cooperating agencies under ORS 517.952 to 517.989 that are charged to or allocated to the fee paid by a **prospective applicant or** an applicant shall be necessary, just and reasonable. Upon request, the department shall provide a detailed justification for all charges to the **prospective applicant or** applicant.

SECTION 19. ORS 517.977 is amended to read:

517.977. (1) When all members of the technical review team concur that the permitting agencies and the cooperating agencies are ready to begin preparing draft permits, the State Department of Geology and Mineral Industries shall conduct a public hearing and accept written comments on whether the information contained in the consolidated application is complete and sufficient to allow the permitting agencies to determine whether to issue a permit. The date and location of the public hearing and the period allowed for written comment shall be established by the department. Notice of the public hearing and comment period shall be given in accordance with ORS 517.959.

(2) At the conclusion of the public hearing and comment period under subsection (1) of this section and within 90 days after the State Department of Geology and Mineral Industries receives a consolidated application for a [*chemical process*] mining operation, the department, in conjunction with all permitting and cooperating agencies, shall make a determination of whether the application is complete. On the basis of the determination the department shall either:

(a) If the permitting and cooperating agencies determine that the consolidated application is complete, issue a notice to proceed with the permitting process and the preparation of draft permits; or

(b) If the permitting and cooperating agencies determine that additional information is necessary, notify the applicant of the additional information that is required.

(3) If the permitting and cooperating agencies do not require the applicant to provide additional information as suggested at the public hearing or comment period under subsection (1) of this section, the agencies shall prepare a written response explaining why the additional information is not being requested from the applicant.

(4) Upon receipt of any additional information requested, the State Department of Geology and Mineral Industries shall accept public comments related to the additional information for a period of two weeks. Except as provided in ORS 517.978, the department shall not conduct additional public hearings.

SECTION 20. ORS 517.979 is amended to read:

517.979. (1) The State Department of Geology and Mineral Industries shall direct staff or shall hire a third party contractor to:

(a) Prepare an environmental evaluation;

(b) Review baseline data submitted by the applicant; and

(c) Review application material if a permitting agency or a cooperating agency lacks the expertise.

(2) The applicant shall pay costs of hiring a third party contractor. If the applicant shows cause why a particular third party contractor should not be allowed to perform a function under subsection (1) of this section, the department shall hire an alternate contractor.

(3) The contents of the environmental evaluation under subsection (1) of this section shall include:

(a) An analysis of the reasonably foreseeable impacts of an activity including catastrophic consequences, even if the probability of occurrence is low, if the analysis is supported by credible scientific evidence[,] **and** is not based on pure conjecture [*and is within the rule of reason*].

(b) An assessment of the total cumulative impact on the environment that results from the incremental impact of an action when added with other past, present and reasonably foreseeable future actions, regardless of the agency or persons that undertake the other action, or whether the actions are on private, state or federal land. To the extent possible, the department shall enter into

a memorandum of agreement with federal agencies to [*insure*] **ensure** that information required by the state in evaluating the cumulative impact of a proposed [*chemical process mine*] **mining operation** may be used by the applicant to satisfy federal requirements for such an assessment.

(c) A review and analysis of alternatives analyzed by the applicant or a contractor hired by the applicant that:

(A) Rigorously explores and objectively evaluates all reasonable alternatives and briefly discusses alternatives that were eliminated and the reasons the alternatives were eliminated;

(B) Treats each alternative, including the proposed action, in detail so that the permitting agencies, cooperating agencies and the public may evaluate the comparative merits of the alternatives; and

(C) Identifies all alternatives within the authority of each permitting or cooperating agency.

(4) Upon completion of the environmental evaluation, the State Department of Geology and Mineral Industries shall provide notice in accordance with ORS 517.959. The notice shall state that the environmental evaluation is complete and that the persons may respond with written comments for a period of two weeks after the notice is given.

SECTION 21. ORS 517.982 is amended to read:

517.982. (1) Based on information received at the consolidated public hearing, from persons submitting written comments, commenting agencies and the review of the affected agencies, each permitting agency shall, within 45 days after the consolidated public hearing under ORS 517.981 or within the time period required by any applicable federal law, whichever is sooner, approve, deny or modify the agency's permit with conditions necessary to [*assure*] **ensure** that the [*chemical process*] mining operation allowed under a permit complies with the standards and requirements applicable to the permit.

(2) Each cooperating agency shall develop permit conditions within the expertise and authority of the cooperating agency and submit the permit conditions to the State Department of Geology and Mineral Industries to be included as conditions on the department's permit. The department shall not issue a permit until each cooperating agency has submitted a written concurrence with the terms and conditions of the permit as such pertain to the statutory responsibility of each cooperating agency.

(3) Upon completion of the permits, the department shall issue a notice in accordance with ORS 517.959 to notify interested persons that the final permits are issued.

SECTION 22. ORS 517.984 is amended to read:

517.984. (1) The operator, the State Department of Geology and Mineral Industries, any other permitting agency or a cooperating agency may request modification of a permit issued under the process established under ORS 517.952 to 517.989.

(2) If a permitting agency is requested to make a permit modification that the permitting agency or a cooperating agency finds is a significant permit modification under the provisions of ORS 517.952 to 517.989, the agency shall notify the State Department of Geology and Mineral Industries. The department shall coordinate the organization of a project coordinating committee. The project coordinating committee shall review the proposed modification and determine those portions of ORS 517.952 to 517.989 with which the applicant must comply. The decision of the project review committee shall be:

(a) Limited to those portions of the [*chemical process mine*] **mining** operation to be modified; and

(b) Consistent with public participation as set forth in ORS 517.952 to 517.989.

SECTION 23. ORS 517.988 is amended to read:

517.988. (1) The State Department of Fish and Wildlife shall develop conditions for the protection of fish and wildlife resources that shall be included in any permit issued by the State Department of Geology and Mineral Industries under the process established under ORS 517.952 to 517.989.

(2) The State Department of Fish and Wildlife shall have the right of ingress and egress to and from a [*chemical process*] mine operating under a permit that includes conditions imposed pursuant to subsection (1) of this section, doing no unnecessary injury to the property of the mine operator,

to determine whether the operator is complying with such conditions. If the State Department of Fish and Wildlife determines that a violation has occurred, the State Department of Fish and Wildlife shall inform the State Department of Geology and Mineral Industries of the violation and the State Department of Geology and Mineral Industries shall cooperate with the State Department of Fish and Wildlife to take appropriate enforcement action.

[*(3) As used in this section “chemical process mine” has the meaning given in ORS 517.952.*]

SECTION 24. ORS 517.989 is amended to read:

517.989. (1) Except as provided in subsections (2) and (3) of this section, the State Department of Geology and Mineral Industries and all permitting and commenting agencies shall review and take action on a consolidated application in accordance with *[statutes and]* rules in effect at the time the notice of intent to submit an application is filed under ORS 517.961.

(2) Subsection (1) of this section shall not apply to a consolidated application if:

(a) An applicant is responsible for unreasonable delays in the processing of the application or fails to make a good faith effort to comply with all requirements for issuance of the permit;

(b) Application of a statute or rule is required under federal law or is a requirement for the state to maintain approval of or delegation of administration of a federal program; or

(c) The department, or a permitting agency or commenting agency, finds that application of a rule is necessary to protect the public from a serious threat to human health or safety.

[*(3) Subsection (1) of this section shall not apply to rules adopted by the Environmental Quality Commission on or before January 1, 1995.*]

SECTION 25. ORS 517.990 is amended to read:

517.990. (1) A person who conducts a surface mining operation without a valid operating permit as required by ORS 517.750 to 517.901 commits a Class A violation.

(2) Subject to ORS 153.022, violation of any provision of ORS 517.750 to 517.901, or any rules promulgated pursuant thereto, or of any conditions of an operating permit is a Class A violation.

(3) Subject to ORS 153.022, violation of ORS 517.910 to *[517.951]* **517.989**, or any rules promulgated pursuant thereto, or of any conditions of an operating permit for a nonaggregate surface mining operation is punishable, upon conviction, by a fine of not more than \$10,000.

(4) Notwithstanding any other provision of the law, a person who conducts a nonaggregate surface mining operation without a valid operating permit as required by ORS 517.910 to *[517.951]* **517.989** shall be punished, upon conviction, by a fine of not more than \$10,000.

(5) A person commits a violation subject to a fine of not more than \$10,000 if the person knowingly or recklessly causes substantial harm to human health or the environment while:

(a) Conducting a surface mining operation without a valid operating permit as required by ORS 517.750 to 517.901 *[or 517.905 to 517.951]*; or

(b) Violating an operating permit, a reclamation plan, a provision of this chapter or any rule adopted by the State Department of Geology and Mineral Industries to carry out the provisions of this chapter.

(6) For purposes of this section, “substantial harm to human health or the environment” means:

(a) Physical injury, as defined in ORS 161.015, or risk of serious physical injury, as defined in ORS 161.015, to humans; or

(b) Substantial damage to wildlife, plants, aquatic and marine life, habitat or stream buffers.

SECTION 26. ORS 517.992 is amended to read:

517.992. (1) In addition to any other sanction authorized by law, the governing board of the State Department of Geology and Mineral Industries may impose a civil penalty of not less than \$200 per day and not more than \$50,000 per day for any violation of ORS *[517.702]* **517.952** to 517.989 *[related to a chemical process mine]*, of any rules adopted under those provisions *[related to a chemical process mine]*, of any orders issued under those provisions *[related to a chemical process mine]* or of any conditions of a permit issued under those provisions *[related to a chemical process mine]*. A penalty may be imposed under this *[section]* **subsection** without regard to whether the violation occurs on property covered by a permit issued under ORS *[517.702]* **517.952** to 517.989.

(2)(a) In addition to any other sanction authorized by law, and subject to the limitations of paragraph (b) of this subsection, the governing board of the State Department of Geology and Mineral Industries may impose a civil penalty of not more than \$10,000 per day for any violation of ORS 517.702 to 517.740, 517.750 to 517.901 and 517.905 to 517.951 [*not related to a chemical process mine*], of any rules adopted under those provisions [*not related to a chemical process mine*], of any orders issued under those provisions [*not related to a chemical process mine*] or of any conditions of a permit issued under those provisions [*not related to a chemical process mine*].

(b) A penalty may be imposed under this subsection only if a landowner or operator fails to complete erosion stabilization as required by ORS 517.775 or board rules adopted to implement that section, if the operator has failed to comply with an order issued under ORS 517.860 or 517.880, if the operation is being conducted in violation of conditions imposed on an operating permit or reclamation plan pursuant to ORS 517.835 or if the operation is being conducted:

(A) Without a permit;

(B) Outside the permit boundary; or

(C) Outside a permit condition regarding boundaries, setbacks, buffers or the placement of surface mining refuse.

(3) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

(4) Failure to pay a civil penalty that has become final under this section shall be grounds for revocation of any permit issued under ORS 517.702 to 517.989 to the person against whom the penalty has been assessed.

(5) Any civil penalty received by the State Treasurer under this section shall be deposited in the General Fund to the credit of the Geology and Mineral Industries Account and is continuously appropriated to the State Department of Geology and Mineral Industries to the extent necessary for the administration and enforcement of the laws, rules and orders under which the penalty was assessed.

(6) A reclamation fund shall be established into which funds not used as described in subsection (5) of this section shall be deposited. This money shall be used by the State Department of Geology and Mineral Industries for the purpose of the reclamation of abandoned mine and drill sites.

(7) When a single incident violates statutes, rules, board orders or permit conditions administered by more than one agency, the department shall coordinate with the other agencies having civil penalty authority before imposing a civil penalty.

(8) In implementing this section, the department shall adopt rules that provide civil penalties that are commensurate with the severity of violations.

(9) A civil penalty may be imposed against the board of directors and high managerial agents of a corporation if those persons engage in, authorize, solicit, request, command or knowingly tolerate the conduct for which the penalty is to be imposed. As used in this subsection, "agent" and "high managerial agent" have the meanings given those terms in ORS 161.170.

SECTION 27. ORS 517.840 is amended to read:

517.840. [(1)] The governing board of the State Department of Geology and Mineral Industries shall administer and enforce the provisions of ORS 517.702 to 517.989 and:

[(a)] (1) May conduct or cause to be conducted investigations, research, experiments and demonstrations and may collect and disseminate information related to surface mining and the reclamation of surface-mined lands.

[(b)] (2) May cooperate with other governmental and private agencies of this state or of other states and with agencies of the federal government, including the reimbursement for any services provided by such agencies to the State Department of Geology and Mineral Industries at its request.

[(c)] (3) May apply for, accept and expend public and private funds made available for the reclamation of lands affected by surface mining in accordance with the purposes of ORS 517.702 to 517.989.

[(d)] (4) May, in accordance with the applicable provisions of ORS chapter 183, adopt rules to carry out the provisions of ORS 517.702 to 517.989.

[(e)] (5) Shall establish by rule a program to encourage voluntary reclamation practices that exceed the normal reclamation standards to provide maximum enhancement and benefits from mined lands. The program shall include incentives and other actions that will encourage voluntary reclamation practices.

[(f)] (6) May receive and manage abandoned mined land funds received for abandoned mined land reclamation from the federal government.

[(2) *In consultation with the Department of Environmental Quality, the board shall identify those naturally occurring hazardous or toxic metals and minerals that, if present in sufficient concentrations at a surface mining site, subject the operator to the increased bond or security requirements of ORS 517.950. The metals and minerals shall include, but need not be limited to, arsenic, mercury, lead, uranium and asbestos.*]

CONFORMING AMENDMENTS

SECTION 28. ORS 468B.055 is amended to read:

468B.055. (1) The Department of Environmental Quality may require that plans and specifications for the construction, installation or modification of disposal systems, treatment works and sewerage systems be submitted to the department for its approval or rejection.

(2) If the department requires that plans and specifications be submitted under subsection (1) of this section, construction, installation or modification may not be commenced until the plans and specifications submitted to the department are approved. If the disposal or discharge is for a [chemical process mine] **mining operation**, as defined in ORS [517.953] **517.952**, departmental review and approval shall be included as part of the consolidated application process under ORS 517.952 to 517.989. Any construction, installation or modification must be in accordance with the plans and specifications approved by the department.

SECTION 29. ORS 517.800 is amended to read:

517.800. (1)(a) Except for an application for a [chemical process] mining operation submitted under ORS [517.952] **517.910** to 517.989, each applicant for an operating permit under ORS 517.702 to 517.989 shall pay to the State Department of Geology and Mineral Industries a fee established by the State Geologist in an amount not to exceed \$1,260.

(b) If an application for a new permit or an amendment to an existing permit requires extraordinary department resources because of concerns about slope stability or proximity to waters of the state or other environmentally sensitive areas, the applicant shall pay to the department an additional fee in an amount determined by the State Geologist to be adequate to cover the additional costs for staff and other related expenses. The State Geologist shall consult with the applicant when determining the amount of the fee.

(2) Annually, each holder of an operating permit shall pay to the department a base fee of \$635, plus \$0.0075 per ton of aggregate or mineral ore extracted during the previous 12-month period.

(3) If a reclamation plan is changed, the operator may be assessed for staff time and other related costs an amount not to exceed \$1,260 in addition to the annual renewal fee. **This subsection does not apply to a mining operation that is subject to the fee established by ORS 517.973 (2)(a).**

(4) If, at operator request, the department responds to requests for information required by a local government in making a land use planning decision on behalf of the operator for a specific site, the State Geologist may require the operator to pay the department a fee for staff time and related costs. The department shall notify the operator in advance of the estimated costs of providing the information, and the actual amount assessed shall not exceed the estimate provided by the department.

(5) The State Geologist may require the operator of a site to pay to the department a special inspection fee in an amount not to exceed \$200 for an inspection conducted under the following circumstances:

(a) Investigation of surface mining operations conducted without the operating permit required under ORS 517.790; or

(b) Investigation of surface mining operations conducted outside the area authorized in an operating permit.

(6) Upon request of an applicant or operator, the department shall provide an itemized list and documentation of expenses used to determine a fee under subsection (1)(b), (3) or (4) of this section.

(7) Notwithstanding the per ton fee established in subsection (2) of this section, the governing board of the department may lower to zero or raise the per ton fee up to \$0.0085 if necessary to provide financial certainty to the department or to reflect actual expenses of the department in administering ORS 517.702 to 517.951. If the per ton fee established in subsection (2) of this section is raised by the governing board, the additional amount of money collected by the department shall be deposited in the Mined Land Regulation and Reclamation Program Subaccount within the Geology and Mineral Industries Account.

(8) The governing board of the State Department of Geology and Mineral Industries:

(a) Shall adopt by rule a procedure for the administrative review of the determinations of fees under this section.

(b) Shall adopt rules establishing the payment date for annual fees required under this section.

(c) May adopt rules establishing a late fee of up to five percent of the unpaid amount of an annual fee owed under this section if the annual fee is more than 60 days past due.

SECTION 30. ORS 517.835 is amended to read:

517.835. (1) Notwithstanding ORS 517.831, the State Department of Geology and Mineral Industries may require conditions on any new or existing surface mining operating permit or reclamation plan sufficient to prevent or mitigate off-site impacts to ground water resources from the removal of water from surface mining operations. The department may include ground water monitoring as one of the conditions.

(2) The department shall consult with the operator and the Water Resources Department in assessing off-site impacts and in developing prevention or mitigation measures prior to imposing any conditions on an operating permit or reclamation plan pursuant to this section.

(3) As used in this section, "mitigation" has the meaning given that term in ORS 517.952.

SECTION 31. ORS 537.140 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. In addition, the department shall 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 [*chemical process mine*] **mining operation** as defined in ORS [517.953] **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 32. ORS 537.211 is amended to read:

537.211. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set forth in a water right permit issued by the Water Resources Department. The permit shall specify the details of the authorized use and shall set forth any terms, limitations and conditions as the department considers appropriate including but not limited to any applicable condition required under ORS 537.289. A copy of the permit shall be filed as a public record in the department. The permit shall be mailed to the applicant, and upon receipt of the permit the permittee may proceed with the construction of the necessary works and may take all action required to apply the water to the designated beneficial use and to perfect the proposed appropriation.

(2) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or 537.400 indicates that the applicant does not have written authorization or an easement permitting access to nonowned land crossed by the proposed ditch, canal or other work, the department may issue a final order approving the application if the approval includes a condition requiring the applicant to obtain such written authorization, or easement or ownership of such land and to provide the department with a copy of the written authorization, easement or evidence of ownership.

(3) If an application referred to in ORS 537.140 or 537.400 is rejected, the department shall enter a written order setting forth the reasons for the rejection. The applicant shall take no action toward

construction of the works or use of the water. The department shall mail a copy of the order to the applicant.

(4) The holder of a water right permit may change the point of diversion, change the point of appropriation, change the point of diversion to allow the appropriation of ground water or use the water on land to which the right is not appurtenant if:

(a) The use of water on land to which the right is not appurtenant, the change of point of diversion or the change in point of appropriation does not result in injury to an existing water right;

(b) For a proposed change in the place of use of the water, the land on which the water is to be used is owned or controlled by the holder of the permit and is contiguous to the land to which the permit is appurtenant;

(c) All other terms of the permit remain the same, including but not limited to the beneficial use for which the water is used and the number of acres to which water is applied;

(d) Prior approval is obtained from the district if the water is transported or conveyed by an irrigation district organized under ORS chapter 545, a drainage district organized under ORS chapter 547, a water improvement district organized under ORS chapter 552, a water control district organized under ORS chapter 553 or a district improvement company or a corporation organized under ORS chapter 554;

(e) The holder of the permit provides written notice to the department at least 60 days before making any changes to the lands, point of diversion or point of appropriation described in the permit;

(f) The holder of the permit complies with the publication requirements of ORS 540.520 (5), if applicable;

(g) Diversion is provided with a proper fish screen, if requested by the State Department of Fish and Wildlife; and

(h) For a request to transfer the point of diversion to allow the appropriation of ground water, the proposed change meets the standards set forth in ORS 540.531 (2) or (3).

(5) Notwithstanding the requirements of subsection (4)(b) of this section, the holder of a water right permit may change the place of use of all or any portion of water under the permit to land that is not contiguous to the land to which the permit is appurtenant if:

(a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as determined by the listing agency; and

(b) All other requirements of subsection (4) of this section are met.

(6) For an application made by or on behalf of a public corporation, the department may issue a permit approving the application without requiring the applicant to obtain prior written authorization or an easement permitting access to nonowned lands affected by the proposed project. However, nothing in this subsection shall be construed to allow any person to trespass on the lands of another person.

(7) When the department receives notice under subsection (4)(e) of this section, the department shall publish the notice in the department's weekly public notice of water right applications.

(8) If the use of water under the permit is for operation of a *[chemical process mine]* **mining operation** as defined in ORS *[517.953]* **517.952**:

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

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

(c) The permit shall include a condition that additional conditions may be added to the use of 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 *[chemical process]* mine *[operation]*.

(9) As used in this section, "contiguous" includes land separated from the land to which a water right is appurtenant by roads, utility corridors, irrigation ditches or publicly owned rights of way.

SECTION 33. ORS 537.615 is amended to read:

537.615. (1) Any person or public agency intending to acquire a wholly new right to appropriate ground water or to enlarge upon any existing right to appropriate ground water, except for any purpose exempt under ORS 537.545, shall apply to the Water Resources Department for and be issued a permit before withdrawing or using the ground water.

(2) The application for a permit shall be in a form prescribed by the department and shall contain:

- (a) The name and post-office address of the applicant.
- (b) The nature of the use by the applicant of the ground water for which the application is made.
- (c) The dates of the beginning and completion of the construction of any well or other means of developing and securing the ground water.
- (d) The date when the ground water will be completely applied to the proposed beneficial use.
- (e) The amount of ground water claimed.
- (f) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.
- (g) The depth to the water table, if known.
- (h) The location of each well with reference to government survey corners or monuments or corners of recorded plats.
- (i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.
- (j) The estimated capacity of each well and each well pump in gallons per minute, and the horsepower of each well pump motor.
- (k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the Water Resources Commission may prescribe.
- (L) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant.
- (m) Any other information as the department considers necessary to evaluate the application.

(3) Each application for a permit shall be accompanied by any maps and drawings the department considers necessary.

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. In addition, the department shall 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 [*the operation of a chemical process mine*] **a mining operation** as defined in ORS [517.953] **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 ground water shall be processed in the manner set forth in ORS 537.505 to 537.795. 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 537.505 to 537.795, the provisions in ORS 537.505 to 537.795 shall control.

SECTION 34. ORS 537.625 is amended to read:

537.625. (1) 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 Water Resources Director determines that the proposed use does not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the

director shall issue a final order rejecting the application or modifying the proposed final order as necessary to ensure the preservation of the public welfare, safety and health as described in ORS 537.525. 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 ensure the preservation of the public welfare, safety and health as described in ORS 537.525, 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.

(2) If a contested case hearing is not held:

(a) Where the final order modifies the proposed final order, the applicant may request and the Water Resources Department shall schedule a contested case hearing as provided under ORS 537.622 (3) by submitting the information required for a protest under ORS 537.621 (7) 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.

(3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome, then before issuing a final order, the director or the Water Resources 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 preserve the public welfare, safety and health as described in ORS 537.525 by considering:

(a) The conservation of 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.

(4) Upon issuing a final order, the Water Resources Department 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 the fee required under ORS 536.050 (1)(p).

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

(6) If the use of water under the permit is for operation of a *[chemical process mine]* **mining operation** as defined in ORS 517.952:

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

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

(c) The permit shall include a condition that additional conditions may be added to the use of 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 [chemical process mine] mining operation.

SECTION 35. ORS 516.070 is amended to read:

516.070. (1) There is established in the General Fund of the State Treasury an account to be known as the Geology and Mineral Industries Account. All moneys received by the State Department of Geology and Mineral Industries shall be paid over to the State Treasurer and by the State Treasurer deposited in the General Fund to the credit of the account. All moneys within the account are continuously appropriated for the use of the department in carrying out its lawful functions.

(2) The Federal Locatable Mineral Royalties Subaccount is established within the Geology and Mineral Industries Account. Notwithstanding subsection (1) of this section, all moneys received from the federal government by the State of Oregon as the state's distributive share of the amounts collected for royalties for locatable minerals shall be credited to the subaccount. All moneys in the Federal Locatable Mineral Royalties Subaccount are continuously appropriated to the State Department of Geology and Mineral Industries to conduct investigations of new mineral resources and to carry out the provisions of ORS 517.840 [(1)(f)] (6).

(3) The State Treasurer may invest and reinvest the moneys in the Federal Locatable Mineral Royalties Subaccount as provided in ORS 293.701 to 293.820. Interest from the moneys deposited in the subaccount and earnings from investment of the moneys in the subaccount shall be credited to the subaccount.

(4) The Mined Land Regulation and Reclamation Program Subaccount is established within the Geology and Mineral Industries Account. Notwithstanding subsection (1) of this section, all moneys received by the State Department of Geology and Mineral Industries from fees assessed pursuant to ORS 517.800 shall be credited to the subaccount. All moneys in the subaccount are continuously appropriated to the department for the purpose of administering ORS 517.702 to 517.951.

REPEALS

SECTION 36. ORS 517.935, 517.940 and 517.950 are repealed.

MISCELLANEOUS

SECTION 37. The unit captions used in this 2013 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 2013 Act.

SECTION 38. The amendments to ORS 517.973 by section 18 of this 2013 Act apply to:

(1) Notices of intent to submit a consolidation application filed with the State Department of Geology and Mineral Industries on or after the operative date specified in section 39 of this 2013 Act.

(2) Renewal fees for operating permits paid to the department on or after the operative date specified in section 39 of this 2013 Act.

(3) Inspections made at sites by the department on or after the operative date specified in section 39 of this 2013 Act.

SECTION 39. (1) Except as provided in subsection (2) of this section, the repeal of ORS 517.935, 517.940 and 517.950 by section 36 of this 2013 Act and the amendments to ORS 468B.055, 516.070, 517.800, 517.835, 517.840, 517.905, 517.910, 517.915, 517.920, 517.930, 517.952, 517.953, 517.954, 517.956, 517.958, 517.959, 517.961, 517.963, 517.965, 517.967, 517.969, 517.971, 517.973, 517.977, 517.979, 517.982, 517.984, 517.988, 517.989, 517.990, 517.992, 537.140, 537.211, 537.615 and 537.625 by sections 1 to 35 of this 2013 Act become operative on January 1, 2014.

(2) The governing board of the State Department of Geology and Mineral Industries may adopt rules or take any other action before the operative date specified in subsection (1) of this section that is necessary to implement, on or after the operative date specified in sub-

section (1) of this section, the repeal of ORS 517.935, 517.940 and 517.950 by section 36 of this 2013 Act and the amendments to ORS 468B.055, 516.070, 517.800, 517.835, 517.840, 517.905, 517.910, 517.915, 517.920, 517.930, 517.952, 517.953, 517.954, 517.956, 517.958, 517.959, 517.961, 517.963, 517.965, 517.967, 517.969, 517.971, 517.973, 517.977, 517.979, 517.982, 517.984, 517.988, 517.989, 517.990, 517.992, 537.140, 537.211, 537.615 and 537.625 by sections 1 to 35 of this 2013 Act.

SECTION 40. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House May 28, 2013

.....
Ramona J. Line, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate June 6, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

.....
Kate Brown, Secretary of State