# OREGON WATER LAWS

# Volume I of II

## Oregon Water Laws

Reprinted from the 2015 Edition
of
Oregon Revised Statutes

Oregon Water Laws, a compilation of statutes relating exclusively to water law, has been published since 1911. This two-volume set contains all of Oregon water law compiled under Title 45 of the 2015 Edition of Oregon Revised Statutes. The set is not a complete collection of all Oregon statutes that might deal, however remotely, with water. At the back of Volume I, we have included portions of the 2015 ORS General Index that cite many references to water that appear in statute.

Volume I, Oregon Water Laws, contains the bulk of Oregon law that is administered by the Water Resources Department. This volume includes statutes relating to water management, such as appropriation and distribution of water.

Volume II, Oregon Laws Relating to Water Users' Organizations, contains the Oregon Revised Statutes Title 45 laws relating to organizations, such as irrigation and water control districts.

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# Constitution of Oregon

**2015 EDITION**

## Constitutional Provisions Related to Water

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### ARTICLE XI-D
### STATE POWER DEVELOPMENT

Sec. 1. State's rights, title and interest to water and water-power sites to be held in perpetuity
2. State's powers enumerated
3. Legislation to effectuate article
4. Construction of article

**Section 1. State's rights, title and interest to water and water-power sites to be held in perpetuity.** The rights, title and interest in and to all water for the development of water power and to water power sites, which the state of Oregon now owns or may hereafter acquire, shall be held by it in perpetuity. [Created through initiative petition filed July 7, 1932, and adopted by the people Nov. 8, 1932]

**Section 2. State's powers enumerated.** The state of Oregon is authorized and empowered:

1. To control and/or develop the water power within the state;

2. To lease water and water power sites for the development of water power;

3. To control, use, transmit, distribute, sell and/or dispose of electric energy;

4. To develop, separately or in conjunction with the United States, or in conjunction with the political subdivisions of this state, any water power within the state, and to acquire, construct, maintain and/or operate hydroelectric power plants, transmission and distribution lines;

5. To develop, separately or in conjunction with the United States, with any state or states, or political subdivisions thereof, or with any political subdivision of this state, any water power in any interstate stream and to acquire, construct, maintain and/or operate hydroelectric power plants, transmission and distribution lines;

6. To contract with the United States, with any state or states, or political subdivisions thereof, or with any political subdivision of this state, for the purchase or acquisition of water, water power and/or electric energy for use, transmission, distribution, sale and/or disposal thereof;

7. To fix rates and charges for the use of water in the development of water power and for the sale and/or disposal of water power and/or electric energy;

8. To loan the credit of the state, and to incur indebtedness to an amount not exceeding one and one-half percent of the true cash value of all the property in the state taxed on an ad valorem basis, for the purpose of providing funds with which to carry out the provisions of this article, notwithstanding any limitations elsewhere contained in this constitution;

9. To do any and all things necessary or convenient to carry out the provisions of this article. [Created through initiative petition filed July 7, 1932, and adopted by the people Nov. 8, 1932; Amendment proposed by S.J.R. 6, 1961, and adopted by the people Nov. 6, 1962]

**Section 3. Legislation to effectuate article.** The legislative assembly shall, and the people may, provide any legislation that may be necessary in addition to existing laws, to carry out the provisions of this article; Provided, that any board or commission created, or empowered to administer the laws enacted to carry out the purposes of this article shall consist of three members and be elected without party affiliation or designation. [Created through initiative petition filed July 7, 1932, and adopted by the people Nov. 8, 1932]

**Section 4. Construction of article.** Nothing in this article shall be construed to affect in any way the laws, and the administration thereof, now existing or hereafter enacted, relating to the appropriation and use of water for beneficial purposes, other than for the development of water power. [Created through initiative petition filed July 7, 1932, and adopted by the people Nov. 8, 1932]

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### ARTICLE XI-I(1)
### WATER DEVELOPMENT PROJECTS

Sec. 1. State empowered to lend credit to establish Water Development Fund; eligibility; use
2. Bonds
3. Refunding bonds
4. Sources of revenue
5. Legislation to effectuate Article

**Section 1. State empowered to lend credit to establish Water Development Fund; eligibility; use.** Notwithstanding the limits contained in sections 7 and 8, Article XI of this Constitution, the credit of the State of Oregon may be loaned and indebtedness incurred in an amount not to exceed one and one-half percent of the true cash value of all the property in the state for the purpose of creating a fund to be known as the Water Development Fund. The fund shall be used to provide financing for loans for residents of this state for construction of water development projects for irrigation, drainage, fish protection, watershed restoration and municipal uses and for the acquisition of easements and rights of way for water development projects authorized by law. Secured repayment thereof shall be and is a prerequisite to the advancement of money from such fund. As used in this section, "resident" includes both natural persons and any corporation or cooperative, either for profit or nonprofit, whose principal income is from farming in Oregon or municipal or quasi-municipal or other body subject to the laws of the State of Oregon. Not less than 50 percent of the potential amount available from the fund will be reserved for irrigation and drainage projects. For municipal use, only municipalities and communities with populations less than 30,000 are eligible for loans from the fund. [Created through S.J.R. 1, 1977, and adopted by the people Nov. 8, 1977; Amendment proposed by S.J.R. 6, 1981, and adopted by the people May 18, 1982; Amendment proposed by H.J.R. 45, 1987, and adopted by the people May 17, 1988]

**Section 2. Bonds.** Bonds of the State of Oregon containing a direct promise on behalf of the state to pay the face value thereof, with the interest therein provided for, may be issued to an amount authorized by section 1 of this Article for the purpose of creating such fund. The bonds shall be a direct obligation of the state and shall be in such form and shall run for such periods of time and bear such rates of interest as provided by statute. [Created through S.J.R. 1, 1977, and adopted by the people Nov. 8, 1977]

**Section 3. Refunding bonds.** Refunding bonds may be issued and sold to refund any bonds issued under authority of sections 1 and 2 of this Article. There may be issued and outstanding at any time bonds aggregating the amount authorized by section 1 of this Article but at no time shall the total of all bonds outstanding, including refunding bonds, exceed the amount so authorized. [Created through S.J.R. 1, 1977, and adopted by the people Nov. 8, 1977]

**Section 4. Sources of revenue.** Ad valorem taxes shall be levied annually upon all the taxable property in the State of Oregon in sufficient amount to provide for the payment of principal and interest of the bonds issued pursuant to this Article. The Legislative Assembly may provide other revenues to supplement or replace, in whole or in part, such tax levies. [Created through S.J.R. 1, 1977, and adopted by the people Nov. 8, 1977]

**Section 5. Legislation to effectuate Article.** The Legislative Assembly shall enact legislation to carry out the provisions of this Article. This Article supersedes any conflicting provision of a county or city charter or act of incorporation. [Created through S.J.R. 1, 1977, and adopted by the people Nov. 8, 1977]

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# Chapter 390

**(Partial)**

**2015 EDITION**

# Scenic Waterways

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## SCENIC WATERWAYS

**390.805 Definitions for ORS 390.805 to 390.925.** As used in ORS 390.805 to 390.925, unless the context requires otherwise:

(1) "Related adjacent land" means all land within one-fourth of one mile of the bank on the side of Waldo Lake, or a river or segment of river within a scenic waterway, except land that, in the State Parks and Recreation Department's judgment, does not affect the view from the waters within a scenic waterway.

(2) "Scenic easement" means the right to control the use of related adjacent land, including airspace above such land, for the purpose of protecting the scenic view from waters within a scenic waterway; but such control does not affect, without the owner's consent, any regular use exercised prior to the acquisition of the easement, and the landowner retains the right to uses of the land not specifically restricted by the easement.

(3) "Scenic waterway" means Waldo Lake, or a river or segment of river that has been designated as such in accordance with ORS 390.805 to 390.925 or any subsequent Act, and includes related adjacent land. [1971 c.1 §2; 1981 c.787 §55; 1983 c.334 §1; 1983 c.642 §10; 1989 c.904 §25; 1995 c.79 §203; 2001 c.104 §132]

**390.815 Policy; establishment of system.** The people of Oregon find that many of the free-flowing rivers of Oregon and Waldo Lake and lands adjacent to such lake and rivers possess outstanding scenic, fish, wildlife, geological, botanical, historic, archaeologic, and outdoor recreation values of present and future benefit to the public. The people of Oregon also find that the policy of permitting construction of dams and other impoundment facilities at appropriate sections of the rivers of Oregon and Waldo Lake needs to be complemented by a policy that would preserve Waldo Lake and selected rivers or sections thereof in a free-flowing condition and would protect and preserve the natural setting and water quality of the lake and such rivers and fulfill other conservation purposes. It is therefore the policy of Oregon to preserve for the benefit of the public Waldo Lake and selected parts of the state's free-flowing rivers. For these purposes there is established an Oregon Scenic Waterways System to be composed of areas designated in accordance with ORS 390.805 to 390.925 and any subsequent Acts. [1971 c.1 §1; 1983 c.334 §2]

**390.826 Designated scenic waterways.** The following lakes and rivers, or segments of rivers, and related adjacent land are designated as scenic waterways:

(1) The Metolius Scenic Waterway which includes the Metolius River from Metolius Springs downstream to its confluence with Candle Creek.

(2) The Klamath Scenic Waterway which includes the Klamath River from the John Boyle Dam powerhouse downstream to the Oregon-California border.

(3) The Clackamas Scenic Waterway which includes:

(a) The segments of the Clackamas River from the boundary of the Olallie Lake Scenic Area, as constituted on December 8, 1988, downstream to the North Fork Reservoir, and from immediately below the River Mill Dam downstream to the bridge at Carver;

(b) The South Fork Clackamas River from its confluence with an unnamed tributary near the western boundary of Section 7, Township 5 South, Range 5 East, Willamette Meridian, downstream to the confluence of the South Fork Clackamas River with the Clackamas River; and

(c) The North Fork Clackamas River from its source downstream to the North Fork Reservoir.

(4) The McKenzie Scenic Waterway which includes:

(a) The segments of the McKenzie River from Clear Lake downstream to Carmen Reservoir, from Tamolitch Falls downstream to Trail Bridge Reservoir and from Trail Bridge Dam downstream to Paradise Campground; and

(b) The segments of the South Fork McKenzie River from the boundary of the Three Sisters Wilderness, as constituted on December 8, 1988, downstream to Cougar Reservoir, and from immediately below Cougar Dam downstream to its confluence with the McKenzie River.

(5) The Deschutes Scenic Waterway which includes the segments of the Deschutes River from Little Lava Lake downstream to Crane Prairie Reservoir, from the gaging station immediately below Wickiup Dam downstream to General Patch Bridge, from Harper Bridge downstream to the Central Oregon Irrigation District's diversion structure (near river mile 171), from Robert Sawyer Park downstream to Tumalo State Park, from Deschutes Market Road Bridge downstream to Lake Billy Chinook Reservoir (excluding the Cline Falls hydroelectric facility near river mile 145), and from immediately below the existing Pelton reregulating dam downstream to the confluence of the Deschutes River with the Columbia River, excluding the City of Maupin as its boundaries are constituted on October 4, 1977.

(6) The Santiam Scenic Waterway which includes the Little North Fork of the Santiam River from the confluence of Battle Ax Creek and Opal Creek downstream to the boundary of the Willamette National Forest, as constituted on September 20, 1985.

(7) The John Day Scenic Waterway which includes:

(a) The John Day River from its confluence with Parrish Creek downstream to Tumwater Falls;

(b) The North Fork John Day River from the boundary of the North Fork John Day Wilderness (near river mile 76), as constituted on December 8, 1988, downstream to the northern boundary of the south one-half of Section 20, Township 8 South, Range 28 East, Willamette Meridian;

(c) The Middle Fork John Day River from its confluence with Crawford Creek (near river mile 71) downstream to the confluence of the Middle Fork John Day River with the North Fork John Day River; and

(d) The South Fork John Day River from the Post-Paulina road crossing (near river mile 35) downstream to the northern boundary of the Murderer's Creek Wildlife Area, as constituted on December 8, 1988 (near river mile 6).

(8) The Illinois Scenic Waterway which includes the Illinois River from its confluence with Deer Creek downstream to its confluence with the Rogue River.

(9) The Rogue Scenic Waterway which includes the segments of the Rogue River from the boundary of Crater Lake National Park, as constituted on December 8, 1988, downstream to the boundary of the Rogue River National Forest, as constituted on December 8, 1988 (near river mile 173), and from the confluence of the Rogue River with the Applegate River downstream to Lobster Creek Bridge.

(10) The Umpqua Scenic Waterway which includes the segments of the North Umpqua River from the boundary of the Mt. Thielsen Wilderness, as constituted on December 8, 1988, downstream to Lemolo Reservoir, and from the Soda Springs Dam powerhouse downstream to its confluence with Rock Creek (near Idleyld Park).

(11) The Nestucca Scenic Waterway which includes:

(a) The Nestucca River from immediately below the McGuire Dam downstream to its confluence with East Creek (near Blaine); and

(b) Walker Creek from its source downstream to its confluence with the Nestucca River.

(12) The Wallowa-Grande Ronde Scenic Waterway which includes:

(a) The Grande Ronde River from its confluence with the Wallowa River downstream to the Oregon-Washington border; and

(b) The Wallowa River from its confluence with the Minam River downstream to the confluence of the Wallowa River with the Grande Ronde River.

(13) The Minam Scenic Waterway which includes the Minam River from Minam Lake downstream to its confluence with the Wallowa River.

(14) The Elk Scenic Waterway which includes:

(a) The Elk River from the confluence of the North Fork Elk River and South Fork Elk River downstream to the Elk River fish hatchery;

(b) The North Fork Elk River from its source downstream to its confluence with the South Fork Elk River; and

(c) The South Fork Elk River from its source downstream to its confluence with the North Fork Elk River.

(15) The Owyhee Scenic Waterway which includes:

(a) The South Fork Owyhee River from the Oregon-Idaho border downstream to Three Forks; and

(b) The Owyhee River from Crooked Creek (near river mile 118) downstream to the mouth of Birch Creek (near river mile 76).

(16) The North Fork of the Middle Fork Willamette Scenic Waterway which includes the North Fork of the Middle Fork Willamette River from Waldo Lake downstream to

a point one mile upstream from the railroad bridge near the town of Westfir.

(17) The Waldo Lake Scenic Waterway which includes Waldo Lake in Lane County. [1989 c.2 §2 (enacted in lieu of 390.825)]

**390.827 Effect of ORS 390.826 on rights of Indian tribes.** Nothing in ORS 390.826 shall:

(1) Affect or modify any treaty or other rights of any Indian tribe; or

(2) Affect lands held in trust by the Secretary of the Interior for Indian tribes or individual members of Indian tribes or other lands acquired by the Army Corps of Engineers and administered by the Secretary of the Interior for the benefit of Indian tribes and individual members of Indian tribes. [1989 c.2 §3]

**Note:** 390.827 was enacted into law but was not added to or made a part of ORS chapter 390 or any series therein by law. See Preface to Oregon Revised Statutes for further explanation.

**390.835 Highest and best use of waters within scenic waterways; prohibitions; authority of various agencies; water rights; conditions; recreational prospecting; placer mining.** (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. No dam, or reservoir, or other water impoundment facility shall be constructed on waters within scenic waterways. No water diversion facility shall be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission's duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section shall not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) Nothing in this subsection shall limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, "measurably reduce" means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a

combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) No placer mining shall be permitted on waters within scenic waterways other than recreational placer mining.

(15) No person shall be required to obtain a permit for recreational prospecting resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) No provision of this section shall be construed to exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining, other than recreational prospecting not requiring a permit, shall not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs. [1971 c.1 §4; 1973 c.756 §1; 1977 c.671 §2; 1985 c.673 §177; 1989 c.320 §1; 1993 c.99 §1; 1995 c.223 §1; 1995 c.719 §1; 1997 c.223 §1; 1997 c.478 §1; 2001 c.499 §1]

**Note:** Operation of the amendments to 390.835 by section 8, chapter 516, Oregon Laws 2001, is dependent upon further approval by the Legislative Assembly. See section 11, chapter 516, Oregon Laws 2001. The text that is operative after that approval is set forth for the user's convenience.

**390.835.** (1) It is declared that the highest and best uses of the waters within scenic waterways are recreation, fish and wildlife uses. The free-flowing character of these waters shall be maintained in quantities necessary for recreation, fish and wildlife uses. A dam, reservoir or other water impoundment facility may not be constructed on waters within scenic waterways. A water diversion facility may not be constructed or used except by right previously established or as permitted by the Water Resources Commission, upon a finding that such diversion is necessary to uses designated in ORS 536.310 (12), and in a manner consistent with the policies set forth under ORS 390.805 to 390.925. The Water Resources Commission shall administer and enforce the provisions of this subsection.

(2) Filling of the beds or removal of material from or other alteration of the beds or banks of scenic waterways for purposes other than recreational prospecting not requiring a permit shall be prohibited, except as permitted by the Director of the Department of State Lands upon a finding that such activity would be consistent with the policies set forth under ORS 390.805 to 390.925 for scenic waterways and in a manner consistent with the policies set forth under ORS 196.800 to 196.825 and 196.845 to 196.870 for removal of material from the beds and banks and filling of any waters of this state. The Director of the Department of State Lands shall administer and enforce the provisions of this subsection.

(3)(a) Upon a finding of emergency circumstances, the Director of the Department of State Lands may issue a temporary permit for the removal, filling or alteration of the beds or banks within a scenic waterway. The temporary permit shall include conditions developed after consultation with the State Department of Fish and Wildlife and the State Parks and Recreation Department.

(b) As used in this subsection, "emergency circumstances" exist if prompt action is necessary to prevent irreparable harm, injury or damage to persons or property.

(4) Any person adversely affected or aggrieved by the grant or denial of a permit under subsection (2) or (3) of this section may appeal in accordance with the procedure set forth in ORS 196.835.

(5) Nothing in ORS 390.805 to 390.925 affects the authority of the State Fish and Wildlife Commission to construct facilities or make improvements to facilitate the passage or propagation of fish or to exercise other responsibilities in managing fish and wildlife resources. Nothing in ORS 390.805 to 390.925 affects the authority of the Water Resources Commission to construct and maintain stream gauge stations and other facilities related to the commission's duties in administration of the water laws.

(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That issuing the water right is consistent with provisions pertaining to water appropriation and water rights under ORS chapters 536 and 537 and rules adopted thereunder.

(c) That construction, operation and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(d) If the water right is for human consumption, an additional finding that:

(A) The applicant cannot reasonably obtain water from any other source;

(B) Denial of the water right would result in loss of reasonable expectations for use of the property; and

(C) The system installed to divert water shall include monitoring equipment to permit water use measurement and reporting.

(e) If the water right is for livestock consumption, an additional finding that:

(A) The right is necessary to prevent the livestock from watering in or along the stream bed;

(B) The applicant cannot reasonably obtain water from any other source; and

(C) The applicant has excluded livestock from the stream and its adjacent riparian zone.

(7) In making the findings required under subsection (6) of this section, the Water Resources Commission shall consider the existing or potential cumulative impacts of issuing the water right.

(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Commission, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(9)(a) The provisions of this section do not apply to a water right application for the use of ground water as defined in ORS 537.515, except upon a finding by the Water Resources Director based on a preponderance of evidence that the use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.

(b) The Water Resources Department shall review every application for the use of ground water to determine whether to make the finding specified in paragraph (a) of this subsection. The finding shall be based upon the application of generally accepted hydrogeologic methods using relevant and available field information concerning the proposed use.

(c) In making the determination required by paragraph (a) of this subsection, the Water Resources Department shall consider the timing of projected impacts of the proposed use in relation to other factors, including but not limited to: Changing climate, recharge, incidental precipitation, out-of-stream appropriations and return flows.

(d) If the Water Resources Director makes the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order denying the application unless:

(A) Mitigation is provided in accordance with subsection (10) of this section; or

(B) The applicant submits evidence to overcome the finding under paragraph (a) of this subsection.

(e) Except as provided under subsection (13) of this section, if the Water Resources Director does not make the finding specified in paragraph (a) of this subsection, the Water Resources Director shall issue an order approving the application if the application otherwise meets the requirements of ORS 537.505 to 537.795.

(f) A protest of any order issued under this subsection may be filed in the same manner as a protest on any application for a right to appropriate ground water.

(g) Each water right permit and certificate for appropriation of ground water issued after July 19, 1995, for which a source of appropriation is within or above a scenic waterway shall be conditioned to allow the regulation of the use if analysis of data available after the permit or certificate is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

(h) This subsection does not limit the use of ground water for a use exempted under ORS 537.545.

(10) The Water Resources Commission or Water Resources Director shall consider mitigation measures and may include mitigation measures as conditions in any water right permit or certificate to ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

(11) The Water Resources Commission and the Water Resources Director shall carry out their responsibilities under ORS 536.220 to 536.590 with respect to the waters within scenic waterways in conformity with the provisions of this section.

(12) As used in this section, "measurably reduce" means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(a) The Water Resources Department, the State Parks and Recreation Department, the State Department of Fish and Wildlife, the Department of Environmental Quality and the Department of State Lands unanimously agree to exceed that amount; and

(b) Exceeding that amount will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(b) That the appropriation is consistent with provisions pertaining to water appropriations and water rights under ORS chapters 536 and 537 and the rules adopted thereunder.

(c) That construction, operation and maintenance of the appropriation will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925.

(14) Placer mining is not permitted on waters within scenic waterways, other than recreational placer mining.

(15) A person may not be required to obtain a permit for recreational prospecting or other nonmotorized recreational activity resulting in the fill, removal or other alteration of less than one cubic yard of material at any one individual site and, cumulatively, not more than five cubic yards of material from within the bed or wet perimeter of any single scenic waterway in a single year. Recreational prospecting shall not occur at any site where fish eggs are present.

(16) This section does not exempt recreational placer mining on a scenic waterway, other than recreational prospecting not requiring a permit, from compliance with the provisions of ORS 196.800 to 196.825 and 196.845 to 196.870 or rules adopted pursuant to ORS 196.800 to 196.825 and 196.845 to 196.870.

(17) Recreational placer mining may not:

(a) Dam or divert a waterway or obstruct fish passage;

(b) Include nozzling, sluicing or digging outside the wet perimeter of the stream, nor extend the wet perimeter;

(c) Include movement of boulders, logs, stumps or other woody material from the wet perimeter other than movement by hand and nonmotorized equipment;

(d) Involve the disturbance of rooted or embedded woody plants, including trees and shrubs, regardless of their location;

(e) Include excavation from the streambank;

(f) Fail to level pits, piles, furrows or potholes outside the main channel of the waterway upon leaving the site;

(g) Include operation of a suction dredge without a suction dredge waste discharge permit from the Department of Environmental Quality including, but not limited to, a prohibition against dredging during periods when fish eggs could be in the dredging site gravel;

(h) Be conducted on federal lands except as allowed by agencies of the federal government;

(i) Impede boating;

(j) Include operation of a dredge between the hours of 6 p.m. and 8 a.m. within 500 feet of a residence or within 500 feet of a campground except within a federally designated recreational mining site; or

(k) Include operation of a dredge within the marked or posted swimming area of a designated campground or day use area except within a federally designated recreational mining site.

(18) As used in this section:

(a) "Bed" means the land within the wet perimeter and any adjacent nonvegetated dry gravel bar.

(b) "Prospecting" means to search or explore for samples of gold, silver or other precious minerals, using nonmotorized methods, from among small quantities of aggregate.

(c) "Recreational placer mining" includes, but is not limited to, the use of nonmotorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four inches, a motor no larger than 16 horsepower and a muffler meeting or exceeding factory-installed noise reduction standards. "Recreational placer mining" does not include recreational prospecting that does not require a permit.

(d) "Wet perimeter" means the area of the stream that is underwater, or is exposed as a nonvegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

**Note:** Sections 3 and 4, chapter 499, Oregon Laws 2001, provide:

**Sec. 3.** In order to make recommendations to better achieve the objectives and enhance the effectiveness of the Oregon Scenic Waterways System, the State Parks and Recreation Department shall complete a review of the system administered under ORS 390.805 to 390.925, including a review of the studies pertaining to the effects of recreational placer mining within scenic water-

ways. At the request of the State Parks and Recreation Department, the Department of State Lands, the Water Resources Department, the State Department of Fish and Wildlife, the State Marine Board and the Department of Environmental Quality shall assist in the review. The State Parks and Recreation Department may also request interested public parties to assist in the review. [2001 c.499 §3]

**Sec. 4.** Notwithstanding ORS 390.835, a permit or temporary permit for dredging issued by the Department of State Lands for the purpose of recreational placer mining within a scenic waterway is not valid after December 31, 2003, if the review described in section 3 of this 2001 Act has been completed and reported to the Seventy-second Legislative Assembly or, if the review has not been completed and reported to the Seventy-second Legislative Assembly, after December 31, 2005. [2001 c.499 §4]

**390.845 Administration of scenic waterways and related adjacent lands; limitations on use; condemnation; rules.** (1) Except as provided in ORS 390.835, scenic waterways shall be administered by the State Parks and Recreation Department, each in such manner as to protect and enhance the values which caused such scenic waterway to be included in the system. In such administration primary emphasis shall be given to protecting the aesthetic, scenic, fish and wildlife, scientific and recreation features, based on the special attributes of each area.

(2) After consultation with the State Board of Forestry, the State Department of Agriculture and the affected counties and with the concurrence of the Water Resources Commission, the department shall adopt rules governing the management of related adjacent land. Such rules shall be adopted in accordance with ORS chapter 183. Such rules shall reflect management principles, standards and plans applicable to scenic waterways, their shore lines and related adjacent land and, if necessary, establish varying intensities of protection or development based on special attributes of each area. Such management principles, standards and plans shall protect or enhance the aesthetic and scenic values of the scenic waterways and permit compatible agricultural, forestry and other land uses. Specifically, and not in limitation of the foregoing, such rules shall provide that:

(a) No roads, railroads or utilities shall be constructed within any scenic waterway except where necessary to serve the permissible uses, as defined in subsection (2) of this section and in the rules of the department, of the related adjacent land or unless department approval of such use is obtained as provided in subsection (4) or (5) of this section. The department wherever practicable shall require the sharing of land and airspace by such roads, railroads and utilities. All permissible roads, railroads and utilities shall be located in such a manner as to minimize the disturbance of the natural beauty of a scenic waterway;

(b) Forest crops shall be harvested in such manner as to maintain as nearly as reasonably is practicable the natural beauty of the scenic waterway;

(c) Occupants of related adjacent land shall avoid pollution of waters within a scenic waterway;

(d) The surface of related adjacent land shall not be disturbed for prospecting or mining unless the department's approval is obtained under subsection (4) or (5) of this section; and

(e) Unless department approval of the proposed use is obtained under subsection (4) or (5) of this section, no commercial, business or industrial structures or buildings other than structures or buildings erected in connection with an existing use shall be erected or placed on related adjacent land. All structures and buildings erected or placed on such land shall be in harmony with the natural beauty of the scenic waterway and shall be placed a sufficient distance from other structures or buildings so as not to impair substantially such natural beauty. No signs or other forms of outdoor advertising that are visible from waters within a scenic waterway shall be constructed or maintained.

(3) No person shall put related adjacent land to uses that violate ORS 390.805 to 390.925 or the rules of the department adopted under ORS 390.805 to 390.925 or to uses to which the land was not being put before December 3, 1970, or engage in the cutting of trees, or mining, or prospecting on such lands or construct roads, railroads, utilities, buildings or other structures on such lands, unless the owner of the land has given to the department written notice of such proposed use at least one year prior thereto and has submitted to the department with the notice a specific and detailed description of such proposed use or has entered into agreement for such use with the department under subsection (5) of this section. The owner may, however, act in emergencies without the notice required by ORS 390.805 to 390.925 when necessary in the interests of public safety.

(4) Upon receipt of the written notice provided in subsection (3) of this section, the department shall first determine whether in its judgment the proposed use would impair substantially the natural beauty of a scenic waterway. If the department determines that the proposal, if put into effect, would not impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land that the owner may imme-

diately proceed with the proposed use as described to the department. If the department determines that the proposal, if put into effect, would impair substantially the natural beauty of the scenic waterway, the department shall notify in writing the owner of the related adjacent land of such determination and no steps shall be taken to carry out such proposal until at least one year after the original notice to the department. During such period:

(a) The department and the owner of the land involved may agree upon modifications or alterations of the proposal so that implementation thereof would not in the judgment of the department impair substantially the natural beauty of the scenic waterway; or

(b) The department may acquire by purchase, gift or exchange, the land involved or interests therein, including scenic easements, for the purpose of preserving the natural beauty of the scenic waterway.

(5) The department, upon written request from an owner of related adjacent land, shall enter into negotiations and endeavor to reach agreement with such owner establishing for the use of such land a plan that would not impair substantially the natural beauty of the scenic waterway. At the time of such request for negotiations, the owner may submit a plan in writing setting forth in detail proposed uses. Three months after the owner makes such a request for negotiations with respect to use of land, either the department or the owner may give written notice that the negotiations are terminated without agreement. Nine months after the notice of termination of negotiations the owner may use land in conformity with any specific written plan submitted by the owner prior to or during negotiations. In the event the department and the owner reach agreement establishing a plan for land use, such agreement is terminable upon at least one year's written notice by either the department or the owner.

(6) With the concurrence of the Water Resources Commission, the department may institute condemnation proceedings and by condemnation acquire related adjacent land:

(a) At any time subsequent to nine months after the receipt of notice of a proposal for the use of such land that the department determines would, if carried out, impair substantially the natural beauty of a scenic waterway unless the department and the owner of such land have entered into an agreement as contemplated by subsection (4) or (5) of this section or the owner shall have notified the department of the abandonment of such proposal; or

(b) At any time related adjacent land is used in a manner violating ORS 390.805 to 390.925, the rules of the department or any agreement entered into by the department pursuant to subsection (4) or (5) of this section; or

(c) At any time related adjacent land is used in a manner which, in the judgment of the department, impairs substantially the natural beauty of a scenic waterway, if the department has not been given at least one year's advance written notice of such use and if there is not in effect department approval of such use pursuant to subsection (4) or (5) of this section.

(7) In such condemnation the owner of the land shall not receive any award for the value of any structure, utility, road or other improvement constructed or erected upon the land after December 3, 1970, unless the department has received written notice of such proposed structure, utility, road or other improvement at least one year prior to commencement of construction or erection of such structure, utility, road or other improvement or unless the department has given approval for such improvement under subsection (4) or (5) of this section. If the person owned the land on December 3, 1970, and for a continuous period of not less than two years immediately prior thereto, the person shall receive no less for the land than its value on December 3, 1970. The department shall not acquire by condemnation a scenic easement in land. When the department acquires any related adjacent land that is located between a lake or river and other land that is owned by a person having the right to the beneficial use of waters in the river by virtue of ownership of the other land:

(a) The right to the beneficial use of such waters shall not be affected by such condemnation; and

(b) The owner of the other land shall retain a right of access to the lake or river necessary to use, store or divert such waters as the owner has a right to use, consistent with concurrent use of the land so condemned as a part of the Oregon Scenic Waterways System.

(8) Any owner of related adjacent land, upon written request to the department, shall be provided copies of rules then in effect or thereafter adopted by the department pursuant to ORS 390.805 to 390.925.

(9) The department shall furnish to any member of the public upon written request and at expense of the member a copy of any notice filed pursuant to subsection (3) of this section.

(10) If a scenic waterway contains lands or interests therein owned by or under the jurisdiction of an Indian tribe, the United

States, another state agency or local governmental agency, the department may enter into agreement with the tribe or the federal, state or local agency for the administration of such lands or interests therein in furtherance of the purposes of ORS 390.805 to 390.925. [1971 c.1 §5; 1971 c.459 §1; 1973 c.756 §2; 1981 c.236 §3; 1983 c.334 §4]

**390.848 Passes for use of parts of Deschutes River; rules; fee; exemption from fee; disposition of moneys.** (1) The State Parks and Recreation Department shall establish, by rule, a system for issuing passes necessary to comply with the requirements under ORS 390.851. The department shall establish a reasonable fee for issuance of a pass under this section. The department may establish any form of proof of payment of the user fees that it deems appropriate.

(2) The system for issuance of passes established by the department under this section may include issuance of the passes by governmental entities or private persons who have entered into appropriate agreements with the department for issuance of the passes. Agreements under this subsection may include, but are not limited to, terms providing for locations for the collection of fees, methods the department determines appropriate to assure payment of moneys collected and provisions for the distribution of river-user information.

(3) The department shall issue, without charge, annual passes to comply with the requirements under ORS 390.851 to persons who own ranch, farm or residential property immediately abutting those portions of the Deschutes River designated as scenic waterways under ORS 390.826 and to members of the immediate family of such persons. This subsection does not authorize the issuance without charge of passes to persons holding less than a majority interest in a firm, corporation or cooperative organization which owns land immediately abutting the Deschutes River designated as scenic waterways under ORS 390.826.

(4) Moneys collected under this section shall be deposited in the separate fund established for the State Parks and Recreation Department under ORS 366.512 and, subject to the limitations under subsection (5) of this section, are continually appropriated to that department to be used:

(a) For operation of the pass system established under this section;

(b) For providing river-user oriented law enforcement services;

(c) For providing river recreation information and education;

(d) For developing and maintaining river oriented recreation facilities; and

(e) For any other purposes the department considers appropriate for the maintenance, enhancement or protection of the natural and scenic beauty of the scenic waterway consistent with ORS 390.805 to 390.925.

(5) The use of moneys for purposes described under subsection (4) of this section is limited to the performance of those purposes for areas of the Deschutes River designated as scenic waterways under ORS 390.826. [1981 c.798 §2; 1985 c.606 §4; 1987 c.291 §2; 1987 c.624 §15]

**390.851 Activities prohibited on parts of Deschutes River without pass; exceptions.** (1) Unless the person has an appropriate pass issued under ORS 390.848, no person shall launch, operate or ride in any boat or engage in any camping, fishing or other activity in connection with being transported by a boat on those portions of the Deschutes River designated as scenic waterways under ORS 390.826.

(2) This section does not apply to:

(a) Peace officers, members or employees of a governmental body or their agents while engaged in the discharge of official duties; or

(b) Any member of the Confederated Tribes of the Warm Springs Indian Reservation.

(3) A person who violates this section commits a Class C violation. [1981 c.798 §3; 1987 c.291 §3; 1999 c.1051 §99]

**390.855 Designation of additional scenic waterways.** The State Parks and Recreation Department shall undertake a continuing study and submit periodic reports to the Governor, with the concurrence of the Water Resources Commission, recommending the designation of additional rivers or segments of rivers and related adjacent land by the Governor as scenic waterways subject to the provisions of ORS 390.805 to 390.925. Consistent with such recommendation, the Governor may designate any river or segment of a river and related adjacent land as a scenic waterway subject to the provisions of ORS 390.805 to 390.925. The department shall consult with the State Fish and Wildlife Commission, the State Department of Agriculture, the Environmental Quality Commission, the Department of State Lands, and such other persons or agencies as it considers appropriate. The State Parks and Recreation Department shall conduct hearings in the counties in which the proposed additional rivers or segments of rivers are located. The following criteria shall be considered in making such report:

(1) The river or segment of river is relatively free-flowing and the scene as viewed

from the river and related adjacent land is pleasing, whether primitive or rural-pastoral, or these conditions are restorable.

(2) The river or segment of river and its setting possess natural and recreation values of outstanding quality.

(3) The river or segment of river and its setting are large enough to sustain substantial recreation use and to accommodate existing uses without undue impairment of the natural values of the resource or quality of the recreation experience. [1971 c.1 §6]

**390.865 Authority of legislature over designation of additional scenic waterways.** The designation of a river or segment of a river and related adjacent land, pursuant to ORS 390.855, shall not become effective until the day following the adjournment sine die of the regular session of the Legislative Assembly next following the date of the designation or that was in session when the designation was made. The Legislative Assembly by joint resolution may disapprove any such designation or a part thereof, and in that event the designation, or part thereof so disapproved, shall not become effective. [1971 c.1 §7]

**390.875 Transfer of public lands in scenic waterways to department; administration of nontransferred lands.** Any public land within or adjacent to a scenic waterway, with the consent of the governing body having jurisdiction thereof, may be transferred to the jurisdiction of the State Parks and Recreation Department with or without compensation. Any land so transferred shall become state recreational land and shall be administered as a part of the scenic waterway. Any such land within a scenic waterway which is not transferred to the jurisdiction of the department, to the fullest extent consistent with the purposes for which the land is held, shall be administered by the body having jurisdiction thereof in accordance with the provisions of ORS 390.805 to 390.925. [1971 c.1 §8]

**390.885 Exchange of property within scenic waterway for property outside waterway.** In acquiring related adjacent land by exchange, the State Parks and Recreation Department may accept title to any property within a scenic waterway and, in exchange therefor, may convey to the grantor of the property any property under the department's jurisdiction that the department is not otherwise restricted from exchanging. Insofar as practicable, the properties so exchanged shall be of approximately equal fair market value. If they are not of approximately equal fair market value, the department may accept cash or property from, or pay cash or grant property to, the grantor in order to equalize the values of the properties exchanged. [1971 c.1 §9; 2015 c.27 §39]

**390.895 Use of federal funds.** In addition to State of Oregon funds available for the purposes of ORS 390.805 to 390.925, the State Parks and Recreation Department shall use such portion of moneys made available to it by the Bureau of Outdoor Recreation and other federal agencies, including matching funds, as the department determines are necessary and available to carry out the purposes of ORS 390.805 to 390.925. [1971 c.1 §10]

**390.905 Effect of ORS 390.805 to 390.925 on other state agencies.** Nothing in ORS 390.805 to 390.925 affects the jurisdiction or responsibility of other state agencies with respect to boating, fishing, hunting, water pollution, health or fire control; except that such state agencies shall endeavor to perform their responsibilities in a manner consistent with the purposes of ORS 390.805 to 390.925. [1971 c.1 §11]

**390.910 Intergovernmental cooperation; county representative on management advisory committee.** In carrying out the provisions of ORS 390.805 to 390.925, the State Parks and Recreation Department may enter into intergovernmental agreements to form committees to advise the various governmental agencies involved regarding management of the scenic waterways. Each such agreement must provide for membership on the committee of a representative of one of the governing bodies of the counties through which the scenic waterway flows. The county representative shall be chosen by the Governor from among those individuals recommended to the Governor by the county governing bodies. [1981 c.236 §2]

**390.915 Determination of value of scenic easement for tax purposes; easement exempt.** For ad valorem tax purposes, real property that is subject to a scenic easement shall be valued at its real market value, less any reduction in value caused by the scenic easement, and assessed in accordance with ORS 308.232. The easement shall be exempt from assessment and taxation the same as any other property owned by the state. [1971 c.1 §12; 1981 c.804 §99; 1991 c.459 §394]

**390.925 Enforcement.** In addition to any other penalties provided by law for violation of ORS 390.805 to 390.925 or rules adopted thereunder, the State Parks and Recreation Department is vested with power to obtain injunctions and other appropriate relief against violations of any provisions of ORS 390.805 to 390.925 and any rules adopted under ORS 390.805 to 390.925 and agreements made under ORS 390.805 to 390.925. [1971 c.1 §13; 1981 c.798 §6]

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## PENALTIES

**390.990 Violations.** (1) Subject to ORS 153.022, a person commits a Class A violation if the person violates:

(a) ORS 390.678.

(b) Any rule adopted under ORS 390.124.

(c) Any rule adopted under ORS 390.340.

(d) ORS 390.729.

(e) Any rule adopted under ORS 390.845.

(2) Notwithstanding any other provision of this section, violation of any rule adopted under this chapter for the regulation of vehicle speed in parks, including violations of rules relating to driving vehicles at a speed greater than a posted speed limit or greater than is reasonable and prudent, are subject to the same penalties as provided in ORS 811.109 for violation of a specific speed limit imposed under law or violation of a posted speed limit. [Subsection (1) formerly 366.990; subsection (2) formerly part of 274.990; 1969 c.601 §28; 1971 c.743 §362; subsection (4) enacted as 1971 c.614 §10; 1981 c.692 §3; 1981 c.798 §7; 1983 c.740 §124; 1989 c.904 §63; 1999 c.1051 §100; subsection (4) renumbered 390.995 (2) in 1999; 2005 c.300 §4]

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# TITLE 45

# WATER RESOURCES: IRRIGATION, DRAINAGE, FLOOD CONTROL, RECLAMATION


Chapter 536. Water Resources Administration
537. Appropriation of Water Generally
538. Withdrawal of Certain Waters From Appropriation; Special Municipal and County Water Rights
539. Determination of Water Rights Initiated Before February 24, 1909; Determination of Water Rights of Federally Recognized Indian Tribes
540. Distribution of Water; Watermasters; Change in Use; Transfer or Forfeiture of Water Rights
541. Water Distributors; Water Releases; Conservation and Storage; Water Development Projects; Watershed Management and Enhancement
542. Water Resource Surveys and Projects; Compacts
543. Hydroelectric Projects
543A. Reauthorizing and Decommissioning Hydroelectric Projects
545. Irrigation Districts
547. Drainage Districts
548. Provisions Applicable Both to Drainage Districts and to Irrigation Districts
549. Drainage and Flood Control Generally
551. Diking Districts
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# Chapter 536

**2015 EDITION**

## Water Resources Administration


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## GENERAL PROVISIONS

**536.007 Definitions.** As used in ORS 196.600 to 196.905, 541.010 to 541.320 and 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Water Resources Director.

(4) "Existing right" or "vested right" or words of similar import include an inchoate right to the use of water to the fullest extent that the right is recognized, defined or declared by the commission, the director or any court within this state.

(5) "Order" has the meaning given in ORS 183.310.

(6) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(7) "Public corporation" includes any city, county or district organized for public purposes.

(8) "Rule" has the meaning given in ORS 183.310.

(9) "State agency" includes any office, board, commission or department of a state government.

(10) "State water resources policy" means the water resources policy provided for in ORS 536.295 to 536.350 and 537.505 to 537.534.

(11) "Undetermined vested right" means a water right claimed under ORS 539.010 as having vested or as having been initiated before February 24, 1909, that has not been determined in an adjudication proceeding under ORS chapter 539 nor is evidenced by a permit or certificate issued under the Water Rights Act.

(12) "Waters of this state" means any surface or ground waters located within or without this state and over which this state has sole or concurrent jurisdiction.

(13) "Water resources of this state" means waters of this state and the following auxiliary lands whose usage directly affects the development and control of the waters of this state:

(a) Potential reservoir sites.

(b) Floodplain areas forming the predictable channels of floodwater drainage of rivers and streams. [1985 c.673 §2; 1989 c.691 §5]

**536.008** [1975 c.581 §14; 1985 c.421 §4; repealed by 1985 c.673 §185]

**536.009 Water Resources Department Water Right Operating Fund; uses; sources.** (1) There is established in the State Treasury the Water Resources Department Water Right Operating Fund, separate and distinct from the General Fund, to provide for the payment of the program and administrative expenses of the Water Resources Commission and the Water Resources Department in carrying out the provisions of ORS chapters 536, 537, 540 and 541. Interest earned by the fund shall be credited to the fund.

(2) The fund shall consist of:

(a) All moneys received under ORS 536.050 and 537.747.

(b) All moneys received on behalf of the fund by gift, grant or appropriation from whatever source.

(3) All moneys in the fund are continuously appropriated to the Water Resources Department for payment of expenses as described in this section. [1989 c.758 §3; 1993 c.765 §106; 1999 c.1026 §19; 2003 c.594 §5]

**Note:** 536.009 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**536.010** [Amended by 1955 c.707 §66; 1973 c.792 §23; repealed by 1975 c.581 §29]

**536.014** [1975 c.581 §15; 1981 c.545 §12; 1983 c.643 §1; repealed by 1985 c.673 §185]

**536.015 Water Resources Department Hydroelectric Fund; uses; sources.** (1) The Water Resources Department Hydroelectric Fund is established separate and distinct from the General Fund of the State Treasury. Except as provided in subsections (4) to (6) of this section, of the moneys in the Water Resources Department Hydroelectric Fund:

(a) A portion equal to 67 percent of the total moneys received each year shall be transferred to the fund created under ORS 496.835;

(b) A portion equal to 10.3 percent of the total moneys received each year shall be transferred to an account of the Department of Environmental Quality to be used to review applications for certification of hydroelectric projects under ORS 468B.040 and 468B.045; and

(c) All of the remaining moneys received each year are continuously appropriated to the Water Resources Commission and the Water Resources Department to provide for the payment of the administrative expenses

of the commission and the department in carrying out their responsibilities related to the issuance of permits, licenses or water right certificates for hydroelectric projects.

(2) The following shall be deposited into the State Treasury and credited to the Water Resources Department Hydroelectric Fund:

(a) Fees received by the Water Resources Department for hydroelectric projects under ORS 536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710, 543A.405 and 543A.415; and

(b) All moneys received on behalf of this account by gift, grant or appropriation from whatever source.

(3) All interest, if any, from moneys credited to the Water Resources Department Hydroelectric Fund shall be credited to the fund and shall inure to the benefit of the Water Resources Department Hydroelectric Fund.

(4) Application fees received under ORS 543A.405 shall be disbursed to the various agencies in the amounts specified in the cost reimbursement agreement executed with each reauthorization applicant.

(5) Four cents of each 28 cents paid as a reauthorization fee under ORS 543A.415 shall be paid to the Department of Environmental Quality.

(6) Annual fees paid under ORS 543.078 shall be disbursed to state agencies pursuant to a memorandum of agreement developed by the Department of Environmental Quality, the State Department of Fish and Wildlife and the Water Resources Department. [1991 c.869 §2; 1997 c.449 §36; 1999 c.873 §13]

**536.017 Records of expenditures from Water Resources Department Hydroelectric Fund.** The Water Resources Commission and the State Department of Fish and Wildlife shall maintain records of expenditures from the Water Resources Department Hydroelectric Fund established under ORS 536.015. The records shall account for costs imposed against specific operating hydroelectric projects and against projects in the process of obtaining a state or federal hydroelectric permit, certificate or license. [1991 c.869 §13]

**Note:** 536.017 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**536.018** [1975 c.581 §16; repealed by 1985 c.673 §185]

**536.020** [Repealed by 1955 c.707 §75]

**536.021 Water Measurement Cost Share Program Revolving Fund; uses; sources; prioritization.** (1) The Water Measurement Cost Share Program Revolving Fund is established separate and distinct from the General Fund. All moneys in the Water Measurement Cost Share Program Revolving Fund are continuously appropriated to the Water Resources Department for the purposes described in this section.

(2) The fund established in this section consists of moneys appropriated by the Legislative Assembly and moneys gifted, bequested, donated or granted from any person for the purpose of installing, substantially repairing or replacing streamflow gauges, measuring devices or headgates with measuring devices.

(3) The department may use the moneys in the fund to contribute up to 75 percent of the moneys needed to install, substantially repair or replace a streamflow gauge, measuring device or headgate with a measuring device on authorized diversions on the waters of this state where the gauge, measuring device or headgate will be used to protect in-stream flow or to monitor water rights and streamflow.

(4) The department may receive funds from, and may enter into agreements or contracts with, any person for the purpose of implementing the Water Measurement Cost Share Program Revolving Fund.

(5) The department shall prioritize the expenditure of moneys from the fund for streamflow gauges, measuring devices and headgates with measuring devices in the following descending order:

(a) Installation.

(b) Replacement.

(c) Substantial repair. [2001 c.808 §2]

## WATER RESOURCES COMMISSION

**536.022 Water Resources Commission; members; terms; confirmation; compensation and expenses.** (1) There is created a Water Resources Commission consisting of seven members, appointed by the Governor, one of whom the Governor shall designate as chairperson. The members appointed to the commission shall be subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. One member of the commission shall be appointed from each of the five regional river basin management areas set forth in subsection (3) of this section, one member shall be appointed from east of the summit of the Cascade Mountains, as defined in ORS 477.001, and one member shall be appointed from west of that summit.

(2) The term of office of a member shall be four years. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the retiring member's duties on July 1 next following. A member shall be eligible for reappointment,

but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. The members of the commission shall serve at the pleasure of the Governor.

(3) For purposes of appointing members under subsection (1) of this section, the drainage basins of the state shall be divided into the following regional river basin management areas:

(a) Upper Northwest Region, consisting of the Lower and Middle Willamette, North Coast and Sandy drainage basins and that portion of the Columbia River drainage basin below Bonneville Dam.

(b) Southwest Region, consisting of the Rogue, Klamath, Goose and Summer Lakes drainage basins and that portion of the South Coast drainage basins south of the mouth of the Rogue River.

(c) West Central Region, consisting of the Umpqua, Mid Coast, Upper Willamette and that portion of the South Coast drainage basins north of the mouth of the Rogue River.

(d) North Central Region, consisting of the Umatilla, John Day, Hood and Deschutes drainage basins and that portion of the Columbia River drainage basin above Bonneville Dam.

(e) Eastern Region, consisting of the Owyhee, Malheur, Grande Ronde, Malheur Lake, Middle Snake and Powder drainage basins.

(4) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1985 c.673 §3; 1995 c.548 §1]

**536.025 Duty of commission; delegation to Water Resources Director; exception.** (1) It is the function of the Water Resources Commission to establish the policies for the operation of the Water Resources Department in a manner consistent with the policies and purposes of ORS 196.600 to 196.905, 537.525, 541.010 to 541.320, 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543. In addition, the commission shall perform any other duty vested in it by law.

(2) Except for the commission's power to adopt rules, the commission may delegate to the Water Resources Director the exercise or discharge in the commission's name of any power, duty or function of whatever character, vested in or imposed by law upon the commission. The official act of the director acting in the commission's name and by the commission's authority shall be considered to be an official act of the commission.

(3) The commission may delegate to the director the authority to conduct a public hearing relating to the adoption or amendment of a basin program as provided in ORS 536.300. However, the commission may not delegate to the director the authority to adopt or amend a basin program. [1985 c.673 §4]

**536.026 Powers of Water Resources Commission.** (1) The Water Resources Commission, its members or a person designated by and acting for the commission may:

(a) Conduct public hearings.

(b) Issue subpoenas for the attendance of witnesses and the production of books, records and documents relating to matters before the commission.

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Water Resources Department under ORS 196.600 to 196.905, 541.010 to 541.320, 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 536.029]

**536.027 Rules and standards.** (1) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission shall adopt rules and standards to perform the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard before its adoption. The hearing may be before the commission, any designated member of the commission or any person designated by and acting for the commission. [1985 c.673 §5]

**536.028 Rules pertaining to human or livestock consumption uses within or above scenic waterway.** In accordance with applicable provisions of ORS chapter 183, the Water Resources Commission may adopt rules necessary to administer the provisions of ORS 390.835 pertaining to the issuance of a water right within or above a scenic waterway. [1993 c.99 §3; 1995 c.719 §2]

**536.029** [1985 c.673 §11; 1989 c.980 §14c; renumbered 536.026 in 1999]

**536.030** [Repealed by 1975 c.581 §29]

**536.031 Applicability of rules to completed application for permit.** (1) Except as provided in subsection (2) of this section,

the Water Resources Department may apply only those rules of the department that are in effect as of the date that a completed application is made for a permit in deciding whether to approve, deny or impose conditions on the permit.

(2) This section does not affect the application of any rule of the department that:

(a) Is required by federal law;

(b) Is required by any agreement between the state and a federal agency;

(c) The applicant voluntarily agrees to make applicable to the application; or

(d) Is necessary to protect public health and safety. [1999 c.301 §2]

## WATER RESOURCES DEPARTMENT

**536.032 Water Resources Director; term; qualifications.** Subject to confirmation by the Senate in the manner provided in section 4, Article III, Oregon Constitution, the Governor shall appoint a Water Resources Director. The director shall be an individual qualified by training and experience and shall serve for a term of four years at the pleasure of the Governor. The director or a principal assistant must be a registered engineer experienced in water-related engineering. [1975 c.581 §18; 1985 c.673 §7; 2009 c.259 §28]

**536.035** [1955 c.513 §1; repealed by 1975 c.581 §29]

**536.037 Functions of director.** (1) Subject to policy direction by the Water Resources Commission, the Water Resources Director shall:

(a) Be administrative head of the Water Resources Department;

(b) Have power, within applicable budgetary limitations, and in accordance with ORS chapter 240, to hire, assign, reassign and coordinate personnel of the department;

(c) Administer and enforce the laws of the state concerning the water resources of this state;

(d) Be authorized to participate in any proceeding before any public officer, commission or body of the United States or any state for the purpose of representing the citizens of Oregon concerning the water resources of this state;

(e) Have power to enter upon any private property in the performance of the duties of the director, doing no unnecessary injury to the private property; and

(f) Coordinate any activities of the department related to a watershed enhancement project approved by the Oregon Watershed Enhancement Board under ORS 541.932 with activities of other cooperating state and federal agencies participating in the project.

(2) In addition to duties otherwise required by law, the director shall prescribe internal policies and procedures for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any employee of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of a person so acting in the director's name and by the director's authority shall be considered to be an official act of the director. [1985 c.673 §8; 1987 c.734 §14]

**536.039 Water Resources Department.** There is hereby established in the executive-administrative branch of the government of the state under the Water Resources Commission a department to be known as the Water Resources Department. The department shall consist of the director of the department and all personnel employed in the department including but not limited to all watermasters appointed under ORS 540.020. [1985 c.673 §§6,203]

**536.040 Public records; copies as evidence.** (1) The records of the Water Resources Department are public records and shall remain on file in the department and be open to the inspection of the public at all times during business hours. The records shall show in full all maps, profiles, and engineering data relating to the use of water, and certified copies thereof shall be admissible as evidence in all cases where the original would be admissible as evidence.

(2) Whenever a record is required to be filed or maintained in the Water Resources Department, the record may be handwritten, typewritten, printed or a photostated or photographic copy and any means of recording the information is acceptable, including but not limited to papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other preservation of the document or the information contained in the document.

(3) Notwithstanding any provision of subsection (2) of this section, the Water Resources Department shall maintain a paper copy of each final water use permit, certificate, order of the Water Resources Commission or Water Resources Director, decree or certificate of registration. The copies shall be retained in a secure location in the department. [Amended by 1975 c.581 §20; 1991 c.102 §1]

**536.045 Sending or receipt of documents in electronic form; rules; fees.** (1) Notwithstanding any provision of ORS chapters 536 to 540, 543 or 543A that requires the mailing of a document, the submission of a document in written form or the provision of a certified copy of a document, the Water Resources Department may adopt rules:

(a) Allowing the submission of one or more types of document to the department by electronic means in lieu of submission by mailing or submission in written form;

(b) Allowing the department, with the consent of the recipient, to send one or more types of document in electronic form in lieu of mailing or other sending of the document in written form; or

(c) Identifying acceptable means for verifying the authenticity of a document sent by electronic means in lieu of the provision of a certified copy of the document.

(2) The department may not adopt rules to require the submission of documents to the department by electronic means. The department may not require a recipient to consent to the receipt of documents from the department by electronic means. The department may not use electronic means in lieu of service under ORCP 7 or notice under ORS 183.413 or 183.415.

(3) For purposes of determining timeliness or calculating deadlines, a document sent by electronic means in accordance with department rules is considered to be delivered when sent.

(4) Notwithstanding any provision of ORS chapters 536 to 540, 543 or 543A that specifies a fee amount, the department may reduce or waive the fee for a document that the department sends or receives by electronic means. [2011 c.51 §1]

**Note:** 536.045 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**536.050 Fees; rules; refunds; waiver and reduction of certain fees.** (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 $800 for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) $300 for the first second-foot or fraction thereof appropriated under the permit;

(iii) $300 for each additional second-foot or fraction thereof appropriated under the permit;

(iv) $300 for each additional use, point of diversion or point of appropriation included in the application;

(v) If appropriating stored water, $30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof; and

(vi) If appropriating ground water, in addition to any other fees, $350 for each application filed.

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

(i) A base fee of $800;

(ii) $30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof; and

(iii) $125 for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of $450; and

(ii) $30 for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 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:

(A) A base fee of $450 for recording the permit; and

(B) An additional fee of $575 if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, $85.

(d) For copying records in the department, $2 for the first page and 50 cents for each additional page.

(e) For certifying copies, documents, records or maps, $10 for each certificate.

(f) For a blueprint copy of any map or drawing, the actual cost of the work.

(g) For a computer-generated map, the actual cost of the work.

(h) For examining an application for approval of a change to an existing water right or permit:

(A) A base fee of $1,000 for a change to a single water right or permit;

(B) $800 for each additional type of change requested;

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, $300 for each second-foot or fraction thereof requested beyond the first second-foot;

(D) $450 for each additional water right or permit included in the application; and

(E) An additional fee of $350 per application, if the application is for an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of $700 for the first water right or permit, plus $225 for each additional water right or permit included in the application and:

(A) For nonirrigation uses, $175 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, $2 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 50 cents per acre of land irrigated.

(j) For submitting a protest to the department:

(A) $700 if the protest is by a nonapplicant; and

(B) $350 if the protest is by an applicant.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, $575.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, $350 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, $200.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, $500.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, $25.

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

(A) A base fee of $350; and

(B) $30 for each acre-foot or fraction thereof.

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

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

(A) A base fee of $725 for the first well substitution; and

(B) A fee of $350 for each additional well substitution.

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

(A) A base fee of $1,000 for the first water right that is part of the allocation; and

(B) An additional fee of $350 for each water right that is part of the allocation beyond the first water right.

(u) For submitting a water management and conservation plan pursuant to rules of the commission:

(A) $500, if the plan is submitted by an agricultural water supplier;

(B) $900, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) $1,800, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

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

(A) $450 for an application for a lease with four or more landowners or four or more water rights; or

(B) $300 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, $110.

(x) For submitting a claim of beneficial use under a permit or transfer having a priority date of July 9, 1987, or later, $175.

(y) For submitting a request no later than 60 days after cancellation of a permit

under ORS 537.260 to reinstate the permit, $450.

(z) For submitting a request for a basin program exception under ORS 536.295, $575.

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

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

(A) $85 for a dam with a low hazard rating.

(B) $170 for a dam with a significant hazard rating.

(C) $575 for a dam with a high hazard rating.

(D) If the dam owner fails to pay an annual fee on or before six months after the billing date, a late fee of $100.

(b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the department may, after giving the dam owner notice by certified mail, place a lien on the real property where the dam is located for the fees owed by the dam owner.

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

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

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

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

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

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

(a) Made pursuant to ORS 537.348;

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

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

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

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

(8) Notwithstanding subsection (7) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015. [Amended by 1961 c.187 §3; 1967 c.36 §1; 1973 c.163 §4; 1975 c.581 §21; 1981 c.627 §1; 1983 c.256 §1; 1985 c.673 §12; 1987 c.815 §8; 1989 c.587 §1; 1989 c.758 §1; 1989 c.933 §4; 1989 c.1000 §6; 1991 c.734 §49a; 1991 c.869 §4; 1995 c.416 §1; 1995 c.752 §6; 1997 c.449 §35; 1997 c.587 §1; 1999 c.555 §3; 1999 c.664 §1; 1999 c.665 §1; 1999 c.873 §19; 2003 c.594 §1; 2003 c.691 §4; 2003 c.705 §7; 2005 c.156 §1; 2007 c.188 §1; 2007 c.267 §1; 2009 c.819 §§5,12; 2013 c.166 §§4,5; 2013 c.644 §1]

**Note:** The amendments to 536.050 by section 2, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

**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 $700 for an appropriation of water through a single use, point of diversion or point of appropriation;

(ii) $250 for the first second-foot or fraction thereof appropriated under the permit;

(iii) $250 for each additional second-foot or fraction thereof appropriated under the permit;

(iv) $250 for each additional use, point of diversion or point of appropriation included in the application;

(v) If appropriating stored water, $25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof; and

(vi) If appropriating ground water, in addition to any other fees, $300 for each application filed.

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

(i) A base fee of $700;

(ii) $25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 for each additional acre-foot or fraction thereof; and

(iii) $100 for each additional storage location.

(C) To exclusively appropriate stored water:

(i) A base fee of $400; and

(ii) $25 for the first acre-foot or fraction thereof up to 20 acre-feet, plus $1 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:

(A) A base fee of $400 for recording the permit; and

(B) An additional fee of $500 if the permit is issued pursuant to a final order that contains provisions requested by the applicant for mitigating impacts to the proposed water source.

(c) For filing and recording the assignment or partial assignment of a water right application, permit or license under ORS 537.220 or 537.635, $75.

(d) For copying records in the department, $2 for the first page and 50 cents for each additional page.

(e) For certifying copies, documents, records or maps, $10 for each certificate.

(f) For a blueprint copy of any map or drawing, the actual cost of the work.

(g) For a computer-generated map, the actual cost of the work.

(h) For examining an application for approval of a change to an existing water right or permit:

(A) A base fee of $900 for a change to a single water right or permit;

(B) $700 for each additional type of change requested;

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, $250 for each second-foot or fraction thereof requested beyond the first second-foot;

(D) $400 for each additional water right or permit included in the application; and

(E) An additional fee of $300 per application, if the application is for an additional point of appropriation, a change in a point of appropriation or a change from surface water to ground water or for substitution as described in ORS 540.524.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of $600 for the first water right or permit, plus $200 for each additional water right or permit included in the application and:

(A) For nonirrigation uses, $150 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, $2 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 50 cents per acre of land irrigated.

(j) For submitting a protest to the department:

(A) $600 if the protest is by a nonapplicant; and

(B) $300 if the protest is by an applicant.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, $500.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, $300 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, $150.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, $350.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300 or an extension issued under ORS 537.230, 537.248 or 537.630, $20.

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

(A) A base fee of $300; and

(B) $25 for each acre-foot or fraction thereof.

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

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

(A) A base fee of $630 for the first well substitution; and

(B) A fee of $300 for each additional well substitution.

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

(A) A base fee of $850 for the first water right that is part of the allocation; and

(B) An additional fee of $300 for each water right that is part of the allocation beyond the first water right.

(u) For submitting a water management and conservation plan pursuant to rules of the commission:

(A) $400, if the plan is submitted by an agricultural water supplier;

(B) $800, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) $1,600, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

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

(A) $400 for an application for a lease with four or more landowners or four or more water rights; or

(B) $250 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, $100.

(x) For submitting a claim of beneficial use under a permit or transfer having a priority date of July 9, 1987, or later, $150.

(y) For submitting a request no later than 60 days after cancellation of a permit under ORS 537.260 to reinstate the permit, $400.

(z) For submitting a request for a basin program exception under ORS 536.295, $500.

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

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

(A) $75 for a dam with a low hazard rating.

(B) $150 for a dam with a significant hazard rating.

(C) $500 for a dam with a high hazard rating.

(D) If the dam owner fails to pay an annual fee on or before six months after the billing date, a late fee of $100.

(b) If a dam owner fails to pay an annual fee or a late fee charged by the department, the department may, after giving the dam owner notice by certified mail, place a lien on the real property where the dam is located for the fees owed by the dam owner.

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

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

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

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

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

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

(a) Made pursuant to ORS 537.348;

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

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

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

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

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

**536.055 Agreements to expedite processing and review of applications, permits and other administrative matters; fees.** (1) The Water Resources Department may, with any person, enter into an agreement that sets fees to be paid to the department for the purpose of enabling the department to expedite or enhance the regulatory process to provide services voluntarily requested under the agreement. Pursuant to the agreement, the department may hire additional temporary staff members, contract for services or provide additional services to the person that are within the authority of the department to provide.

(2) Notwithstanding the fees established in ORS 536.050, as part of an agreement entered into under this section, the department may waive all or part of a fee imposed for a service.

(3) The department may not modify existing processing priorities or schedules or create processing priorities or schedules for a particular department-provided service in order to compel a person to enter into an agreement under this section. However, without violating this subsection, the department may modify its processing priorities or schedules based on the overall operating needs of the department.

(4) The department may not require that a person pay more for a service under an agreement entered into under this section than the cost to the department in providing the service to the person.

(5) The department shall review the responsibilities of the department to identify services provided by the department that are appropriate for the department to perform under the provisions of this section. Failure to identify responsibilities under this subsection does not prohibit the department from entering into agreements under this section.

(6) Fees paid under this section shall be deposited in the State Treasury to the credit of the department. Such moneys are continuously appropriated to the department for the purpose of reviewing department responsibilities to determine those services for which the authority provided in this section may be used and for fulfilling the individual agreements entered into pursuant to this section, including the processing and review of:

(a) Water right permit applications, permit extensions, permit amendments and final proof surveys;

(b) Water right exchanges and transfers; and

(c) Water management and conservation plans required by rule by the department. [2003 c.745 §2]

**536.060** [Repealed by 1971 c.734 §21]

**536.065** [1971 c.734 §77; repealed by 1985 c.673 §185]

**536.070** [Amended by 1975 c.581 §21a; repealed by 1985 c.673 §185]

**536.075 Judicial review of final order of commission or department; stay of order; scope of review.** (1) Any party affected by a final order other than contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the Circuit Court of Marion County or to the circuit court of the county in which all or part of the property affected by the order is situated. The review shall be conducted according to the provisions of

ORS 183.484, 183.486, 183.497 and 183.500. A final order other than contested case issued by the Water Resources Commission or the Water Resources Department must state on the first page of the order that the order is a final order other than contested case, that the order is subject to judicial review under ORS 183.484 and that any petition for judicial review of the order must be filed within the time specified by ORS 183.484 (2). Any order other than contested case issued by the Water Resources Commission or by the Water Resources Department that does not comply with the requirements of this section is not a final order.

(2) Any party affected by a final order in a contested case issued by the Water Resources Commission or the Water Resources Department may appeal the order to the Court of Appeals.

(3) An appeal under subsection (2) of this section shall be conducted as provided in ORS 183.482 except as specifically provided in subsections (4), (5) and (6) of this section.

(4) The petition shall state the facts showing how the petitioner is adversely affected by the order and the ground or grounds upon which the petitioner contends the order should be reversed or remanded.

(5) The filing of a petition in either the circuit court or the Court of Appeals shall stay enforcement of the order of the commission or the department unless the commission or the department determines that substantial public harm will result if the order is stayed. If the commission or the department denies the stay, the denial shall be in writing and shall specifically state the substantial public harm that will result from allowing the stay.

(6) The review by the Court of Appeals under subsection (2) of this section shall be on the entire record forwarded by the commission or department. The court may remand the case for further evidence taking, correction or other necessary action. The court may affirm, reverse, modify or supplement the order appealed from, and make such disposition of the case as the court determines to be appropriate.

(7) The provisions of this section shall not apply to any proceeding under ORS 537.670 to 537.695 or ORS chapter 539.

(8) For the purposes of this section, "final order" and "contested case" have the meanings given those terms in ORS 183.310. [1985 c.673 §9; 1999 c.791 §1]

**536.080 Effect of records of former State Water Board and State Water Superintendent.** The transfer of functions from the former State Water Board and State Water Superintendent to the State Engineer, effected by chapter 283, Oregon Laws 1923, shall not impair the legal force and effect in any water right adjudication, suit, action or other proceeding before the State Engineer, or in the courts or other tribunals of the state, of the official records of, or any evidence filed with, said State Water Board or State Water Superintendent.

**536.090 Ground water advisory committee; duties; qualification; term; expenses.** (1) In carrying out the duties, functions and powers prescribed by law, the Water Resources Commission shall appoint a ground water advisory committee to:

(a) Advise the commission on all matters relating to:

(A) Rules for the development, securing, use and protection of ground water; and

(B) Licensing of well constructors, including the examination of such persons for license.

(b) Review the proposed expenditure of all revenues generated under ORS 537.762 (5). At least once each year, and before the expenditure of such funds on new program activities, the Water Resources Department and the ground water advisory committee shall develop jointly a proposed expenditure plan for concurrence by the Water Resources Commission. The plan may be modified, if necessary, upon the joint recommendation of the department and the ground water advisory committee with concurrence by the commission.

(2) The committee shall consist of nine members who represent a range of interests or expertise. At least three of the members shall be individuals actively engaged in some aspect of the water supply or monitoring well drilling industry. Members shall serve for such terms as the commission may specify. The committee shall meet at least once every three months and at other times and places as the commission may specify.

(3) A member of the committee shall not receive compensation, but at the discretion of the commission may be reimbursed for travel expenses incurred, subject to ORS 292.495. [1977 c.749 §2; 1981 c.416 §9; 1985 c.673 §18; 1991 c.925 §1; 1993 c.774 §1]

**536.100** [1985 c.666 §1; 1989 c.904 §67; repealed by 1995 c.690 §§25,26]

**536.104** [Formerly 536.110; repealed by 1995 c.690 §§25,26]

**536.108** [Formerly 536.120; 1989 c.833 §52; 1995 c.690 §9; renumbered 468B.162 in 1995]

**536.110** [1985 c.666 §2; renumbered 536.104 in 1989]

**536.112** [Formerly 536.130; 1995 c.690 §10; renumbered 468B.164 in 1995]

**536.116** [Formerly 536.140; repealed by 1995 c.690 §§25,26]

**536.120** [1985 c.666 §3; 1989 c.833 §52; renumbered 536.108 in 1989]

**536.121** [Formerly 536.150; repealed by 1995 c.690 §§25,26]

**536.125** [1989 c.833 §20; 1995 c.79 §301; 1995 c.690 §11; renumbered 468B.167 in 1995]

**536.129** [1989 c.833 §21; 1995 c.690 §12; renumbered 468B.169 in 1995]

**536.130** [1985 c.666 §4; renumbered 536.112 in 1989]

**536.133** [1989 c.833 §22; 1995 c.690 §13; renumbered 468B.171 in 1995]

**536.137** [1989 c.833 §24; 1995 c.690 §14; renumbered 468B.166 in 1995]

**536.140** [1987 c.409 §§1,2; renumbered 536.116 in 1989]

**536.141** [1989 c.833 §34; 1995 c.690 §15; renumbered 468B.177 in 1995]

**536.145** [1989 c.833 §35; 1995 c.690 §16; renumbered 468B.179 in 1995]

**536.149** [1989 c.833 §39; renumbered 468B.183 in 1995]

**536.150** [1987 c.409 §3; renumbered 536.121 in 1989]

**536.153** [1989 c.833 §40; 1995 c.690 §17; renumbered 468B.182 in 1995]

**536.157** [1989 c.833 §41; 1993 c.18 §127; 1995 c.690 §18; renumbered 468B.184 in 1995]

**536.161** [1989 c.833 §42; renumbered 468B.186 in 1995]

**536.165** [1989 c.833 §43; 1995 c.690 §19; renumbered 468B.187 in 1995]

**536.169** [1989 c.833 §44; 1995 c.690 §20; renumbered 468B.188 in 1995]

**536.210** [1955 c.707 §2; 1965 c.355 §1; 1975 c.581 §22; repealed by 1985 c.673 §185]

## WATER RESOURCES POLICIES AND PROGRAMS

**536.220 Policy on water resources generally; integrated state water resources strategy.** (1) The Legislative Assembly recognizes and declares that:

(a) The maintenance of the present level of the economic and general welfare of the people of this state and the future growth and development of this state for the increased economic and general welfare of the people thereof are in large part dependent upon a proper utilization and control of the water resources of this state, and such use and control is therefore a matter of greatest concern and highest priority.

(b) A proper utilization and control of the water resources of this state can be achieved only through a coordinated, integrated state water resources policy, through plans and programs for the development of such water resources and through other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources, all carried out by a single state agency.

(c) The economic and general welfare of the people of this state have been seriously impaired and are in danger of further impairment by the exercise of some single-purpose power or influence over the water resources of this state or portions thereof by each of a large number of public authorities, and by an equally large number of legislative declarations by statute of single-purpose policies with regard to such water resources, resulting in friction and duplication of activity among such public authorities, in confusion as to what is primary and what is secondary beneficial use or control of such water resources and in a consequent failure to utilize and control such water resources for multiple purposes for the maximum beneficial use and control possible and necessary.

(2) The Legislative Assembly, therefore, finds that:

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency that, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468B.155.

(3)(a) The Water Resources Department shall develop an integrated state water resources strategy to implement the state water resources policy specified in subsection (2) of this section. The department shall design the strategy to meet Oregon's in-stream and out-of-stream water needs.

(b) The Water Resources Department shall work in close cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife to develop the integrated state water resources strategy in consultation with other state, local and federal agencies, with other states, with Indian tribes, with stakeholders and with the public.

(c) The Water Resources Department, in close cooperation with the Department of Environmental Quality and the State Department of Fish and Wildlife, shall develop data on an ongoing basis to forecast Oregon's in-stream and out-of-stream water needs, including but not limited to in-stream, underground water, human consumption and water supply needs, for the purpose of developing and updating the integrated state water resources strategy.

(d) The integrated state water resources strategy shall describe the following:

(A) Oregon's in-stream and out-of-stream water needs, including but not limited to ecosystem services, water quality and water supply needs.

(B) Objectives of the strategy.

(C) Actions that are designed to achieve the objectives of the strategy.

(D) Plans related to the challenges presented by climate change.

(E) Provisions to ensure communication and partnership with key stakeholders.

(F) Specific functions and roles to be played by state agencies, including but not limited to the State Department of Agriculture, the State Forestry Department, the Department of Human Services, the Oregon Business Development Department, the Department of Land Conservation and Development, the Oregon Watershed Enhancement Board, the State Parks and Recreation Department, the Department of State Lands and other relevant state agencies.

(G) Public policy options and recommendations.

(H) Relevant strategy factors, including but not limited to population growth and land use change.

(I) Recommendations of the Water Resources Department regarding the continuous monitoring of climate change effects on Oregon's water supply and regarding water user actions that are necessary to address climate change.

(e)(A) The Water Resources Commission shall give the Environmental Quality Commission, the State Department of Agriculture and the State Department of Fish and Wildlife notice of the integrated state water resources strategy prior to adoption of the strategy. The strategy shall take effect upon adoption by the Water Resources Commission.

(B) The Water Resources Commission shall review and update the integrated state water resources strategy every five years. The Water Resources Commission shall give notice to the Environmental Quality Commission, the State Department of Agriculture and the State Department of Fish and Wildlife prior to adopting any revisions of the strategy. Revisions of the strategy shall take effect upon the Water Resources Commission's adoption of the revised strategy by reference in rule.

(4) This section does not limit the authority granted the Environmental Quality Commission or the Department of Environmental Quality under ORS chapter 468B. [1955 c.707 §1; 1989 c.833 §53; 2009 c.907 §44; 2013 c.1 §76]

**Note:** Sections 2 and 3, chapter 780, Oregon Laws 2015, provide:

**Sec. 2.** (1) As used in this section, "place-based integrated water resources" means waters that are from sources within a single drainage basin or within an area that is a subset of a single drainage basin.

(2) The Water Resources Department may issue grants from available moneys to facilitate the preparation of place-based integrated water resources strategies that are consistent with state laws concerning the water resources of this state, state water resources policy and department requirements. The department may issue grants under this subsection to:

(a) A person;

(b) A public body as defined in ORS 174.109; or

(c) An Indian tribe.

(3) The department may enter into contracts or agreements with, and provide technical assistance and information to, a person, a public body as defined in ORS 174.109 or an Indian tribe for the development of place-based integrated water resources strategies.

(4) Place-based integrated water resources strategies described in subsections (2) and (3) of this section must:

(a) Be developed in collaboration with a balanced representation of interests;

(b) Balance current and future in-stream and out-of-stream needs;

(c) Include the development of actions that are consistent with the existing state laws concerning the water resources of this state and state water resources policy;

(d) Facilitate implementation of local solutions;

(e) Be developed utilizing an open and transparent process that fosters public participation; and

(f) Be developed in consultation with the department.

(5) The Water Resources Commission may adopt rules for the administration of this section. [2015 c.780 §2]

**Sec. 3.** (1) Section 2 of this 2015 Act is repealed July 1, 2019.

(2) The repeal of section 2 of this 2015 Act does not affect any rights or responsibilities established in a grant, contract or agreement made under section 2 of this 2015 Act prior to July 1, 2019. [2015 c.780 §3]

**536.230** [1955 c.707 §3; 1969 c.695 §12; repealed by 1975 c.581 §29]

**536.231 Commission to devise plans and programs for development of water resources.** The Water Resources Commission shall devise plans and programs for the development of the water resources of this state in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. [Formerly 536.430]

**536.235 Policy on minimum streamflows.** It is the policy of the State of Oregon that establishment of minimum perennial streamflows is a high priority of the Water Resources Commission and the Water Resources Department. [1983 c.796 §2; 1985 c.673 §13]

**536.238 Policy on water storage facilities.** (1) The Legislative Assembly finds and declares that:

(a) The water resources of the state are critical to the economic and recreational well-being of the people of Oregon.

(b) The future vitality of the state's economy depends on immediate planning to insure future availability of water resources.

(c) Measures to insure adequate water resources to meet the needs of future generations of Oregonians must be pursued.

(d) The potential for a future shortage of water poses serious risks to public health, safety and welfare and therefore is a matter of statewide concern.

(2) Therefore, the Legislative Assembly, in addressing the problem of how to insure adequate water resources for in-stream and out-of-stream uses in the future, declares that it is a high priority of the state to both:

(a) Develop environmentally acceptable and financially feasible multipurpose water storage facilities; and

(b) Enhance watershed storage capacity through natural processes using nonstructural means. [1993 c.386 §1]

**Note:** 536.238 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**536.240** [1955 c.707 §4; 1969 c.314 §63; repealed by 1975 c.581 §29]

**536.241 Policy on water supply.** (1) The Legislative Assembly finds that the availability of an adequate water supply is essential to the continued health and safety of all Oregonians.

(2) The Legislative Assembly declares that it is the policy of the State of Oregon to ensure a water supply sufficient to meet the needs of existing and future beneficial uses of water, and to adequately manage the state's water resources. Further, in recognition of this policy, the Legislative Assembly declares that the planning and management of the water resources of this state shall be conducted in a consistent and coordinated manner. [1999 c.984 §2]

**Note:** 536.241 was added to and made a part of ORS chapter 536 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**536.250** [1955 c.707 §5; 1969 c.706 §64f; repealed by 1975 c.581 §29]

**536.260** [1955 c.707 §6; repealed by 1975 c.581 §29]

**536.265** [1967 c.157 §2; 1975 c.581 §23; repealed by 1985 c.673 §185]

**536.270** [1955 c.707 §7; repealed by 1975 c.581 §29]

**536.280** [1955 c.707 §8; repealed by 1971 c.418 §23]

**536.290** [1955 c.707 §9; 1967 c.156 §1; repealed by 1975 c.581 §29]

**536.295 Conditions for consideration of application for use not classified in basin program; rules.** (1) Notwithstanding any provision of ORS 536.300 or 536.340, the Water Resources Commission may allow the Water Resources Department to consider an application to appropriate water for a use not classified in the applicable basin program if the use:

(a) Will be of short duration during each year;

(b) Will be for a continuous period of no longer than five years;

(c) Is largely nonconsumptive in nature and not likely to be regulated for other water rights;

(d) Is necessary to ensure public health, welfare and safety;

(e) Is necessary to avoid extreme hardship;

(f) Will provide a public benefit such as riparian or watershed improvement; or

(g) Is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program including but not limited to:

(A) Exploratory thermal drilling;

(B) Heat exchange;

(C) Maintaining water levels in a sewage lagoon; or

(D) Facilitating the watering of livestock away from a river or stream.

(2) A permit granted on or before January 1, 1993, for a quasi-municipal use of water shall be considered a permit for a classified use under ORS 536.340 if at the time the application was submitted or the permit was granted, the basin program identified municipal use as a classified use.

(3) The commission by rule may determine the specific uses permitted within a classified use.

(4) In making the determination under subsection (1) of this section, the commission shall evaluate whether the proposed use is consistent with the general policies established in the applicable basin program.

(5) The Water Resources Department shall process and evaluate an application allowed by the commission under subsections (1) to (4) of this section in the same manner as any other water right application, including determining whether the proposed use would result in injury to an existing water right. [1989 c.9 §1; 1993 c.591 §1; 1999 c.703 §1]

**536.300 Formulation of state water resources program; public hearing in affected river basin.** (1) The Water Resources Commission shall proceed as rapidly as possible to study: Existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, floodplains and reservoir sites.

(2) Based upon said studies and after an opportunity to be heard has been given to all other state agencies which may be concerned, the commission shall progressively formulate an integrated, coordinated program for the use and control of all the water resources of this state and issue statements thereof.

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin. After the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the Water Resources Director the authority to conduct additional public hearings in the affected river basin. [1955 c.707 §10(1), (2); 1965 c.355 §2; 1985 c.673 §14]

**536.310 Purposes and policies to be considered in formulating state water resources program.** In formulating the water resources program under ORS 536.300 (2), the Water Resources Commission shall take into consideration the purposes and declarations enumerated in ORS 536.220 and also the following additional declarations of policy:

(1) Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste;

(2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole;

(3) That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses;

(4) Multiple-purpose impoundment structures are to be preferred over single-purpose structures; upstream impoundments are to be preferred over downstream impoundments. The fishery resource of this state is an important economic and recreational asset. In the planning and construction of impoundment structures and milldams and other artificial obstructions, due regard shall be given to means and methods for its protection;

(5) Competitive exploitation of water resources of this state for single-purpose uses is to be discouraged when other feasible uses are in the general public interest;

(6) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

(7) The maintenance of minimum perennial streamflows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit;

(8) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

(9) Due regard shall be given in the planning and development of water recreation facilities to safeguard against pollution;

(10) It is of paramount importance in all cooperative programs that the principle of the sovereignty of this state over all the waters within the state be protected and preserved, and such cooperation by the commission shall be designed so as to reinforce and strengthen state control;

(11) Local development of watershed conservation, when consistent with sound engineering and economic principles, is to be promoted and encouraged;

(12) When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use, and thereafter other beneficial purposes in such order as may be in the public interest consistent with the principles of chapter 707, Oregon Laws 1955, under the existing circumstances; and

(13) Notwithstanding any other provision of this section, when available supplies of water are insufficient in the South Umpqua River to provide for both the needs of human consumption pursuant to a municipal water right and the maintenance of previously established minimum streamflows, preference shall be given to the municipal needs if the municipality adopts and enforces an ordi-

nance restricting use of the water so obtained to direct human consumption uses. [1955 c.707 §10(3); 1979 c.170 §1; 1987 c.546 §1]

**Note:** The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 707, Oregon Laws 1955," in 536.310 and 536.330. Chapter 707, Oregon Laws 1955, enacted into law and amended the ORS sections which may be found by referring to the 1955 Comparative Section Table located in Volume 20 of Oregon Revised Statutes.

**536.315 Designation of exact land areas included within auxiliary lands.** As part of the water resources policy statement authorized under ORS 536.300, the Water Resources Commission may designate the exact land areas included within the auxiliary lands described in ORS 536.007. [1965 c.355 §4; 1985 c.673 §179; 1987 c.158 §114]

**536.320 Limitation of powers of commission.** The Water Resources Commission shall not have power:

(1) To interfere with, supervise or control the internal affairs of any state agency or public corporation;

(2) To modify, set aside or alter any existing right to use water or the priority of such use established under existing laws; or

(3) To modify or amend any standard or policy as prescribed in ORS 536.310 nor to adopt any rule or regulation in conflict therewith. [1955 c.707 §10(4)]

**536.325** [1979 c.319 §2; 1983 c.796 §4; 1985 c.673 §15; repealed by 1997 c.212 §1]

**536.330 Water Resources Act as supplemental to and including existing statutes.** Chapter 707, Oregon Laws 1955, shall be construed by the Water Resources Commission as supplemental to existing statutes and not in lieu thereof except to the extent that existing statutes are expressly amended or repealed by chapter 707, Oregon Laws 1955. ORS 536.220 to 536.540 and the authority of the Water Resources Department thereunder shall include all laws now existing or hereinafter enacted that relate to or affect the use and control of the water resources of this state. [1955 c.707 §10(5); 1963 c.415 §1; 1975 c.581 §24; 1985 c.673 §180]

**Note:** See note under 536.310.

**536.340 Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses.** (1) Subject at all times to existing rights and priorities to use waters of this state, the Water Resources Commission:

(a) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in this subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities of use of a source of water supply resulting from a classification or reclassification under this subsection shall apply to the use of all waters of this state affected by the classification or reclassification, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or reclassification that imposes the restriction.

(b) Shall diligently enforce laws concerning cancellation, release and discharge of excessive unused claims to waters of this state to the end that such excessive and unused amounts may be made available for appropriation and beneficial use by the public.

(c) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof. In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data.

(2) In classifying or reclassifying a source of water supply or prescribing preferences for the future uses of a source of water supply under subsection (1) of this section, the commission shall:

(a) Comply with the requirements set forth in the Water Resources Department coordination program developed pursuant to ORS 197.180; and

(b) Cause notice of the hearing held under ORS 536.300 (3) to be published in a newspaper of general circulation once each week for two successive weeks in each county:

(A) In which waters affected by the action of the commission under subsection (1) of this section are located; or

(B) That is located within the basin under consideration.

(3) Before beginning any action under subsection (2) of this section that would limit new ground water uses that are exempt under ORS 537.545 from the requirement to obtain a water right, the commission shall:

(a) Review the proposed action to determine whether the proposal is consistent with ORS 537.780;

(b) Provide an opportunity for review by:

(A) Any member of the Legislative Assembly who represents a district where the proposed action would apply; and

(B) Any interim committee of the Legislative Assembly responsible for water-related issues; and

(c) Receive and consider a recommendation on the proposal from the ground water advisory committee appointed under ORS 536.090. [1955 c.707 §10(6); 1963 c.414 §1; 1989 c.9 §2; 1989 c.833 §54; 1997 c.510 §1; 2011 c.52 §1]

**536.350 Delivery of water resources statement to certain public bodies; effect.** The Water Resources Commission shall deliver a copy of each water resources statement referred to in ORS 536.300 (2) to each state agency or public corporation of this state which may be concerned with or which may carry on activities likely to affect the use or control of the water resources of this state. Each state agency or public corporation of this state which receives a copy of a water resources statement shall give to the commission a receipt for the water resources statement. A copy of any such statement duly certified by the Water Resources Director to be a full, true and correct copy shall be received in evidence in any court in the state and if the certificate recites that a copy of the statement was delivered to a particular state agency or public corporation of this state, it shall be presumed that the same was actually delivered as stated in the certificate. [1955 c.707 §10(7); 1985 c.673 §16]

**536.360 State agencies and public corporations to conform to statement of state water resources policy.** In the exercise of any power, duty or privilege affecting the water resources of this state, every state agency or public corporation of this state shall give due regard to the statements of the Water Resources Commission and shall conform thereto. No exercise of any such power, duty or privilege by any such state agency or public corporation which would tend to derogate from or interfere with the state water resources policy shall be lawful. [1955 c.707 §11]

**536.370 Exercise of power in conflict with state water resources policy not effective until approved by commission.** (1) No exercise by any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536.350, of any power, duty or privilege, including the promulgating or undertaking of any order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy as set forth in the statement, shall be effective or enforceable until approved by the Water Resources Commission as provided in subsection (2) of this section.

(2) The exercise of any power, duty or privilege referred to in subsection (1) of this section shall be deemed approved by the commission if:

(a) The commission grants its approval as provided in ORS 536.390; or

(b) The commission does not notify the state agency or public corporation within 30 days after the filing of the notification as provided in ORS 536.380 (1) of the intention of the commission to review the proposed exercise of the power, duty or privilege; or

(c) The commission grants its approval as provided in ORS 536.380 (4). [1955 c.707 §12]

**536.380 Notification to commission of proposed exercise of power involving water resources required; review and determination by commission.** (1) Except as otherwise provided in ORS 536.390, whenever any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536.350, proposes to exercise any power, duty or privilege referred to in ORS 536.370 (1), it shall first file with the Water Resources Commission a notification of the proposed exercise. The notification shall be in such form and shall contain a description of the proposed exercise and such other information as the commission may require. The notification shall be a public record in the office of the commission.

(2) Within 30 days after the filing of the notification as provided in subsection (1) of this section, the commission shall notify the state agency or public corporation of the intention of the commission to review the proposed exercise of the power, duty or privilege, if:

(a) The commission, in its discretion, determines that a review should be undertaken; or

(b) A protest against the proposed exercise is filed with the commission within 25 days after the filing of the notification as

provided in subsection (1) of this section by any person, state agency or public corporation of this state or agency of the federal government.

(3) The commission, in its discretion, may hold a public hearing on the proposed exercise of the power, duty or privilege. The commission shall determine the time and place of the public hearing, and shall give written notice thereof to the state agency or public corporation whose proposed exercise of a power, duty or privilege is being reviewed and to each protestant under subsection (2)(b) of this section, if any, at least 10 days prior to the hearing. Notice of the hearing shall also be published in at least one issue each week for at least two consecutive weeks prior to the hearing in a newspaper of general circulation published in each county in which the proposed exercise of the power, duty or privilege is to take place or be effective.

(4) After the commission has notified the state agency or public corporation of the intention of the commission to review the proposed exercise of the power, duty or privilege as provided in subsection (2) of this section, the commission shall undertake the review and proceed therewith with reasonable diligence. At the conclusion of the review the commission shall make a determination approving the proposed exercise, approving the proposed exercise subject to conditions specified in the determination or disapproving the proposed exercise. A copy of the determination by the commission shall be delivered to the state agency or public corporation whose proposed exercise of a power, duty or privilege was reviewed and to each protestant under subsection (2)(b) of this section, if any. [1955 c.707 §14]

**536.390 Approval without filing notification.** The Water Resources Commission may enter into agreements or provide by orders, rules or regulations whereby it approves the exercise of any one or more of the powers, duties or privileges referred to in ORS 536.370 (1) by a state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536.350, without the filing of the notification as provided in ORS 536.380 (1). Each agreement, order, rule or regulation shall specifically provide for the modification or revocation thereof at the discretion of the commission and upon reasonable notice to the state agency or public corporation, and may contain such other conditions, limitations or requirements as the commission, in its discretion, may require to insure the accomplishment of the purposes of the state water resources policy. [1955 c.707 §13]

**536.400 Application to court to compel compliance with state water resources policy.** (1) As used in subsection (2) of this section, "violation" means any exercise or attempt to exercise by any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536.350, of any power, duty or privilege which would in any way conflict with the state water resources statement, without the approval of the Water Resources Commission as provided in ORS 536.370 (2).

(2) The commission, may apply to the circuit court of the county in which a violation is alleged to exist for the restraining by appropriate process of the commission or continuation of a violation, or for the enforcement by appropriate process of compliance with ORS 536.370 to 536.390. [1955 c.707 §15]

**536.410 Withdrawal of unappropriated waters from appropriation by commission order.** (1) When the Water Resources Commission determines that it is necessary to insure compliance with the state water resources policy or that it is otherwise necessary in the public interest to conserve the water resources of this state for the maximum beneficial use and control thereof that any unappropriated waters of this state, including unappropriated waters released from storage or impoundment into the natural flow of a stream for specified purposes, be withdrawn from appropriation for all or any uses including exempt uses under ORS 537.545, the commission, on behalf of the state, may issue an order of withdrawal.

(2) Prior to the issuance of the order of withdrawal the commission shall hold a public hearing on the necessity for the withdrawal. Notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks prior to the hearing in a newspaper of general circulation published in each county in which are located the waters proposed to be withdrawn.

(3) The order of withdrawal shall specify with particularity the waters withdrawn from appropriation, the uses for which the waters are withdrawn, the reason for the withdrawal and the duration of the withdrawal. The commission may modify or revoke the order at any time.

(4) Copies of the order of withdrawal and notices of any modification or revocation of the order of withdrawal shall be filed in the Water Resources Department.

(5) While the order of withdrawal is in effect, no application for a permit to appropriate the waters withdrawn for the uses specified in the order and no application for a preliminary permit or license involving ap-

propriations of such waters shall be received for filing by the Water Resources Commission. [1955 c.707 §16; 1961 c.224 §11; 1985 c.673 §17; 1989 c.833 §55]

## COOPERATION WITH OTHER ENTITIES

**536.420 Representation of state in carrying out compacts and agreements with other governmental agencies regarding water resources.** (1) The Governor shall designate the Water Resources Director or a member or members of the Water Resources Commission to act on behalf of and to represent the state in formulating, entering into and carrying out any formal or informal compact or other agreement authorized by the Legislative Assembly concerning the use and control of the water resources of this state, between this state or any state agency or public corporation thereof and any other state, any state agency or public corporation thereof or the federal government or any agency thereof.

(2) The representative or representatives designated by the Governor under subsection (1) of this section shall make every effort practicable to ensure that the compact or other agreement, as formulated, entered into and carried out, is in harmony with the state water resources policy and otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this state.

(3) The commission in carrying out an investigation pertaining to water resources may cooperate with state agencies of California for the purpose of formulating, executing and submitting to the legislatures of Oregon and California for their approval, interstate compacts relative to the distribution and use of the waters of Goose Lake and tributaries thereto. No compacts or agreements formulated as provided in this section are binding upon this state until they have been approved by the legislature of this state and the Congress of the United States.

(4) Any state agency or public corporation of this state required or permitted by law to formulate, enter into or carry out any compact or other agreement referred to in subsection (1) of this section shall give timely and adequate notice to the commission before it undertakes any action under such requirement or permission. [1955 c.707 §17; 1961 c.298 §1; 1975 c.581 §25; 1999 c.59 §169]

**536.430** [1955 c.707 §18; renumbered 536.231 in 2013]

**536.440 Investigations and studies.** The Water Resources Commission, by itself or in conjunction with any person, local voluntary committee or association, state agency or public corporation of this or any other state, any interstate agency or any agency of the federal government, may conduct such investigations, surveys or studies, including the holding of public hearings, relating to the water resources of this state as it deems necessary to facilitate and assist in carrying out its functions as provided by law. [1955 c.707 §20]

**536.450 Assistance by commission to other persons and agencies.** The Water Resources Commission may make available technical advice and information for the purpose of assisting any person, local voluntary committee or association, state agency or public corporation of this state, any interstate agency or any agency of the federal government in the preparation, carrying into effect and properly sustaining any plan, program or project concerning the use or control of the water resources of this state in harmony with the state water resources policy or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this state. [1955 c.707 §19]

**536.460 Preparation and submission of information or recommendations to other persons or agencies.** The Water Resources Commission may prepare and submit information or proposals and recommendations relating to the water resources of this state or the functions of the commission as provided by law to any person, local voluntary committee or association, state agency or public corporation of this or any other state, any interstate agency, any agency of the federal government or any committee of the legislature of this or any other state or of the Congress of the United States. [1955 c.707 §22]

**536.470 Coordination of local, state, interstate and federal programs.** The Water Resources Commission may consult and cooperate with any state agency or public corporation of this or any other state, any interstate agency or any agency of the federal government for the purpose of promoting coordination between local, state, interstate and federal plans, programs and projects for the use or control of the water resources of this state or to facilitate and assist the commission in carrying out its functions as provided by law. [1955 c.707 §21]

**536.480 Making available information concerning water resources.** The Water Resources Commission, insofar as practicable, shall make available, free or at cost, to the public and to any state agency or public corporation of this or any other state, any interstate agency or any agency of the federal government, information concerning the water resources of this state or the functions of the commission as provided by law, in-

cluding information relating to the state water resources policy, to any plan or program devised by the commission for the development of the water resources of this state, to the results of any investigation, survey or study conducted by the commission and to the results of any hearing held by the commission. [1955 c.707 §23]

**536.490 Attendance at conferences and meetings.** The Water Resources Commission, or any member thereof or any other person designated by the commission, may attend and participate in any public conference, meeting or hearing held within or without this state for the purpose of considering water resources problems. [1955 c.707 §24]

**536.500 Acceptance and expenditure of moneys from public and private sources.** The Water Resources Commission may accept and expend moneys from any public or private source, including the federal government, made available for the purpose of encouraging, promoting and securing the maximum beneficial use and control of the water resources of this state or to facilitate and assist in carrying out its functions as provided by law. All moneys received by the commission under this section shall be deposited in the State Treasury and, unless otherwise prescribed by the source from which such moneys were received, shall be kept in separate accounts in the General Fund designated according to the purposes for which the moneys were made available. Notwithstanding the provisions of ORS 291.238, all such moneys are continuously appropriated to the commission for the purposes for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [1955 c.707 §25]

**536.510** [1955 c.707 §26; repealed by 1985 c.673 §185]

**536.520 State agencies and public corporations furnishing information and services to commission.** (1) In order to facilitate and assist in carrying out its functions as provided by law, the Water Resources Commission may:

(a) Call upon state agencies or public corporations of this state to furnish or make available to the commission information concerning the water resources of this state which such state agencies or public corporations have acquired or may acquire in the performance of their functions.

(b) Have access to the records, facilities or projects of state agencies or public corporations of this state, insofar as such records, facilities or projects may concern the water resources of this state or the functions of the commission with regard thereto.

(c) Otherwise utilize the services, records and other facilities of state agencies or public corporations of this state to the maximum extent practicable.

(2) Upon request by the commission, all officers and employees of state agencies or public corporations of this state shall cooperate to the maximum extent practicable with the commission under subsection (1) of this section.

(3) Upon receipt and approval by the commission of approved claims therefor, any special or extraordinary expense incurred by any state agency or public corporation of this state in cooperating with the commission under this section shall be paid by the commission. [1955 c.707 §§27,28]

**536.530** [1955 c.707 §29; repealed by 1975 c.581 §29 and by 1975 c.605 §33]

**536.540 Approval of voucher claims.** All voucher claims for indebtedness or expenses authorized and incurred by the Water Resources Commission in carrying out its functions as provided by law shall be approved by the commission or as provided in ORS 293.330. [1955 c.707 §31]

**536.550** [1955 c.707 §30; repealed by 1985 c.673 §185]

**536.560** [1955 c.707 §76; 1979 c.284 §164; repealed by 1985 c.673 §185]

## MISCELLANEOUS PROVISIONS

**536.570 Moneys and securities of irrigation districts in possession of Water Resources Commission; deposit with State Treasurer.** The Water Resources Commission may deposit with the State Treasurer for safekeeping all moneys and securities which may come into the commission's possession in connection with the reorganization, retirement or settlement of the bonds, warrants or other evidences of indebtedness of any irrigation district within the state. When so deposited the State Treasurer shall safely keep the same subject to call of the Water Resources Commission. [Formerly 544.050; 1957 c.351 §3; 1985 c.673 §19]

**536.580 Rights acquired prior to August 3, 1955, not affected.** Nothing in ORS 509.645, 536.220 to 536.540 or 543.225, as enacted by chapter 707, Oregon Laws 1955, nor in the amendments made by chapter 707, Oregon Laws 1955, to ORS 225.290, 225.300, 261.325, 261.330, 509.610, 509.625, 537.170, 537.200 (1969 Replacement Part), 543.050 or 543.230, nor in sections 38, 41, 43, 45 or 50 of chapter 707, Oregon Laws 1955, nor in ORS 509.585 shall be construed to take away or impair any right to any waters or to the use of any waters vested and inchoate prior to August 3, 1955. [1955 c.707 §55; 1973 c.723 §125; 1985 c.673 §181; 2001 c.923 §15]

**536.590 Rights acquired prior to January 1, 1956, not affected.** Nothing in the amendments made by chapter 707, Oregon Laws 1955, to ORS 182.410, 536.010 (1973 Replacement Part), 542.110, 548.365, 555.030 or 555.070, nor in sections 58 to 65, 70 or 75 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested or inchoate prior to January 1, 1956. [1955 c.707 §77; 1969 c.168 §2; 1985 c.673 §182]

**536.595 Department discussions with Corps of Engineers over operation of Detroit Lake.** In discussions held with the United States Army Corps of Engineers over seasonal operations of impoundments within the Willamette Basin reservoir system, including Detroit Lake, the Water Resources Department shall:

(1) Specify that the State of Oregon has determined that Detroit Lake is an important recreational resource to the citizens of Oregon.

(2) Encourage the United States Army Corps of Engineers to place Detroit Lake as the highest priority recreational use lake in the Willamette Basin reservoir system.

(3) If the United States Army Corps of Engineers indicates that recreational use of Detroit Lake will not receive the highest priority, notify communities that may be detrimentally affected by such a decision and hold public meetings within the affected communities. [2001 c.837 §1]

**Note:** 536.595 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**536.600** [1993 c.765 §104; renumbered 541.345 in 1995]

## EMERGENCY WATER SHORTAGE POWERS

**536.700 "Drainage basin" defined.** As used in ORS 536.700 to 536.780, "drainage basin" means one of the 18 Oregon drainage basins identified by the Water Resources Department as shown on maps published by that department dated January 1976. [1977 c.541 §3]

**536.710 Policy.** (1) The Legislative Assembly finds that an emergency may exist when a severe, continuing drought results in a lack of water resources, thereby threatening the availability of essential services and jeopardizing the peace, health, safety and welfare of the people of Oregon.

(2) The Legislative Assembly finds it necessary in the event of an emergency described in subsection (1) of this section, to promote water conservation and to provide an orderly procedure to assure equitable curtailment, adjustment, allocation or regulation in the domestic, municipal and industrial use of water resources where more than one user is dependent upon a single source of supply. [1977 c.541 §1]

**536.720 Declaration of state authority; Governor's power to order water conservation or curtailment plan.** (1) Because municipal and other political subdivision boundaries do not conform with the geographic boundaries of the 18 major drainage basins, or associated subbasins in the state, and because problems caused by a severe continuing drought may exceed local ability to control, the Legislative Assembly declares that water resource conservation in time of severe, continuing drought requires the exercise of state authority.

(2)(a) After a declaration that a severe, continuing drought exists, or is likely to exist, the Governor may order individual state agencies and political subdivisions within any drainage basin or subbasin to implement, within a time certain following the declaration, a water conservation or curtailment plan or both, approved under ORS 536.780.

(b) Each state agency and political subdivision ordered to implement a water conservation or curtailment plan shall file with the Water Resources Commission such periodic reports regarding implementation of the plans as the commission or the Governor may require.

(3) Orders provided for in subsection (2) of this section and curtailments, adjustments, allocations and regulations ordered pursuant thereto shall be designed insofar as practicable not to discriminate within any class of consumers.

(4) It is the intent of the Legislative Assembly that curtailments, adjustments, allocations and regulations ordered pursuant to subsection (2) of this section be continued only so long as a declaration by the Governor of the existence of severe, continuing drought is in effect.

(5) The Governor may direct individual state agencies and political subdivisions of this state to seek enforcement of all orders and regulations issued pursuant to ORS 536.780 and subsection (2) of this section. [1977 c.541 §2; 1985 c.673 §20; 1989 c.87 §7]

**536.730 Effect of emergency powers on vested water rights.** Except as provided in ORS 536.740 and 536.750, nothing in ORS 536.700 to 536.780 is intended to permit the Governor or the Water Resources Commission to hinder the ability of any holder of a vested water right to obtain and use legally assured benefits of that right. [1977 c.541 §4; 1989 c.87 §8]

**536.740 Governor's authority to declare drought.** Upon finding that a need exists for statewide coordination of water resource conservation measures by municipal and other political subdivisions of this state in order to minimize problems caused by a severe shortage of water, the Governor may declare that a severe, continuing drought exists or is likely to exist. [1989 c.87 §2]

**536.750 Powers of commission after declaration of drought; rules.** (1) Notwithstanding any provision of ORS chapters 536 to 543A, after a declaration that a severe, continuing drought exists, the Water Resources Commission may:

(a) Issue without first conducting a hearing under ORS 537.170, a temporary permit for an emergency use of water;

(b) Allow a temporary change in use, place of use or point of diversion of water without complying with the notice and waiting requirements under ORS 540.520;

(c) Notwithstanding the priority of water rights, grant preference of use to rights for human consumption or stock watering use;

(d) Waive the notice requirements under ORS 537.753 and the report required under ORS 537.762;

(e) Allow a temporary exchange of water without giving notice as required under ORS 540.535; and

(f) Utilize an expedited notice and waiting requirement established by rule for the substitution of a supplemental ground water right for a primary water right under drought conditions in place of the notice and waiting requirement provided in ORS 540.524.

(2) The commission by rule may establish procedures for carrying out the provisions of this section and a schedule of fees that must accompany a request under subsection (1) of this section. [1989 c.87 §3; 1999 c.873 §20; 2001 c.788 §1]

**536.760 Cessation of actions taken under ORS 536.750.** Any action taken under ORS 536.750 may be carried out only during the period of severe, continuing drought. After the drought, any water use undertaken under ORS 536.750 must cease or comply with the applicable provisions of ORS 537.110 to 537.252, 537.505 to 537.795 and 537.992 or 540.520 and 540.530. [1989 c.87 §4]

**536.770 Purchase of option or agreement for use of water permit or right during declared drought; application; fee.** (1) The Water Resources Commission or a local government, public corporation or water right holder may purchase an option or enter an agreement to use an existing permit or water right during the time in which a severe, continuing drought is declared to exist.

(2) A local government, public corporation or water right holder proposing to purchase an option or enter an agreement under this section shall submit to the commission an application accompanied by the fee required under ORS 536.050 (1)(a).

(3) After approval of the application by the commission, the option or agreement user:

(a) Is not required to construct any diversion or appropriation facilities or works;

(b) May use the water acquired under the option or agreement on property or for a use different than allowed in the permit or water right transferred under the option or agreement, if the water is used to replace water not available to the local government, public corporation or water right holder because of the drought; and

(c) May begin use at any time after approval by the commission so long as the total use by the water right or permit holder and the option or agreement user is within the rate, volume and seasonal limits of the permit or water right. [1989 c.87 §5; 1993 c.349 §1; 1997 c.587 §3; 2001 c.788 §2]

**536.780 Water conservation or curtailment plan; contents; review; effect of failure to file or implement.** (1) The Water Resources Commission, upon a finding that a severe or continuing drought is likely to occur, may order individual state agencies and political subdivisions within any drainage basin or subbasin to develop and file with the commission, within 30 days following the order, a water conservation or curtailment plan or both. The commission may allow the state agencies and political subdivisions more than 30 days following the order to file the plan depending on the urgency for the plan.

(2)(a) The water conservation plan shall specify efforts to be made:

(A) To reduce usage of water resources for nonessential public purposes;

(B) To undertake activities consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources; and

(C) To establish programs consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources.

(b) When a state agency or political subdivision files a water conservation plan with the Water Resources Commission, the commission shall review the plan and approve it if the commission finds that the plan satisfactorily promotes uniformity in water con-

servation practices and the coordination of usage regulation, taking into account local conditions.

(3)(a) The water curtailment plan, in order to provide water necessary for human and livestock consumption during a severe and continuing drought, shall specify efforts to be made:

(A) To curtail, adjust or allocate the supply of water resources for domestic, municipal and industrial use; and

(B) To regulate the times and manner in which water resources are consumed.

(b) When a state agency or political subdivision files a water curtailment plan with the Water Resources Commission, the commission shall review the plan and approve it if the commission finds that the plan satisfactorily promotes uniformity in water curtailment practices and the coordination of usage regulation, taking into account local conditions.

(4) If a state agency or political subdivision fails to file a water conservation or curtailment plan when so ordered, or if the commission does not approve a filed plan, the commission may develop appropriate plans. [1989 c.87 §6]

## PENALTIES

**536.900 Civil penalties; imposition.** (1) In addition to any other liability or penalty provided by law, the Water Resources Commission may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a permit, certificate or license issued under ORS chapters 536 to 543A.

(b) Violation of ORS 537.130 or 537.535.

(c) Violation of ORS 537.545 (5) or (6) or of a rule described in ORS 537.545 (8).

(d) Violation of any rule or order of the Water Resources Commission that pertains to well maintenance.

(e) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

(2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

(3) In the event the petitioner knowingly misrepresents the map and petition required in ORS 541.329, the commission may assess a penalty of up to $1,000 based upon guidelines to be established by the commission. In addition, the petition and map shall be amended to correct the error at the petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

(4) A civil penalty may not be imposed until the commission prescribes a reasonable time to eliminate the violation. The commission shall notify the violator of the time allowed to correct a violation within five days after the commission first becomes aware of the violation.

(5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the use of water under ORS 540.150 may not be considered a violation under subsection (1) of this section. [1989 c.618 §1; 1991 c.869 §5; 1993 c.818 §5; 1999 c.873 §21; 2001 c.788 §§6,12; 2003 c.705 §§17,18; 2009 c.819 §2]

**Note:** 536.900 to 536.935 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**536.905 Notice; application for hearing.** (1) Any civil penalty under ORS 536.900 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the commission. [1989 c.618 §2; 1991 c.734 §50]

**Note:** See note under 536.900.

**536.910 Amount of penalty; rules.** After public hearing, the Water Resources Commission by rule shall adopt a schedule establishing the civil penalty that may be imposed under ORS 536.900 and the time allowed to correct each violation. However, the civil penalty may not exceed $5,000 for each violation. [1989 c.618 §3]

**Note:** See note under 536.900.

**536.915 Remission or reduction of penalty.** A civil penalty imposed under ORS 536.900 may be remitted or reduced upon such terms and conditions as the Water Resources Commission considers proper and consistent with the public health and safety and protection of the public interest in the waters of this state. [1989 c.618 §4]

**Note:** See note under 536.900.

**536.920 Factors to be considered in imposition of penalty.** In imposing a penalty pursuant to the schedule adopted pursuant to ORS 536.910, the Water Resources Commission shall consider the following factors:

(1) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation.

(2) Any prior violations of statutes, rules or orders pertaining to water use.

(3) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(4) The immediacy and extent to which the violation threatens other rights to the use of water or the public health or safety or the public interest in the waters of this state. [1989 c.618 §5]

**Note:** See note under 536.900.

**536.925** [1989 c.618 §12; repealed by 1991 c.734 §122]

**536.930 Consequence of failure to follow order.** Any owner or operator who fails without sufficient cause to take corrective action as required by an order of the Water Resources Commission shall be liable for damages not to exceed the amount of all expenses incurred by the Water Resources Department in carrying out the department's enforcement duties related to the corrective action. [1989 c.618 §7; 1991 c.734 §51]

**Note:** See note under 536.900.

**536.935 Disposition of penalties; appropriation.** All penalties recovered under ORS 536.930 shall be paid into the State Treasury and credited to an account of the Water Resources Department. Such moneys are continuously appropriated to the department to carry out the provisions of ORS chapters 536 to 543A. [1989 c.618 §8; 1999 c.873 §22]

**Note:** See note under 536.900.

# Chapter 537

## 2015 EDITION

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**537.010 Definition of "Water Rights Act."** As used in this chapter, "Water Rights Act" means and embraces ORS 536.050, 537.120, 537.130, 537.140 to 537.252, 537.390 to 537.400, 538.420, 540.010 to 540.120, 540.210 to 540.230, 540.310 to 540.430, 540.505 to 540.585 and 540.710 to 540.750. [Amended by 1985 c.673 §183]

**537.015** [1993 c.654 §2; repealed by 2005 c.14 §4]

**537.017** [1993 c.654 §3; repealed by 2005 c.14 §4]

**537.020** [1993 c.654 §4; 1995 c.416 §43; 1999 c.664 §4; 2003 c.594 §8; repealed by 2005 c.14 §4]

**537.022** [1993 c.654 §5; repealed by 2005 c.14 §4]

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**537.030** [1993 c.654 §8; repealed by 2005 c.14 §4]

**537.032** [1993 c.654 §9; repealed by 2005 c.14 §4]

## PUBLIC AGENCY WATER USE REGISTRATION

**537.040 Registration of water for road construction, maintenance or reconstruction; fee; annual renewal statement; limitations; rules.** (1) In lieu of applying for a permit for a water right under ORS 537.130, a public agency having jurisdiction over roads or highways may register a water use for road and highway maintenance, construction and reconstruction purposes.

(2) A public agency applying to register a water use under subsection (1) of this section shall:

(a) Submit a completed application to register the water use;

(b) Pay a fee of $300 to be deposited in the Water Resources Department Water Right Operating Fund;

(c) Provide a map indicating the general locations of points of diversion;

(d) Identify the sources of surface water or ground water to be used;

(e) Specify the maximum amount of water to be used during a calendar year and during any 24-hour period; and

(f) If the public agency is withdrawing water from a conveyance or storage facility that is a perfected or certificated water right:

(A) Identify the permit or certificate number of the conveyance or storage right; and

(B) Provide written authorization from the owner of the perfected or certificated water right that allows the public agency to use water from the conveyance or storage facility.

(3) A use of water registered under subsection (1) of this section shall continue until the public agency voluntarily withdraws the registration. However, the public agency shall submit an annual renewal statement accompanied by an annual fee of $50 to be deposited in the Water Resources Department Water Right Operating Fund. The annual renewal statement shall specify any change in the map, the sources of water to be used or maximum amount of water to be used.

(4) The use of water registered under subsection (1) of this section:

(a) Shall not have priority over any water right exercised under a permit, water right certificate, certificate of registration, order of the Water Resources Commission or the Water Resources Director and related court decrees;

(b) Shall be subordinate to all other future permitted or certificated rights; and

(c) Shall not exceed 50,000 gallons from a single source during any 24-hour period.

(5) The commission may require a public agency to cease withdrawal or diversion of water at any time the director has reason to believe the registered use is causing a significant adverse impact upon:

(a) The affected watershed;

(b) Any other water user entitled to use water under a permit issued under ORS 537.211 or 537.625 or a certificate issued under ORS 537.250, 537.630 or 539.140; or

(c) An in-stream water right established under ORS 537.332 to 537.360.

(6) The commission may adopt rules to implement this section. The commission shall not require the map to be prepared by a water right examiner certified under ORS 537.798.

(7) As used in this section, "public agency" means the State of Oregon, any agency of the State of Oregon, a county, a special road district of a county, a city, town, incorporated municipality and any federal agency that has jurisdiction over a roadway in this state. [1993 c.705 §2; 1995 c.416 §44; 1999 c.664 §5; 2003 c.594 §7]

## GEOTHERMAL WELLS

**537.090 Laws applicable to geothermal wells.** (1) The provisions of this chapter relating to appropriation and water rights do not apply to the production of fluid from a well with a bottom hole temperature of at least 250 degrees Fahrenheit.

(2) Production of fluids from a well with a bottom hole temperature of at least 250 degrees Fahrenheit shall be regulated as a geothermal resource under the applicable sections of ORS chapter 522.

(3) If the bottom hole temperature of a well that was initially less than 250 degrees Fahrenheit increases to at least 250 degrees Fahrenheit, the State Geologist and the Water Resources Commission, after consulting with the well owner, shall determine the agency with regulatory responsibility for that specific well. This determination shall be documented in writing and shall supersede a determination made under subsection (2) of this section. [1981 c.589 §3; 1985 c.673 §21]

**537.095 Interference between geothermal well and other water appropriation.** If interference between an existing geothermal well permitted under ORS chapter 522 and an existing water appropriation permitted under this chapter is found by either the State Geologist or the Water Resources Commission, the State Geologist and the Water Resources Commission shall work cooperatively to resolve the conflict and develop a cooperative management program for the area. In determining what action should be taken, they shall consider the following goals:

(1) Achieving the most beneficial use of the water and heat resources;

(2) Allowing all existing users of the resources to continue to use those resources to the greatest extent possible; and

(3) Insuring that the public interest in efficient use of water and heat resources is protected. [1981 c.589 §10; 1985 c.673 §22]

## WATER USE REPORTING

**537.097 Verification of land ownership; time limits; exception.** (1) As the Water Resources Commission updates its water right and permit records with current land ownership information from county records or other sources, the commission shall request the person shown in those updated records to verify that the person owns the land to which a water right or permit is appurtenant.

(2) Any person receiving a request under subsection (1) of this section shall return the verification within 120 days.

(3) Except as provided in subsection (4) of this section, the commission shall request verification from all persons shown in updated water right and permit records on or before July 1, 1992.

(4) If the commission considers verification unnecessary for any water right perfected, transferred or adjudicated after July 16, 1987, the commission need not request verification of that water right or permit. [1987 c.649 §2]

**537.099 Water use report from governmental entity.** (1) Except as provided in subsection (3) of this section, any governmental entity that holds a water right shall submit an annual water use report to the Water Resources Department. The report shall include, but need not be limited to the amount of water used by the governmental entity, the period of use and the categories of beneficial use to which the water is applied.

(2) As used in this section, "governmental entity" includes any state or federal agency, local government as defined in ORS 294.004, irrigation district formed under ORS chapter 545 and a water control district formed under ORS chapter 553.

(3) A governmental entity that acquires land because of default in repayment of loans or other debts owed to the state is not required to file an annual water use report under this section. [1987 c.649 §3]

## APPROPRIATION UNDER 1909 ACT; LIMITED LICENSES

**537.110 Public ownership of waters.** All water within the state from all sources of water supply belongs to the public.

**537.120 Right of appropriation; vested rights protected.** Subject to existing rights, and except as otherwise provided in ORS chapter 538, all waters within the state may be appropriated for beneficial use, as provided in the Water Rights Act and not otherwise; but nothing contained in the Water Rights Act shall be so construed as to take away or impair the vested right of any person to any water or to the use of any water.

**537.130 Permit to appropriate water required; notification to owner of certain land.** (1) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under the registration system set forth in ORS 537.132, any person intending to acquire the right to the beneficial use of any of the surface waters of this state shall, before beginning construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the Water Resources Department for a permit to make the appropriation.

(2) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under the registration system set forth in ORS 537.132, a person may not use, store or divert any waters until after the department issues a permit to appropriate the waters.

(3) The department may not issue a permit without notifying the owner, as identified in the application, of any land to be crossed

by the proposed ditch, canal or other work as set forth in the application filed pursuant to ORS 537.140. The department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(4) If more than 25 persons are identified in the application as required under subsection (3) of this section, the department may provide the notice required under subsection (3) of this section by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least two successive weeks. The cost of the publication shall be paid by the applicant in advance to the department. [Amended by 1985 c.310 §3; 1985 c.673 §25; 1989 c.509 §3; 1991 c.370 §4; 1995 c.365 §1; 1995 c.416 §2a; 2005 c.14 §2; 2011 c.52 §2]

**537.131 Reclaimed water.** As used in ORS 537.132, 540.510 and 540.610, "reclaimed water" means water that has been used for municipal purposes and after such use has been treated in a treatment works as defined in ORS 454.010, and that, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur. [1991 c.370 §2; 1997 c.244 §1]

**Note:** 537.131 was added to and made a part of ORS chapter 537 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**537.132 Exemption from permit requirement for use of reclaimed water; rules.** (1) The provisions of ORS 537.130 requiring application for a permit to appropriate water shall not apply to the use of reclaimed water, if:

(a) The use of reclaimed water is authorized by the national pollutant discharge elimination system or water pollution control facilities permit issued pursuant to ORS 468B.050 or 468B.053;

(b) The Department of Environmental Quality, in reviewing an application for a permit pursuant to ORS 468B.050 or 468B.053, has consulted with the State Department of Fish and Wildlife on the impact to fish and wildlife to determine that the application of reclaimed water under ORS 537.130, 537.131, 537.132, 540.510 and 540.610 shall not have a significant negative impact on fish and wildlife; and

(c) The Department of Environmental Quality has determined the use of reclaimed water is intended to improve the water quality of the receiving stream.

(2) Any person using or intending to use reclaimed water shall file with the Water Resources Department a reclaimed water registration form setting forth the following:

(a) Name and mailing address of the registrant;

(b) The date the use of reclaimed water is initiated;

(c) Source of reclaimed water supply, including a description of the location of the reclaimed water treatment facility and the name and mailing address of the owner and operator of the facility;

(d) Nature of the use of the reclaimed water;

(e) Amount of reclaimed water used or proposed to be used;

(f) Location and description of the ditch, canal, pipeline or any other conduction facility used or to be used to transport the reclaimed water from the treatment facility to the place of use;

(g) A statement declaring the existence of a written contract or agreement to provide reclaimed water including the name and address of the reclaimed water provider and the date and terms of such contract or agreement;

(h) A description of the season of use and the place of use of the reclaimed water, and any restrictions applicable to the use of the reclaimed water; and

(i) If the reclaimed water is used in lieu of using water under an existing water right, the application, permit and certificate number of such right, or if the right is granted pursuant to a decree of circuit court, the volume and page number setting forth the right.

(3) If a municipality has discharged waste water into a natural watercourse for five or more years, and the discharge represents more than 50 percent of the total average flow of the natural watercourse and if such discharge would cease as a result of the use of reclaimed water in accordance with the provisions of ORS 540.510 (3) and this section, the director of the department shall notify any persons who, according to the department records, have a water right that may be affected by the cessation of the discharge by the municipality.

(4) If a person holding an affected water right demonstrates to the department that the cessation of discharge by the municipality substantially impairs the ability to satisfy a water right, the person shall be entitled to a preference to the use of the reclaimed water. However, the delivery of the reclaimed water to the person claiming such preference shall be accomplished through a conveyance facility or channel other than a natural watercourse.

(5) If a municipality has a less expensive alternative for the disposal and distribution

of the reclaimed water, the municipality shall not be obligated to incur expenses or cost beyond the expenses or costs of such alternative.

(6) The Water Resources Commission shall adopt rules to implement the notice and preference provisions and impairment evaluation standards of this section. [1991 c.370 §3; 1997 c.286 §8]

**Note:** 537.132 was added to and made a part of ORS chapter 537 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**537.133 Permittee's right to enter on forestland; notice.** (1) A permittee may not enter upon forestland adjacent to the point of diversion designated in the permit until such person provides notice to the landowner of the permittee's intention to enter upon such property. The notice shall:

(a) Be in writing;

(b) Be mailed to the landowner 30 days prior to the commencement of any construction, maintenance or repair work; and

(c) Give a complete description of the location and duration of the work project.

(2) If a permittee fails to provide the notice required in subsection (1) of this section, the permittee shall not obtain any right to continued use of the land without the express written consent of the landowner.

(3) For purposes of determining whether a prescriptive easement or way of necessity has been established under Oregon common law, unimproved or unenclosed forestlands shall include commercial forestland parcels larger than 20 acres. [1989 c.509 §5]

**Note:** 537.133 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.135 Permit required to appropriate water for recharging ground water sources; minimum perennial streamflow required for permit; exception.** (1) The appropriation of water for the purpose of recharging ground water basins or reservoirs is declared to be for a beneficial purpose. Permits for such appropriation may be granted by the Water Resources Department on application made therefor. Any such application shall substantially comply with ORS 537.140 and shall be subject to the provisions of ORS 537.150 to 537.230, as are other applications and permits to appropriate water.

(2) Any person proposing to apply to a beneficial use the water stored artificially in any such ground water basin or reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.230. The application shall refer to the artificially recharged ground water basin or reservoir as a supply of water and shall include the written consent of the holder of the recharge permit or certificate to appropriate the artificially recharged water.

(3) The Water Resources Commission shall develop standards that an applicant must meet before the department approves a permit to appropriate water for the purpose of recharging ground water.

(4) Before issuing a permit for the purpose of recharging ground water, the department shall determine, under ORS 537.170, whether the proposed ground water recharge project would impair or be detrimental to the public interest.

(5) The department shall not issue a ground water recharge permit unless the supplying stream has a minimum perennial streamflow established for the protection of aquatic and fish life. The State Department of Fish and Wildlife may waive this prerequisite if a minimum perennial streamflow for protection of aquatic and fish life is not required for the supplying stream. [1961 c.402 §1; 1985 c.673 §26; 1987 c.499 §1; 1995 c.416 §3]

**537.139 Failure to obtain authorization for access to certain land.** (1) The failure of an applicant to obtain written authorization, obtain an easement or acquire ownership of land if required as a condition to issuance of a permit under ORS 537.211 (2) shall be a ground for refusal to issue a permit.

(2) If an applicant makes a statement under ORS 537.140 (1)(a)(E) that falsely states that the applicant owns all lands crossed by a proposed ditch, canal or other work or that the applicant has obtained written authorization or an easement permitting access across such lands, any permit issued in response to the application shall be subject to cancellation.

(3) Nothing in ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310 requires the Water Resources Department to mediate or arbitrate a dispute between a permittee and a landowner with respect to the provisions of ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310. [1989 c.509 §8; 1995 c.365 §2; 1995 c.416 §4]

**Note:** 537.139 was added to and made a part of 537.110 to 537.330 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**537.140 Application for permit; contents; maps and drawings.** (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 mining operation as defined in ORS 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. [Amended by 1985 c.673 §27; 1987 c.542 §5; 1989 c.509 §4; 1991 c.735 §32; 1991 c.869 §6; 1993 c.557 §1; 1993 c.591 §2; 1995 c.365 §3; 1995 c.416 §5; 1997 c.446 §1; 1997 c.587 §4; 2013 c.371 §31]

**537.141 Uses of water not requiring water right application, permit or certificate; rules.** (1) The following water uses do not require an application under ORS 537.130 or 537.615, a water right permit under ORS

537.211 or a water right certificate under ORS 537.250:

(a) Emergency fire-fighting uses;

(b) Nonemergency fire-fighting training, provided:

(A) The source of the water is existing storage and the use occurs with permission of the owner of the stored water; or

(B) If the source of water is other than existing storage, the use occurs with the prior written approval of the watermaster in the district where the training will take place and subject to any conditions the watermaster determines are necessary to prevent injury to existing water rights and to protect in-stream resources;

(c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water right permit or certificate for the reservoir;

(d) Fish screens, fishways and fish bypass structures, as exempted by rule of the Water Resources Commission;

(e) Land management practices intended to save soil and improve water quality by temporarily impeding or changing the natural flow of diffuse surface water across agricultural lands when storage of public waters is not an intended purpose. Such practices include but are not limited to:

(A) Terraces;

(B) Dikes;

(C) Retention dams and other temporary impoundments; and

(D) Agronomic practices designed to improve water quality and control surface runoff to prevent erosion, such as ripping, pitting, rough tillage and cross slope farming;

(f) Livestock watering operations that comply with the requirements under subsections (2) and (3) of this section;

(g) Forest management activities that require the use of water in conjunction with mixing pesticides as defined in ORS 634.006, or in slash burning;

(h) The collection of precipitation water from an artificial impervious surface and the use of such water;

(i) Land application of ground water so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation; and

(j) Surface mining practices that result in the removal of water from a surface mine subject to an operating permit or reclamation plan approved by the State Department of Geology and Mineral Industries, unless the water is used for a subsequent beneficial use.

(2) The use of surface water for livestock watering may be exempted under subsection (1) of this section if:

(a) The water is diverted from a stream or other surface water source to a trough or tank through an enclosed water delivery system;

(b) The delivery system either is equipped with an automatic shutoff or flow control mechanism or includes a means for returning water to the surface water source through an enclosed delivery system; and

(c) The operation is located on land from which the livestock would otherwise have legal access to both the use and source of the surface water source.

(3) If the diversion system described in subsection (2) of this section is located within or above a scenic waterway, the amount of water that may be used without a water right is limited to one-tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent the Water Resources Commission from approving an application for a water right permit for a delivery system not qualifying under subsection (2) of this section.

(4) The Water Resources Department, in conjunction with local soil and water conservation districts, the Oregon State University Extension Service, the State Department of Agriculture and the State Department of Fish and Wildlife and any other organization interested in participating, shall develop and implement a voluntary educational program on livestock management techniques designed to keep livestock away from streams and riparian areas.

(5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

(a) Submit notice of the proposed use, including the identification of the proposed water source, to the Water Resources Department and to the State Department of

Fish and Wildlife at the time notice is provided to other affected agencies pursuant to ORS 527.670; and

(b) Comply with any restrictions imposed by the department pertaining to sources of water that may not be used in conjunction with the proposed activity.

(6) Except for the use of water under subsection (1)(i) of this section, the Water Resources Commission by rule may require any person or public agency diverting water as described in subsection (1) of this section to furnish information with regard to such water and the use thereof. For a use of water described in subsection (1)(i) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse. [1993 c.595 §3; 1995 c.184 §1; 1995 c.274 §9a; 1995 c.537 §2; 1995 c.752 §7; 1997 c.199 §1; 1997 c.244 §2; 1999 c.335 §1; 2001 c.248 §11; 2003 c.470 §4; 2007 c.189 §1]

**Note:** 537.141 was added to and made a part of ORS chapter 537 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**537.142 Water right permit or certificate not required for egg incubation project under salmon and trout enhancement program.** (1) No water right certificate or permit is required for the use of the surface waters of this state if the water is to be used for a salmon and trout enhancement project certified by the State Department of Fish and Wildlife under ORS 496.430 to 496.460.

(2) The use of water for a salmon and trout enhancement project under subsection (1) of this section is a beneficial use and such use shall be allowed on all the waters of this state, whether or not the project is located on waters of this state for which the use is restricted pursuant to any of the following:

(a) A scenic waterway designation under ORS 390.805 to 390.925.

(b) A statutory withdrawal from appropriation under ORS chapter 538.

(c) A program adopted by the Water Resources Commission under ORS 536.300 to 536.400.

(d) An administrative withdrawal from appropriation by the Water Resources Director or the Water Resources Commission.

(e) Any other statutory or administrative restriction on the use of the waters.

(3) If the use of the waters of this state under subsection (1) of this section conflicts with the use of water under a permit issued under ORS 537.240 or a use allowed under a water right certificate issued under ORS 537.250, the use permitted under subsection (1) of this section shall be subordinate. [1985 c.310 §2; 1989 c.587 §2]

**537.143 Limited license to use or store surface or ground water or to use stored water; rules.** (1) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission may establish by rule a procedure to allow a person to obtain a limited license to use or store ground water not otherwise exempt under ORS 537.545, to use or store surface water, to use stored water or to use stored water for purposes for which the stored water is authorized and in accordance with a contract with a local, state or federal government after the person complies with the notice provisions set forth in ORS 537.144. Uses eligible for a limited license shall be for a short-term or fixed duration and may include but are not limited to road construction and maintenance, general construction and forestland or rangeland management. Except as provided in subsections (4) to (6) and (9) of this section, the use of water for a purpose specifically prohibited by a basin program or for irrigation is not eligible for a limited license.

(2) The use of water under a limited license under subsection (1) of this section shall not have priority over any water right exercised according to a permit or certificate and shall be subordinate to all other authorized uses that rely upon the same source. The Water Resources Department may revoke the right to use of water acquired under a limited license pursuant to subsection (1) of this section at any time if the use causes injury to:

(a) Any other water right; or

(b) A minimum perennial streamflow.

(3) Except as provided in subsections (4), (5) and (11) of this section, the licensee shall give notice to the Water Resources Department at least 15 days in advance of using the water under the limited license and shall maintain a record of use. The record shall include but need not be limited to an estimate of the amount of water used, the period of use and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be available for review by the department upon request.

(4) The Water Resources Director may issue a limited license in conjunction with an enforcement order to address an illegal water use, including irrigation use or a use specifically prohibited by a basin program.

The director may issue a limited license for such a use upon a finding that:

(a) The person did not knowingly violate state laws regarding a water use permit;

(b) The immediate termination of the illegal use would cause serious and undue hardship to the water user that could be ameliorated by providing a period of time in which to achieve compliance with the law; and

(c) The continued use under a limited license outweighs the public benefits of termination, including deterrence of illegal uses and protection of the water source.

(5) An enforcement order issued under subsection (4) of this section shall specify an amount of time in which the person using water illegally shall bring such use into compliance. The duration of the limited license shall not exceed the duration of time allowed in the enforcement order to achieve compliance. A licensee using water under a limited license issued in conjunction with an enforcement order need not provide the department with advance notice of water use, but shall comply with the other requirements of this section.

(6) The director may issue a limited license for irrigation if the sole purpose of the use is:

(a) To provide water necessary to establish a crop for which no further irrigation will be required after the crop is established;

(b) To mitigate the impacts of drought when additional water is needed beyond a prescribed irrigation season in order to avoid irreparable damage to the user's crop; or

(c) Under a limited license issued pursuant to subsection (9) of this section.

(7) Nothing in this section is intended to prohibit any person from obtaining a water right certificate under ORS 537.250 or 537.630 for any use for which a limited license is obtained under this section.

(8) Except as provided in subsection (10) of this section, the department may not issue a limited license for the same use for more than five consecutive years.

(9) Notwithstanding any other provision of this section, if the use of water under the limited license is for the use of stored water consistent with the purposes for which the stored water is authorized and the use of water is authorized by a contract between the user and a local, state or federal government:

(a) The limited license may be issued for a period of up to one year; and

(b) The limited license shall be revoked if the contract between the user and the local, state or federal government is terminated for any reason.

(10) At the end of the one-year limited license period in subsection (9) of this section, the user may reapply for a limited license under ORS 537.144 provided that there is an authorized contract between the user and a local, state or federal government.

(11) The director may issue a limited license authorizing immediate use of water if the director finds that an emergency exists and the water is needed to protect the public health, safety and welfare. Notwithstanding subsection (8) of this section, the director may issue a limited license for such a use for a period of 60 days. [1989 c.933 §2; 1993 c.595 §1; 1995 c.274 §8; 1997 c.38 §1; 1997 c.366 §1]

**537.144 Request for right to use water under limited license; fee.** (1) Any person requesting the right to use water under a limited license under ORS 537.143 shall notify the Water Resources Department on a form provided by the department.

(2) If the request submitted under subsection (1) of this section is to use stored water for purposes for which the stored water is authorized and pursuant to a contract between the user and a local, state or federal government:

(a) The person also shall submit:

(A) A copy of the contract;

(B) A map indicating the point of diversion and the place of use; and

(C) Any other information required by the Water Resources Commission that is necessary to evaluate the request as established by statute and the rules of the commission.

(b) Upon the filing of the request under this subsection, the department shall determine whether the request contains the information listed under paragraph (a) of this subsection and is complete and not defective, including the payment of any fee required by the commission. If the department determines that the request is incomplete or defective or that all fees have not been paid, the department shall return all fees and the request. If the department determines that a request contains the information listed under paragraph (a) of this subsection and is complete and not defective, the department shall proceed with the review of the request and issuance of the limited license if the use complies with the requirements of ORS 537.143.

(3) The notification required under subsection (1) or (2) of this section shall be accompanied by the fee established by rule by the Water Resources Commission.

(4) The department shall notify the person whether the department grants the limited license.

(5) A request for the right to use stored water under a limited license as described in subsection (2) of this section may be made concurrently with an application for a permit to appropriate water under ORS 537.140. [1989 c.933 §3; 1995 c.274 §11; 1997 c.366 §2]

**537.145 Notice of filing of application to appropriate water for hydroelectric purposes.** (1) If an application is made for a permit to appropriate water for hydroelectric purposes, the Water Resources Department shall give written notice of the filing of the application to the owner of any land that is:

(a) Adjacent to any portion of the stream in which the quantity of water will be decreased by the project; or

(b) Adjacent to the site of the proposed hydroelectric project.

(2) The department shall also publish notice of the application once each week for at least two successive weeks and for such further time, if any, as the department shall determine, in a newspaper of general circulation in each county in which the project covered by the application is located. [1985 c.569 §22; 1995 c.416 §8; 2011 c.52 §3]

**537.147 Permit to use stored water; fee.** (1) Notwithstanding the process for applying for a water right permit established in ORS 537.150 to 537.230, a person may, pursuant to this section, apply to the Water Resources Department for a water right permit to use stored water. A person applying under this section for a water right permit to use stored water shall submit:

(a) A fee, in the amount required by ORS 536.050 for applications to appropriate stored water.

(b) A completed application for a secondary permit, in a form determined by the department, that contains the information required of applications under ORS 537.140 and 537.400 (1).

(c) Evidence that the proposed use of the stored water is one of the authorized uses under the water right permit, certificate or decree that allows the storage of water.

(2) If an applicant provides, to the satisfaction of the department, the fee and the information required by subsection (1) of this section, the department may, after public notice and a 30-day opportunity to submit comments on the application, issue a water right permit upon determining that no public interest issues as identified in ORS 537.170 (8) have been raised through the comments submitted.

(3) If the department determines that public interest issues have been identified, then the department shall treat the application under this section as an application under ORS 537.150 and perform the public interest review required by ORS 537.153 (2).

(4) At a minimum, a water right permit issued by the department for use of stored water under this section shall be conditioned to require:

(a) Fish screens and by-pass devices and fish passage as may be required by the State Department of Fish and Wildlife; and

(b) A measuring device at each point of diversion authorized under the water right permit.

(5) Within 10 days of issuing a water right permit under this section, the department shall provide notice of the permit issuance in the weekly notice published by the department and to persons who have submitted comments pursuant to subsection (2) of this section. [2005 c.37 §2]

**537.150 Filing of application; determination of completeness; initial review; preliminary determination; notice; public comments; fees.** (1) Within 15 days after receiving an application, the Water Resources Department shall determine whether the application contains the information listed under ORS 537.140 (1) and is complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the department determines that the application is incomplete or defective or that not all fees have been paid, the department shall return the fees paid and the application.

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

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

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

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

(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 $225. 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]

**Note:** The amendments to 537.150 by section 4, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

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

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

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

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

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

(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 $200. 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).

**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;

(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 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 hearings 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 the fee required under ORS 536.050 (1)(p). [Amended by 1955 c.707 §36; 1961 c.224 §12; 1963 c.378 §1; 1975 c.581 §26; 1985 c.569 §19; 1985 c.673 §30; 1995 c.416 §13; 1997 c.587 §6; 2003 c.75 §96]

**537.173 Exceptions to final order; modified order.** (1) Within 20 days after the Water Resources Director issues a final order under ORS 537.170 after the conclusion of a contested case hearing, any party may file exceptions to the order with the Water Resources Commission.

(2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60 days after the close of the exception period under subsection (1) of this section. [1995 c.416 §14]

**Note:** See note under 537.153.

**537.175 Time limit for issuing final order or scheduling contested case hearing; applicant request for extension.** (1) Except as provided in subsection (2) of this section, the Water Resources Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.140 or 537.400 within 180 days after the department proceeds with the application under ORS 537.150 (5).

(2) At the request of the applicant, the department may extend the 180-day period set forth in subsection (1) of this section for a reasonable period of time.

(3) If a contested case hearing is held, the department shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings.

(4) If the applicant does not request an extension under subsection (2) of this section and the department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the department proceeds with the application under ORS 537.150 (5), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the department to issue a final order or schedule a contested case hearing on an application for a water right. If the application is for an out-of-stream use, the writ of mandamus shall compel the department to issue a water right permit, unless the department shows by affidavit that to issue a permit may result in harm to an existing water right holder. [1995 c.416 §17]

**Note:** See note under 537.153.

**537.180** [Amended by 1971 c.734 §78; 1985 c.673 §31; repealed by 1995 c.416 §50]

**537.185** [1971 c.734 §80; repealed by 1985 c.673 §185]

**537.190 Terms and conditions of approval; municipal water supplies; release of stored water.** (1) The Water Resources Department may approve an application for less water than applied for, or upon terms, limitations and conditions necessary for the protection of the public interest, including terms, limitations and conditions relating to the release of water from an impoundment or diversion structure necessary to prevent rapid fluctuation in the stream level below the structure which may create a hazard to life or property, if there exists substantial reason therefor. In any event the department shall not approve an application for more water than can be applied to a beneficial use.

(2) The department may approve an application for a municipal water supply to the exclusion of all subsequent appropriations, if the exigencies of the case demand.

(3) When conditions beyond the control of the owner or operator of an impoundment or diversion structure, to which terms, limitations and conditions made as provided in subsection (1) of this section relate, threaten the safety of the structure and the release of water from the structure contrary to such terms, limitations and conditions is or may be necessary to remove the threat:

(a) The terms, limitations and conditions shall not apply to such release of water.

(b) The owner, operator or person in immediate charge of the structure shall immediately notify the department by telegraph or telephone of the situation.

(c) The owner, operator or person in immediate charge of the structure shall immediately notify, to the best of the person's ability, those persons whose life or property may be threatened by the release of water. [Amended by 1959 c.624 §3; subsection (3) enacted as 1959 c.624 §5; 1985 c.673 §32; 1995 c.416 §15]

**537.200** [Amended by 1955 c.707 §37; repealed by 1971 c.734 §21]

**537.210** [Repealed by 1981 c.61 §1 (537.211 enacted in lieu of 537.210)]

**537.211 Issuance of permit if application approved; contents of permit; effect; rejection of application; change in permit terms.** (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 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 mine.

(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. [1981 c.61 §2 (enacted in lieu of 537.210); 1985 c.392 §10; 1985 c.673 §33; 1991 c.735 §33; 1995 c.365 §4; 1995 c.368 §1; 1995 c.416 §16a; 1997 c.42 §1; 1997 c.446 §3; 1999 c.611 §1; 1999 c.664 §6; 2003 c.705 §2; 2013 c.371 §32]

**537.220 Assignment of application, permit or license.** (1) Any application, permit or license to appropriate water may be assigned, subject to the conditions of the application or permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department.

(2) An assignment of an application, permit or license to appropriate water filed for record with the Water Resources Department shall identify the current record owners of all property described in the application, permit or license. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [Amended by 1985 c.673 §34; 1995 c.367 §1]

**537.225 Full or partial assignment of water right permit; issuance of replacement permits.** (1) Notwithstanding ORS 537.220 and 537.635, except as provided in subsection (6) of this section, a record landowner holding a water right permit for an irrigation, nursery, temperature control, stock watering or agricultural water use that has a subsequent completion date may apply for assignment of all or part of the water right permit and for the issuance of a replacement water right permit that reflects that assignment. To obtain the assignment and replacement water right permits, the applicant shall submit an application to the Water Resources Department that includes, at a minimum:

(a) A map prepared by a certified water right examiner and meeting department mapping standards that identifies the authorized place of use, rate of use, any applicable acre-feet allowances, tax lots and points of diversion or appropriation;

(b) A copy of the deed showing that the applicant is an owner of the land;

(c) An affidavit certifying that the water right has not been conveyed or withheld;

(d) A statement by the applicant that the most recent water use under the permit, if any, has been exercised within relevant terms and conditions of the permit; and

(e)(A) Agreements to the assignment and to the request for the issuance of replacement water right permits submitted jointly or individually by all owners of the land to which the water right is appurtenant; or

(B) An assignment of interest and request for the issuance of replacement water right permits submitted by one or more of the owners of land to which the water right is appurtenant and information identifying the names, addresses and proportionate interests for those owners not submitting the assignment and request.

(2) In addition to the application contents described in subsection (1) of this section, the department may require that the applicant provide any additional information the department deems appropriate to determining whether to approve the application.

(3) Upon receiving an application under subsection (1) of this section, the department shall determine and notify the applicant of the fees payable under ORS 536.050 for processing the application. Upon receipt of the appropriate processing fees, the department shall:

(a) Verify the address of each owner of the lands identified on the map contained in the application;

(b) Verify that the deed supplied with the application matches the property proposed for assignment;

(c) Prepare a statement that the proposed replacement water right permits will not result in the enlargement of the original water right, a proposed final order and drafts of replacement water right permits;

(d) No later than one week prior to the date of the weekly notice described in paragraph (e) of this subsection, mail copies of the application, the map, the existing water right permit, the proposed final order and the draft replacement water right permits to each owner of land to which the existing water right is appurtenant; and

(e) Provide public notice of the application in the weekly notice published by the department.

(4) The department shall allow comment on the application for 30 days following public notice of the application in the weekly notice published by the department. Any protest against the proposed final order must be submitted no later than 45 days after the date of the weekly notice published by the department. A protest must be filed in the manner provided in ORS 537.227.

(5) If the department determines that an application under subsection (1) of this section to assign all or part of a water right permit has been properly filed, and that the issuance of replacement water right permits will not result in the enlargement of the original water right or otherwise cause injury to other water right holders, the department shall issue one or more replacement water right permits to reflect the assignment. The replacement water right permits:

(a) Must have the same conditions as the replaced water right permit, including but not limited to priority date, source of water and type of use;

(b) May not add or change a point of diversion or point of appropriation;

(c) May not result in the enlargement of the water use authorized under the replaced water right permit;

(d) Must apportion the rate, and if applicable the duty, in proportion to the amount of land to which the water right is appurtenant; and

(e) Must identify the land to which the replacement water right permit is appurtenant and the owner of that land.

(6) This section does not apply to municipal or quasi-municipal permits or to permits held by a unit of local government, including but not limited to permits held by a port or water authority or a district. As used in this subsection, "unit of local government" has the meaning given that term in ORS 190.003 and "district" has the meaning given that term in ORS 540.505. [2013 c.166 §2]

**Note:** 537.225 and 537.227 were added to and made a part of ORS chapter 537 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**537.227 Protest of application to assign all or part of water right permit.** (1) A record landowner, an assignee, an affected water right permit holder or other interested person may protest a Water Resources Department proposed final order for a water right assignment under ORS 537.225. The protest must be in writing and received by the department within the time provided under ORS 537.225 (4). The protest must be accompanied by the protest fee required under ORS 536.050 and include:

(a) The name, address and telephone number of the person filing the protest; and

(b) A detailed explanation of why the proposed order does not conform with the criteria for a water right permit assignment and a description of the changes to the order that are necessary to correct the nonconformity.

(2) A protest must identify all issues the person wishes to raise that are reasonably ascertainable at the time the protest is filed. The issues must directly pertain to whether the proposed replacement water right per-

mits are authorized under and in conformance with ORS 537.225.

(3) If a protest is properly filed, the department may work with the applicant for the water right assignment and the person filing the protest to determine whether the issues raised by the protest can be resolved informally. The department may:

(a) Reissue a proposed final order;

(b) Issue a final order; or

(c) Refer the matter for a contested case hearing.

(4) If the department is unable to resolve the issues informally and refers the matter for a contested case hearing, the issues properly before the administrative law judge are limited to whether the proposed replacement water right permits are authorized under and in conformance with ORS 537.225. Any unraised issue that was reasonably ascertainable at the time the protest was filed and any argument not raised in the protest with sufficient specificity to afford the department an opportunity for response is not subject to review at the contested case hearing.

(5) Notwithstanding ORS 183.310, the parties to a contested case hearing held under this section are limited to:

(a) The applicant for the water right assignment; and

(b) Persons that timely filed a protest against the proposed order under ORS 537.225 (4). [2013 c.166 §3]

**Note:** See note under 537.225.

**537.230 Time allowed for construction of irrigation or other work; extension; survey; map; requirements for supplemental water right.** (1) Except for a holder of a permit for municipal use, the holder of a water right permit shall prosecute the construction of any proposed irrigation or other work with reasonable diligence and complete the construction within a reasonable time, as fixed in the permit by the Water Resources Department, not to exceed five years from the date of approval.

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which a permit for municipal use is issued under ORS 537.211. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan; and

(c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

(3) Except as provided in ORS 537.240 and 537.248 and subsection (2) of this section, the Water Resources Department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

(4) Except as provided in subsection (5) of this section and ORS 537.409, upon completion of beneficial use as required under this section, the permittee shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after application of water to a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map of the survey as required by the Water Resources Department, which shall accompany the request for a water right certificate submitted to the department under ORS 537.250. If any property described in the permit is not included in the request for a water right

certificate, the permittee shall state the identity of the record owner of that property.

(5) The Water Resources Director may waive the requirement under subsection (4) of this section that a permittee hire a water right examiner certified under ORS 537.798 if:

(a) The permit is a supplemental water right that shares the same distribution system and same place of use as the primary water right; and

(b) The department determines that there is sufficient information in the records of the department to determine proof of beneficial use.

(6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions. [Amended by 1985 c.617 §1; 1985 c.673 §201; 1987 c.542 §4; 1995 c.367 §2; 1995 c.416 §35; 1995 c.473 §5; 1997 c.446 §4; 1997 c.502 §1; 1997 c.557 §1; 1999 c.453 §1; 1999 c.665 §2; 2005 c.410 §1]

**537.240 Federal permit; time for obtaining; cancellation; time for beginning and completing work.** (1) In any case where a permit from the Federal Energy Regulatory Commission is or shall be required in connection with the development of the applicant's proposed project, the applicant shall make application for the necessary federal permit or license within six months, or, if the applicant is a municipal corporation, within 10 years, from the date of filing application for appropriation of water with the Water Resources Department.

(2) Upon failure of the applicant to file with the department, within 30 days after the expiration of the period above prescribed, satisfactory proof that application for the federal permit or license has been duly made, the application to appropriate water shall be terminated and become void.

(3) Where the application for the necessary permit or license from the Federal Energy Regulatory Commission is finally rejected or disallowed, or if after being granted, the permit or license is revoked or forfeited because of failure to begin or carry on the construction work when and as required by the permit or license, then the department shall, upon the filing in the Water Resources Department of satisfactory proof of such fact, revoke and cancel any permit issued by the department for appropriation of water for use in the project for which the federal permit or license was required.

(4) In case of any permit issued for the appropriation of water for the utilization of which a permit or license from the Federal Energy Regulatory Commission is necessary, the time to be allowed for the beginning and completion of construction under the permit from the department shall be made to conform to the time fixed for such beginning and completion in the permit or license, and in any extension thereof, issued for the project by the Federal Energy Regulatory Commission. [Amended by 1985 c.673 §36; 1995 c.416 §36]

**537.248 Requirement to include in reservoir permit date for beginning and completing construction and for perfecting water right; extension.** (1) When the Water Resources Department issues a reservoir permit for a new storage project to a county, municipality or district, the department shall include in the permit a date, not more than 10 years after the date the permit is issued, to begin and complete construction of diversion or storage works and to perfect the water right. An application for a reservoir permit under this section shall be subject to the provisions of ORS 537.140 to 537.211, except that the applicant need not submit engineering plans and specifications before the permit is issued. However, the applicant may not begin construction of the reservoir until the department approves the engineering plans and specifications.

(2) By order, the Water Resources Director may extend the date for beginning and completing construction and for completing perfection of the use if the applicant shows reasonable diligence and good cause. An extension allowed under this subsection shall not exceed 10 years, but the applicant may request additional extensions.

(3) As used in this section, "district" includes the entities set forth in ORS 198.010 and 198.180. [1995 c.473 §2; 1995 c.416 §35a]

**Note:** 537.248 and 537.249 were added to and made a part of 537.140 to 537.252 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**537.249 Election to have proposed reservation considered as application for permit or rulemaking proceeding.** (1) In lieu of the procedure established pursuant to ORS 537.358, for any reservation pending on July 5, 1995, the state agency that requested the reservation may elect to have the proposed reservation considered:

(a) As an application for a permit under ORS 537.140 to 537.211 and 537.248; or

(b) As a rulemaking proceeding under the applicable provisions of ORS chapter 183 in which case the provisions of ORS 537.358 requiring a public interest review under ORS 537.170 shall not be applicable.

(2) A state agency making any election under subsection (1) of this section shall submit a written request to the Water Resources Commission within 90 days after July 5, 1995. The commission shall proceed in accordance with the election made under subsection (1) of this section or, if an election is not submitted, according to the procedure established pursuant to ORS 537.358.

(3) A reservation established under the provisions of this section shall have as a priority date the date established in rules of the commission in effect on July 5, 1995.

(4) When issuing a reservoir permit for a multipurpose storage project using water reserved or proposed to be reserved under a request originally filed by the Water Resources Department before June 5, 1992, the department shall grant a preference for the project under ORS 537.352.

(5) Notwithstanding ORS 537.356, the Water Resources Commission may accept requests to reserve unappropriated water before July 1, 1997, but shall not begin to process such requests before July 1, 1997. Any request to reserve unappropriated water submitted by the State Department of Agriculture before July 1, 1997, also shall consider municipal needs. The priority date of a request received in proper form by the Water Resources Commission after July 5, 1995, shall be the date of receipt. [1995 c.473 §3; 1995 c.416 §35b]

**Note:** See note under 537.248.

**537.250 Water right certificate; issuance; inclusion of land not described in permit; recordation; duration of rights.** (1) After the Water Resources Department has received a request for issuance of a water right certificate accompanied by the survey required under ORS 537.230 (4) that shows, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the department shall issue to the applicant a certificate of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the applicant as provided in that section.

(2) When issuing a water right certificate under subsection (1) of this section in the name of a district as defined in ORS 540.505, or in the name of a government agency for a district, the department may issue the water right certificate for land not described in the permit in accordance with ORS 537.252.

(3) Rights to the use of water acquired under the provisions of the Water Rights Act, as set forth in a certificate issued under subsection (1) of this section, shall continue in the owner thereof so long as the water shall be applied to a beneficial use under and in accordance with the terms of the certificate, subject only to loss:

(a) By nonuse as specified and provided in ORS 540.610; or

(b) As provided in ORS 537.297. [Amended by 1985 c.392 §11; 1985 c.673 §191; 1987 c.542 §6; 1989 c.509 §6; 1995 c.218 §3; 1995 c.365 §5; 1995 c.416 §21a; 2005 c.410 §3]

**537.252 Certificate issued for land not described in permit; notice.** (1) When issuing a water right certificate under ORS 537.250 to a district, or to a government agency for a district, the Water Resources Department may issue the water right certificate for land not described in the permit if:

(a) Water furnished by the district under the permit has been applied beneficially to the land;

(b) The land not described in the permit that is proposed to be included in the certificate is included within the legally established boundaries of the district and is subject to the charges, assessments and liens of the district;

(c) The certificate does not authorize a greater rate, duty or acreage than is authorized by the terms of the permit, and all other conditions of the permit are satisfied;

(d) The inclusion of land not described in the permit will not result in injury to other existing water rights or in enlargement of the right authorized under the permit; and

(e) The impact to the water source of including land not described in the permit will not differ significantly from the impact expected at the time the permit was issued for the lands described in the permit.

(2) If a district proposes to use water on lands not described in the permit, the Water Resources Department may issue a certificate that includes such additional lands if all of the conditions of subsection (1) of this section are satisfied and if, no later than 60 days before the district actually applies the water to the lands not described in the per-

mit, the district provides written notice to the department. The notice shall include a copy of the original permit map modified to show the lands to be added and lands to be removed from the description of the place of use of the water. Upon receipt of the notice from the district, the department shall provide public notice of the proposed change by means of publication in the department's weekly notice and by publication once each week for two successive weeks in a newspaper having general circulation in the county or counties in which the affected lands are located. The cost of publication shall be paid by the district.

(3) If a district has issued an order of inclusion or exclusion, the boundaries of the irrigation district shall be deemed to have been legally changed in the absence of approval of the Secretary of the Interior.

(4) As used in this section:

(a) "District" has the meaning given in ORS 540.505.

(b) "Legally established boundaries" means the boundaries of a district as established at the time of creation of the district and as the boundaries may have changed after creation of the district by an inclusion, exclusion or merger proceeding according to state law. [1995 c.218 §2; 1995 c.416 §21b; 2003 c.14 §343; 2011 c.52 §4]

**537.260 Cancellation of permit for failure of proof of completion of appropriation; issuance of limited certificate; contest of issuance of certificate; exception for municipalities.** (1) Except as provided under subsection (4) of this section for a permit issued to a municipality, whenever the time within which any appropriation under a permit should have been perfected has expired and the owner of the permit fails or refuses within three months thereafter to submit to the Water Resources Department proof of completion of the appropriation as required by ORS 537.230 and 537.250, the department may, after 60 days' notice by registered mail or by certified mail with return receipt, order the cancellation of the permit. The cancellation shall have the same force and effect as cancellation of a permit in the proceedings provided for in ORS 537.410 to 537.450.

(2) The department may determine the extent to which an appropriation has been perfected under any permit at the time of submission of final proof provided for in ORS 537.250, and shall limit the certificate provided for in that section to a description of such appropriation as has been actually perfected to the extent that the water applied for has been actually applied to the beneficial use contemplated in the permit.

(3) Any person owning an application, permit or water right certificate subsequent in priority may jointly or severally contest before the department the issuance of the water right certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate. The contest shall be brought upon application made, and hearing shall be had in the same manner and after notice as provided in ORS 537.420 for proceedings for cancellation of permits. The department, in a final order, may cancel the permit or determine the extent to which the appropriation claimed thereunder has been perfected, and issue a water right certificate accordingly, or if a certificate has been issued, in the case of a contest within three months after its issuance, the department may cancel the water right certificate, or affirm its issuance, and if the water right certificate in such case is canceled, the permit upon which it is based shall also be canceled.

(4) A municipality may partially perfect not less than 25 percent of the water authorized by its permit without loss of priority or cancellation of the municipality's permit under this section. If a municipality defers perfection of its water right under this section, the department shall issue a certificate under ORS 537.250 only for the amount perfected. Upon perfection of the deferred amount, the municipality shall request a water right certificate for the remaining portion of the water applied for in the original permit application. As used in this section, "municipality" includes a city, a port formed under ORS 777.005 to 777.725 and 777.915 to 777.953, a domestic water supply district formed under ORS chapter 264 or a water authority formed under ORS chapter 450. [Amended by 1983 c.740 §211; 1985 c.673 §38; 1989 c.707 §2; 1991 c.249 §43; 1993 c.577 §35; 1995 c.416 §37]

**537.270 Conclusiveness of certificate.** A water right certificate issued in accordance with the provisions of ORS 537.250 which, after the expiration of three months from the date it is issued, has not been contested and canceled in the manner provided in ORS 537.260, and a water right certificate, when issued under ORS 539.140, shall be conclusive evidence of the priority and extent of the appropriation therein described in any proceeding in any court or tribunal of the state, except in those cases where the rights of appropriation thereby described have been abandoned subsequent to issuance of the certificate.

**537.280** [Renumbered 537.335]

**537.282 Definition of "municipal applicant."** As used in ORS 537.282 to 537.299, "municipal applicant" means any municipal corporation or district as defined in ORS 543.655 that has applied for a permit to appropriate water for the purpose of generating hydroelectric power under the provisions of this chapter, or that has been accorded any right or preference under ORS 543.260, 543.270 or 543.610. [1985 c.392 §2]

**537.283 Procedure for applications to appropriate water for hydroelectric power; rules.** (1) Notwithstanding any other provision of ORS 537.140 to 537.350, in accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission shall by rule establish a procedure for processing applications to appropriate water for hydroelectric power under ORS 537.140 to 537.320.

(2) Rules adopted under subsection (1) of this section:

(a) To the extent possible, shall be consistent with the process established for other applications to appropriate water for other beneficial uses under ORS 537.140 to 537.252.

(b) Shall not supersede any provision pertaining to hydroelectric power established under this chapter or ORS chapter 543, to the extent such provisions are applicable to applications to appropriate water for hydroelectric power purposes.

(c) Need not comply with the mandatory time limits or notice provisions established under ORS 537.140 to 537.350 if such provisions are incompatible with the substantive requirements applicable to applications to appropriate water for hydroelectric power purposes. [1995 c.416 §32a]

**Note:** 537.283 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.285 Municipal applicant may develop hydroelectric project jointly with private person; restrictions.** A municipal applicant may contract with a private person for the purpose of generating hydroelectric power. The municipal applicant shall retain sufficient benefit and interest in, and control of a joint project as necessary for the project to be considered a municipal project. A municipal applicant and a private person developing a joint project under this chapter must comply with the rules adopted by the Water Resources Commission under ORS 537.287. [1985 c.392 §3]

**537.287 Rules for joint project of municipal applicant and private person.** The Water Resources Commission shall establish rules necessary to carry out the provisions of ORS 537.285. The rules shall include the amount of control over and interest in a joint project a municipal applicant must retain in order to receive the benefit of the municipal preference and proceed under the municipal application process set forth in this chapter. [1985 c.392 §4]

**537.289 Conditions to be imposed on permit of municipal corporation or district.** (1) Whenever the Water Resources Department issues a permit under ORS 537.211 allowing a municipal corporation or district, as defined in ORS 543.655, to appropriate water for the purpose of generating hydroelectric power, the department shall impose the following conditions on the permit, in addition to any other term, limitation or condition imposed under ORS 537.211:

(a) That the permit may not be assigned to any nonmunicipal entity so as to result in a loss of ownership of the permit by a municipal corporation or district.

(b) That the holder of the permit must remain qualified as a municipal applicant under ORS 537.285 and 537.287. If the municipal corporation or district proposes to generate hydroelectric power jointly with a nonmunicipal entity, that any proposed changes in the agreement between the municipal corporation and the nonmunicipal entity must be reviewed by the department to determine whether the permittee remains qualified as a municipal applicant.

(2) If the department determines that a permittee no longer qualifies as a municipal applicant, the department shall notify the permittee and any nonmunicipal entity developing a project with the permittee that the parties have 90 days to amend their joint relationship to continue qualifying as a municipal corporation or district. [1985 c.392 §5; 1985 c.673 §186; 1995 c.416 §33]

**537.290** [Renumbered 537.340]

**537.292 Conditions to be imposed on certificate of municipal corporation or district.** (1) Whenever the Water Resources Commission issues a certificate under ORS 537.250 granting a municipal corporation or district as defined in ORS 543.655 the right to appropriate water for the purpose of generating hydroelectric power, the commission shall impose the following conditions on the certificate, in addition to any other term, limitation or condition imposed under ORS 537.250:

(a) That the water right may not be assigned to any nonmunicipal entity so as to result in a loss of ownership of the certificate by the municipal corporation or district.

(b) That the holder of the water right certificate must remain qualified as a munic-

ipal applicant under ORS 537.285 and 537.287. If the municipal corporation or district is generating the hydroelectric power jointly with a nonmunicipal entity, that any proposed changes in the agreement between the municipal corporation and the nonmunicipal entity must be reviewed by the Water Resources Commission to determine whether or not the owner of the certificate remains qualified as a municipal applicant.

(2) If the commission determines that an owner of a certificate no longer qualifies as a municipal applicant, the commission shall notify the owner of the certificate and any nonmunicipal entity developing or operating the project jointly with the owner that the parties have 90 days to amend their joint agreement in a manner that allows the parties to continue to qualify as a municipal corporation or district. [1985 c.392 §6; 1985 c.673 §187]

**537.295 Cancellation of permit when holder fails to continue to qualify as municipal applicant.** (1) If the holder of a permit to appropriate water for hydroelectric purposes under this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the holder continues to qualify as a municipal applicant, or if the holder of the permit has assigned ownership of the permit to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the permit.

(2) A proceeding to cancel a permit under subsection (1) of this section shall be conducted according to the provisions under ORS chapter 183 for a contested case hearing. [1985 c.392 §7; 1985 c.673 §188]

**537.297 Cancellation of water right certificate when holder fails to continue to qualify as municipal applicant.** (1) If the owner of a certificate to appropriate water for hydroelectric purposes under this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the owner continues to qualify as a municipal applicant, or if the holder of the certificate has assigned ownership of the certificate to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the certificate.

(2) A proceeding to cancel a certificate under subsection (1) of this section shall be conducted according to the provisions under ORS chapter 183 for a contested case hearing. [1985 c.392 §8; 1985 c.673 §189]

**537.299 Consequences of cancellation of permit or certificate if holder no longer municipal applicant; conditions to protect public health and welfare.** (1) If the Water Resources Commission cancels a permit or certificate under ORS 537.295 or 537.297, the municipal applicant may apply for a permit to appropriate water for hydroelectric purposes under this chapter, or the private developer may apply for a hydroelectric license under ORS chapter 543. However, the parties may not jointly apply for a permit to appropriate water for hydroelectric purposes pursuant to ORS 537.285.

(2) When a permit or certificate is canceled under ORS 537.295 or 537.297, the cancellation order may include such conditions and requirements as the commission deems necessary for the public safety and welfare, including but not limited to:

(a) Delay of the effective date of cancellation until such time as another entity is authorized to operate the facility under this chapter or ORS chapter 543; or

(b) Provision for operation of the facility during the period between cancellation and issuance of a new permit, certificate or license. [1985 c.392 §9; 1985 c.673 §190]

**537.300** [Subsection (2) enacted as 1961 c.187 §2; 1985 c.673 §39; renumbered 537.345 and then 537.400 in 1987]

**537.310 Acquisition of water rights for railway purposes; certificates.** (1) Any corporation organized for the construction, maintenance or operation of any railway may acquire, hold and appropriate to its use for railway purposes any waters within the state. The appropriation may be accomplished by the procedure provided by ORS 537.130 and 537.140 to 537.252. A railway corporation may acquire by purchase, gift or devise, or by condemnation as provided in subsection (2) of this section, any water rights owned by any person and the rights of other persons affected by change of place or character of use of the water rights. Upon acquisition of the water rights by the corporation the right shall be severed from the land of the grantor and simultaneously transferred and become appurtenant to the operating property of the railway corporation, without losing the priority of the water right as originally established.

(2) Any such corporation may condemn and appropriate for railway operating purposes the rights of any private appropriator of waters within the state. The right of condemnation shall be exercised in the same manner as other property is condemned and appropriated for railway purposes; provided, that no water right so condemned shall exceed two cubic feet per second.

(3) Upon satisfactory proof of the acquisition of water rights by any such corporation through purchase, gift, devise or condemnation, the Water Resources Commission shall issue to the corporation a certif-

icate of the same character as that described in ORS 539.140, which shall be recorded and transmitted to the corporation, as provided in that section. All certificates of water rights issued before May 29, 1925, by the Board of Control or the Water Resources Director to any such corporation shall be sufficient in law to convey to the corporation the water rights described in the certificates, and such certificates shall be received in evidence in all courts in this state. [Amended by 1985 c.673 §40]

**537.320 Entry on land for survey purposes, preliminary to appropriation and diversion of waters.** Any person may enter upon any land for the purpose of locating a point of diversion of the water intended to be appropriated, and upon any land lying between such point and the lower terminus of the proposed ditch, canal or flume of the person, for the purpose of examining the same and of locating and surveying the line of such ditch, canal or flume, together with the lines of necessary distributing ditches and feeders, and to locate and determine the site for reservoirs for storing water.

**537.330 Disclosure required in real estate transaction involving water right; exception; delivery of available permit, order or certificate; effect of failure to comply.** (1) In any transaction for the conveyance of real estate that includes a water right, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

(2) Upon closing and delivery of the instrument of conveyance in a real estate transaction involving the transfer of a water right, the seller shall also deliver to the purchaser evidence of any permit, transfer approval order or certificate of water rights if the permit, transfer approval order or certificate is available.

(3) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction.

(4) This section does not apply to any transaction for the conveyance of real estate that includes a water right when the permit, transfer approval order or certificate evidencing the water right is held in the name of a district or corporation formed pursuant to ORS chapter 545, 547, 552, 553 or 554.

(5) As used in this section:

(a) "Certificate" means a certificate or registration issued under ORS 537.250 (1), 537.585, 539.140 or 539.240.

(b) "Permit" means a permit issued under ORS 537.211, 537.240 or 537.625.

(c) "Transfer approval order" means an order of the Water Resources Commission issued under ORS 540.530. [1979 c.535 §4; 1981 c.448 §1; 1991 c.411 §1; 1995 c.274 §12; 2005 c.14 §1]

## IN-STREAM WATER RIGHTS

**537.332 Definitions for ORS 537.332 to 537.360.** As used in ORS 537.332 to 537.360:

(1) "In-stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(2) "In-stream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

(3) "In-stream water right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use. An in-stream water right does not require a diversion or any other means of physical control over the water.

(4) "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(5) "Public use" includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation. [1987 c.859 §2; 1995 c.416 §32]

**537.334 Findings.** The people of the State of Oregon find and declare that:

(1) Public uses are beneficial uses.

(2) The recognition of an in-stream water right under ORS 537.336 to 537.348 shall not diminish the public's rights in the ownership and control of the waters of this state or the public trust therein. The establishment of an in-stream water right under the provisions of ORS 537.332 to 537.360 shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established pursuant to the provisions of ORS 537.332 to 537.360. [1987 c.859 §3]

**537.335** [Formerly 537.280; renumbered 537.390 in 1987]

**537.336 State agencies authorized to request in-stream water rights; agreement required when supply is stored water.** (1) The State Department of Fish and Wildlife may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Department of Fish and Wildlife.

(2) The Department of Environmental Quality may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state to protect and maintain water quality standards established by the Environmental Quality Commission under ORS 468B.048. The request shall be for the quantity of water necessary for pollution abatement as recommended by the Department of Environmental Quality.

(3) The State Parks and Recreation Department may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to recreation and scenic attraction. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Parks and Recreation Department.

(4) Any request for an in-stream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request. [1987 c.859 §4; 1989 c.904 §68; 1995 c.673 §1]

**537.338 Rules for state agency request for in-stream water right.** The Water Resources Commission by rule shall establish standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336. [1987 c.859 §5]

**537.340** [Formerly 537.290; renumbered 537.395 in 1987]

**537.341 Certificate for in-stream water right.** Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. A certificate for an in-stream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336. [1987 c.859 §6; 1995 c.673 §2]

**537.343 Proposed final order; conditions.** (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

(a) Approve the in-stream water right for the quantity of water requested;

(b) Approve the requested in-stream water right for a lesser quantity of water; or

(c) Reject the requested in-stream water right.

(2) If the director reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the director shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The director shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(3) After the director issues a final order approving an in-stream water right, the Water Resources Department shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7; 1995 c.416 §20]

**537.345** [Formerly 537.300; renumbered 537.400 in 1987]

**537.346 Conversion of minimum perennial streamflows to in-stream water rights; special provisions for Willamette Basin.** (1) All minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and the Water Resources Department issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow.

(2) The priority date for that portion of an in-stream water right that uses the stored water component of a minimum perennial streamflow in the Willamette Basin shall be the date the commission or its predecessor adopted the minimum perennial streamflow containing the stored water component.

(3) Notwithstanding the priority date established under subsection (2) of this section, until the state enters into a contract that meets the criteria set forth in subsection (4) of this section with the owner of the storage facility to release the stored water for the purpose of satisfying the in-stream water right, for that portion of an in-stream water right in the Willamette Basin converted from the stored water component of a minimum perennial streamflow, the department:

(a) May not require the release of the stored water; and

(b) Shall not regulate the use of water to provide water for the portion of the in-stream water right using stored water.

(4) A contract for the release of stored water to satisfy an in-stream water right shall:

(a) Include as parties to the contract the State of Oregon and the owner of the storage facility;

(b) Specifically allow the state to obtain the release of stored water to satisfy an in-stream water right; and

(c) Identify a method to determine the specific quantity of water released from storage to satisfy the stored water component of the in-stream water right.

(5) If the federal government does not release water to satisfy a stored water component of an in-stream water right pursuant to a contract that satisfies the criteria set forth in subsection (4) of this section, the department may not regulate the use of water by other water right holders to satisfy the stored water component of an in-stream water right or take any other action that impairs the rights of any person under a valid contract for the use of the stored water. [1987 c.859 §8; 1995 c.72 §1; 1997 c.212 §3; 1999 c.59 §170; 2001 c.104 §227]

**537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates; split use.** (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to (6) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed. However, the total period for which a water right may be leased for split use as described in subsection (3) of this section may not exceed 10 years regardless of the number of leases or renewals of leases issued for the water right.

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream water right during the same calendar year, provided:

(a) The uses of the existing water right and the in-stream water right are not concurrent; and

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right.

(4) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(5) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights. If the lease is for the split use of water between the existing water right and the in-stream water right during the same calendar year, the conditions imposed in the order approving the request must include, but need not be limited to, compliance with subsection (3) of this section.

(6) The department at any time may revoke or modify an order issued for a lease

under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right. [1987 c.859 §9; 2001 c.205 §§1,2; 2013 c.165 §1]

**Note:** The amendments to 537.348 by section 2, chapter 165, Oregon Laws 2013, become operative January 2, 2024. See section 3, chapter 165, Oregon Laws 2013. The text that is operative on and after January 2, 2024, is set forth for the user's convenience.

**537.348.** (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to (5) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to (5) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed.

(3) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(4) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights.

(5) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right.

**Note:** Section 5 (2), chapter 165, Oregon Laws 2013, provides:

**Sec. 5.** (2) Notwithstanding the amendments to ORS 537.348 by section 2 of this 2013 Act, any lease or lease renewal allowing the split use of water between an existing water right and an in-stream water right during the same calendar year and having a term that began before the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act [January 2, 2024] may continue in effect until the earlier of the expiration of the term or five years after the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act. This subsection does not allow the total period for which a water right may be leased for the split use of water during the same calendar year to exceed 10 years. [2013 c.165 §5(2)]

**537.349 Processing request for in-stream water right.** Except as provided in ORS 537.343, the Water Resources Department shall process a request received under ORS 537.336 for a certificate for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.252. [1995 c.416 §19]

**537.350 Legal status of in-stream water right.** (1) After the Water Resources Commission issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water right shall have the same legal status as any other water right for which a certificate has been issued.

(2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650. [1987 c.859 §10]

**537.352 Precedence of uses.** Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the use of the waters of this state for a project for multipurpose storage or municipal uses or by a municipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall take precedence over an in-stream water right when the Water Resources Department conducts a review of the proposed project in accordance with ORS 537.170. The precedence given under this section shall not apply if the in-stream water right was established pursuant to ORS 537.346 or 537.348. [1987 c.859 §11; 1995 c.416 §42]

**537.354 In-stream water right subject to emergency water shortage provisions.** An in-stream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.780. [1987 c.859 §12]

**537.356 Request for reservation of unappropriated water for future economic development; priority date of reservation.** (1) Any local government, local watershed council or state agency or any other individual cooperating jointly with a local government, local watershed council or state agency may request the Water Resources Commission to reserve unappropriated water for multipurpose storage for future economic development.

(2) A request under subsection (1) of this section shall be in writing on a form provided by the Water Resources Department. Before deciding whether to approve the request and initiate a rulemaking process, the commission shall request comments from any local government or watershed council within the geographic area or basin affected by the request. The comment period shall be

closed not later than 120 days after the request is submitted.

(3) The priority date for any reservation established under this section shall be the date on which the commission takes action to initiate the rulemaking process. [1987 c.859 §13; 1997 c.445 §1]

**537.358 Rules for reservation for future economic development; application for use of reserved water.** (1) In adopting a rule under ORS 537.356 to reserve unappropriated water for multipurpose storage for future economic development, the Water Resources Commission shall include a public interest review that takes into consideration the factors described under ORS 537.170.

(2) A person requesting use of the reserved water for new storage shall submit a water right application and comply with the procedure set forth in ORS 537.140 to 537.252, except that the priority date for a storage right approved for use of reserved water shall be the date of the reservation. The commission by rule may describe a process for ensuring that the proposed use is consistent with the requirements of the rule establishing the reservation. [1987 c.859 §14; 1997 c.445 §2]

**537.360 Relationship between application for in-stream water right and application for certain hydroelectric permits.** If an application is pending under this chapter for a water right permit to use water for hydroelectric purposes or under ORS 543.010 to 543.610 for a hydroelectric permit or license at the time the Water Resources Commission receives an application for an in-stream water right under ORS 537.336 for the same stream or reach of the stream, the commission shall not take any action on the application for an in-stream water right until the commission issues a final order approving or denying the pending hydroelectric application. [1987 c.859 §15]

## MISCELLANEOUS

**537.385 Extension of irrigation season; rules; limitations.** (1) Notwithstanding any condition or limitation of a water right permit issued under ORS 537.211 or 537.625 or a water right certificate issued under ORS 537.250, 537.630 or 539.140, upon receipt of a request by the State Department of Agriculture, the Water Resources Commission may, by rule, extend the irrigation season of a subbasin beyond the period established by adjudication, by rule or by condition imposed on a permit or certificate, if the commission finds:

(a) Water is available during the period of the extended irrigation season;

(b) Water use during the extended season would not impair in-stream flows that are necessary to protect aquatic resources; and

(c) Water diversion and use during the period of the extended season would not impair the achievement or maintenance of water quality standards as established for the water source by the Department of Environmental Quality.

(2) If the source of water identified in the request is stored water and water is available from the storage source during the period of the extended irrigation season, the commission may extend the irrigation season as requested without making the findings required by subsection (1) of this section. However, use of water during the extended period shall be limited to the stored water.

(3) In order to ensure that use of water during an extended irrigation season does not injure existing and future water rights, use of water during the extended period of the irrigation season shall be subordinated to all existing and future water rights.

(4) Use of water during the extended irrigation season shall comply with all conditions and limitations of the permit or certificate, including the rate, duty and place of use of the right.

(5) Use of water shall be regulated among irrigators for whom the season has been extended during the extended irrigation season according to the priority date of the permit or certificate. [1995 c.356 §1; 2007 c.187 §1]

**Note:** 537.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.390 Valuation of water rights.** In any valuation for rate-making purposes, or in any proceeding for the acquisition of rights to the use of water and the property used in connection therewith, under any license or statute of the United States or under the laws of Oregon, no value shall be recognized or allowed for such rights in excess of the actual cost to the owner of perfecting them in accordance with the provisions of the Water Rights Act. [Formerly 537.280; and then 537.335]

**537.395 Public recapture of water power rights and properties; no recapture of other rights.** (1) Any certificate issued for power purposes to a person other than the United States, or the State of Oregon or any municipality thereof, shall provide that after the expiration of 50 years from the granting of the certificate or at the expiration of any federal power license, and after not less than two years' notice in writing to the holder of the certificate, the State of Oregon, or any municipality thereof, may take

over the dams, plants and other structures, and all appurtenances thereto, which have been constructed for the purpose of devoting to beneficial use the water rights specified in the certificate. The taking over shall be upon condition that before taking possession the state or municipality shall pay not to exceed the fair value of the property taken, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the certificate, not taken over, as may be caused by the severance therefrom of the property taken.

(2) The fair value of the property taken and the severance damages, if any, shall be determined by agreement between the holder of the certificate and the state or municipality, or, in case they cannot agree, by proceedings in equity instituted by the state or municipality in the circuit court of the county in which the largest portion of the property is located.

(3) The right of the state or any municipality to take over, maintain and operate any property which has devoted to beneficial use water rights specified in the certificate, by condemnation proceedings upon payment of just compensation, is expressly reserved.

(4) The provision for the recapture of any rights other than for power purposes, as provided in this section, contained in any certificate issued before June 14, 1939, shall be of no force and effect and may be canceled from the records wherever recorded and a new certificate issued with the recapture clause eliminated.

(5) The owner of any certificate issued before June 14, 1939, for such rights may, upon surrendering the certificate, receive a new certificate therefor issued under and subject to the provisions of this section. [Formerly 537.290; and then 537.340]

## PONDS AND RESERVOIRS

**537.400 Reservoir permits.** (1) All applications for reservoir permits shall be subject to the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed to be irrigated under the Water Rights Act shall not be required in the primary permit. But the party proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the application, that the applicant has provided notice of the application to the operator of the reservoir and, if applicable, that an agreement has been entered into with the entity delivering the stored water. When beneficial use has been completed and perfected under the secondary permit, the Water Resources Department shall take the proof of the water user under the permit. The final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit.

(2) Whenever application is made for permit to store water in a reservoir or pond for any beneficial use which does not contemplate future diversion of the stored water except by livestock drinking from stock water ponds, the extent of utilization thereof may be included in the reservoir permit and no secondary permit shall be required. However, in cases where water from a stream is required to maintain a reservoir or pond by replacing evaporation and seepage losses, or is required to maintain suitable fresh water conditions for the proposed use and to prevent stagnation, the applicant for permit to store water in such reservoir or pond shall also file an application for permit to appropriate the waters of the stream.

(3) An application submitted to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height need not be accompanied by a map prepared by a water right examiner certified under ORS 537.798 as required by ORS 537.140 (4). The map submitted with the application shall comply with standards established by the Water Resources Commission. The survey required under ORS 537.230 shall be prepared by a water right examiner certified under ORS 537.798 and shall be submitted to the department before the department issues the water right certificate.

(4) If a dam safety review is required under ORS 540.350, the department may issue a final order approving an application on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission's approval of final plans, specifications and supporting information under ORS 540.350 before the permit is issued.

(5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an application for a reservoir permit for which a dam safety review is required under ORS 540.350 and issue a permit, subject to the condition that before the reservoir may be filled, the permittee shall submit to the department evidence that the permittee owns, or has written authorization or an easement permitting access to, all lands to

be inundated by the reservoir. [Formerly 537.300; and then 537.345; 1993 c.557 §3; 1993 c.595 §9; 1995 c.365 §6; 2005 c.37 §3]

**537.405 Exempt reservoirs; written notification to department; injury to other users.** (1) Reservoirs in existence on or before January 1, 1995, that store less than 9.2 acre-feet of water or with a dam or impoundment structure less than 10 feet in height, are found to be a beneficial use of the water resources of this state. Except as provided in subsection (4) of this section, such reservoirs are exempt from regulation by the Water Resources Commission and the Water Resources Department and are not required to obtain a permit or certificate under ORS 537.140 to 537.252.

(2)(a) On or before January 31, 1997, an owner of a reservoir constructed before January 1, 1995, shall provide written notification to the department of the existence of the exempt reservoir. The written notification shall include the quantity of water stored by the reservoir, the source of the water used to fill the reservoir and a map or drawing of sufficient quality and scale to establish the general location of the reservoir by tax lot, township, range and section and to the nearest quarter-quarter section.

(b) Any person who submitted a notice of exemption for a reservoir under ORS 537.141 and qualified for the exemption shall be allowed an exemption.

(3) Within 90 days after receiving written notification under subsection (2) of this section, the department shall provide notice of the exemption in the manner the department determines to be the most appropriate.

(4) Detailed, legally obtained information demonstrating that a specific reservoir exempt under subsection (1) of this section should not be exempt shall be submitted in writing to the department on or before August 1, 1997:

(a) By the State Department of Fish and Wildlife if the reservoir should not be exempt because the existing reservoir, including any impoundment structure, poses a significant detrimental impact to existing fishery resources; or

(b) By any person if the existing reservoir should not be exempt because the existing reservoir, including the storage or use of the water, results in injury to an existing water right.

(5) Within 180 days after the department receives information under subsection (4) of this section, the Water Resources Director shall determine whether the reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources. The determination of injury to an existing water right or impact to existing fishery resources shall be based on verifiable evidence.

(6) If the director determines that an existing reservoir does not injure an existing water right or pose a significant detrimental impact to existing fishery resources, the reservoir shall be exempt under subsection (1) of this section.

(7) If the director determines that an existing reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources, the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resources.

(8) If the director fails to act under subsection (6) or (7) of this section within 180 days after receiving the information under subsection (4) of this section, the reservoir shall be considered exempt.

(9) Nothing in this section shall be construed to allow any owner of a reservoir exempt under this section to increase the quantity of water stored in or diverted from such reservoir on or before January 1, 1995. [1995 c.752 §2]

**537.407 Water right certificate for reservoirs existing before January 1, 1993; injury to other users; conversion of prior application to notice of exemption.** (1) The Water Resources Department shall issue a water right certificate to any person who submitted an application for a reservoir under section 4, chapter 595, Oregon Laws 1993.

(2) Within 90 days after issuing a certificate under subsection (1) of this section, the department shall provide notice of the certificate in the manner the department determines to be the most appropriate.

(3) Detailed, legally obtained information demonstrating that a specific reservoir granted a certificate under subsection (1) of this section should not be certificated shall be submitted in writing to the department on or before August 1, 1997:

(a) By the State Department of Fish and Wildlife if the reservoir should not be exempt because the existing reservoir, including any impoundment structure, poses a significant detrimental impact to existing fishery resources; or

(b) By any person if the existing reservoir should not be exempt because the existing reservoir, including the storage or use of the water, results in injury to an existing water right.

(4) Within 180 days after the department receives information under subsection (3) of

this section, the Water Resources Director shall determine whether the reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources. The determination of injury to an existing water right or impact to existing fishery resources shall be based on verifiable evidence.

(5) If the director determines that an existing reservoir does not injure an existing water right or pose a significant detrimental impact to existing fishery resources, the certificate for the reservoir shall continue with the same terms and conditions included with the certificate under subsection (1) of this section.

(6) If the director determines that an existing reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources, the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resources.

(7) If the director fails to act under subsection (5) or (6) of this section within 180 days after receiving the information under subsection (3) of this section, the certificate shall continue with the same terms and conditions included with the certificate.

(8) Nothing in this section shall be construed to allow any owner of a reservoir certificated under this section to increase the quantity of water stored in or diverted from such reservoir on or before January 1, 1995.

(9) Any person who submitted an application for a reservoir under section 4, chapter 595, Oregon Laws 1993, may submit a written request to the department to convert the application to a notice of exemption under ORS 537.405. Upon receipt of a request under this subsection, the department shall refund all fees and convert the application to a notice of exemption. [1995 c.752 §3]

**537.409 Alternate permit application process for qualifying reservoirs; injury to existing users or fishery resources; public interest review; rules.** (1) In lieu of the process set forth in ORS 537.140 to 537.211 for applying for a water right permit, an owner of a reservoir may submit an application to the Water Resources Department to issue a water right permit under ORS 537.211 or a certificate under ORS 537.250 according to the process set forth in this section if the reservoir:

(a) Has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height;

(b) Does not injure any existing water right;

(c) Does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and

(d) Is not prohibited under ORS 390.835.

(2) An application for a water right permit for a reservoir under subsection (1) of this section shall provide sufficient information to demonstrate compliance with the criteria set forth in subsection (1) of this section. The application shall:

(a) Include the quantity of water to be stored by the reservoir, a map indicating the location of the reservoir and the source of the water used to fill the reservoir; and

(b) Be accompanied by the fee established in ORS 536.050 (1)(q).

(3) The map required under subsection (2) of this section need not be prepared by a water right examiner certified under ORS 537.798. The map submitted with the application shall comply with standards established by the Water Resources Commission.

(4) Within 60 days after receiving an application under subsection (1) of this section, the Water Resources Department shall provide public notice of the application in the manner the department determines to be the most appropriate.

(5) Within 60 days after the department provides public notice under subsection (4) of this section, any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir:

(a) Would result in injury to an existing water right; or

(b) Would pose a significant detrimental impact to existing fishery resources.

(6) In accordance with rules established by the Water Resources Commission for an expedited public interest review process for applications submitted under this section or in response to a request under subsection (5) of this section, the department shall conduct a public interest review of the reservoir application. The review shall be limited to issues pertaining to:

(a) Water availability;

(b) Potential detrimental impact to existing fishery resources; and

(c) Potential injury to existing water rights.

(7) Within 180 days after the department receives an application for a permit under subsection (1) of this section, the department shall issue a final order granting or denying

the permit or granting the permit with conditions.

(8) If the department issues an order under subsection (7) of this section denying the permit, the applicant may request a contested case hearing, which shall be conducted in accordance with applicable provisions of ORS chapter 183.

(9) If the department does not find injury or impact under subsection (6) of this section and the department issues a final order under subsection (7) of this section allowing the issuance of a permit, the order shall be subject to judicial review of orders in other than contested cases as provided in ORS chapter 183.

(10) Notwithstanding the requirement for a survey under ORS 537.230 (4), a survey of the appropriation is not required for a reservoir that has a storage capacity of less than 9.2 acre-feet of water. For a reservoir qualifying under this subsection, a permittee shall submit to the department a claim of beneficial use within one year after the date of completion of construction. A claim of beneficial use for a reservoir qualifying under this subsection shall require only a written affidavit signed by the permittee that includes the following:

(a) The dimensions of the reservoir.

(b) The maximum capacity of the reservoir in acre-feet.

(c) A map identifying the location of the reservoir. The map shall comply with standards established by the Water Resources Commission. The map required under this subsection need not be prepared by a water right examiner certified under ORS 537.798.

(11) Any person applying for a secondary permit for the use of stored water from a reservoir qualifying under subsection (10) of this section shall submit a survey prepared by a water right examiner certified under ORS 537.798. The survey required under this subsection shall apply to the storage reservoir and to the secondary use of the water in the reservoir. [1995 c.752 §4; 1997 c.446 §5; 1997 c.502 §2; 1997 c.587 §7; 2005 c.410 §4]

## CANCELLATION OF PERMIT FOR APPROPRIATION

**537.410 Failure to commence or complete work, or to properly apply water, as grounds for cancellation of permit; irrigation districts, municipalities and public utilities excepted.** (1) Whenever the owner of a permit to appropriate the public waters of Oregon fails to commence actual construction work within the time required by law, or having commenced construction work as required by law, fails or neglects to prosecute the construction work with reasonable diligence, or fails to complete the construction work within the time required by law, or as fixed in the permit, or within such further time as may be allowed under ORS 537.230, or having completed construction work, fails or neglects to apply the water to beneficial use within the time fixed in the permit, the Water Resources Commission may cancel the permit on the records in the Water Resources Department as provided in ORS 537.410 to 537.450.

(2) However, permits issued by the commission to irrigation districts for reclamation purposes under the irrigation district laws of this state, to municipal corporations for municipal uses or purposes or to public utilities complying with subsection (3) of this section for an energy facility granted a site certificate by the Energy Facility Siting Council, are not subject to cancellation under the provisions of ORS 537.410 to 537.450.

(3) For a public utility to qualify under subsection (2) of this section:

(a) The energy facility of the public utility must not be a facility required to be licensed under ORS chapter 543; and

(b) The public utility must supply information every two years that demonstrates to the satisfaction of the commission that the conditions in the site certificate issued by the Energy Facility Siting Council contemplate the future use of the remaining portion of the water applied for in the original permit application. [Amended by 1985 c.673 §41; 1995 c.372 §1]

**537.420 Notice of hearing.** Whenever a permit holder fails to comply with the laws of the state and the requirements of the permit as to the commencement of work with due diligence, completion of the work of construction or the application of the water for a beneficial use, and the permit is subject to cancellation as provided in ORS 537.410 to 537.450, the Water Resources Commission shall, not less than 30 nor more than 60 days prior to the hearing provided for in ORS 537.445, notify each person who, according to Water Resources Department records, is the holder of a water right permit or certificate whose right may be injured by the proposed cancellation. The notice shall require the holder of the permit to appear before the commission at the time and place designated in the notice, and show cause why the permit described in the notice should not be canceled for the reasons therein specified. The notice shall contain a brief statement of the grounds for cancellation and shall be served in accordance with ORS 183.415. [Amended by 1983 c.740 §212; 1985 c.673 §42; 1991 c.103 §1]

**537.430** [Repealed by 1971 c.734 §21]

**537.440 Cancellation of permit; priorities of other permits.** If the decision of the Water Resources Commission requires the cancellation of a permit, then the commission shall at once cancel, or have canceled, the permit. Thereafter the permit shall be of no further force or effect, and shall not be recognized or admitted as evidence of any right or interest in or to the waters covered by it in any proceeding in the courts or before other tribunals of the state. Permits having subsequent priority shall upon such cancellation have priority in the order of the filing of the applications upon which subsequent permits are based, as if the canceled permit, or the application upon which it was based, had never existed. [Amended by 1985 c.673 §43]

**537.445 Hearing upon proposal to cancel permit or appropriation; cancellation suspended pending review.** (1) If the Water Resources Commission proposes to cancel a permit or appropriation under ORS 537.410 to 537.450, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) If a petition for review of an order canceling a permit or appropriation is filed under ORS 536.075, the commission shall not cancel the permit or appropriation under ORS 537.440 until the petitioner's right of review is exhausted and the order is finally approved. [1971 c.734 §82; 1985 c.673 §44]

**537.450 Rules for proof as to work and use of water under permits; noncompliance as evidence in cancellation proceedings.** The Water Resources Commission may by rule provide that the owners of permits shall submit or furnish proofs of commencement of work, prosecution of work with due diligence, completion of work, and of the application of water to a beneficial use under the permits. Failure to comply with the commission's rules in respect to the proofs shall be considered prima facie evidence of failure to commence work, prosecute work with due diligence, complete work, or apply water to the beneficial use contemplated by the permit in proceedings under ORS 537.410 to 537.440 for the cancellation of permits. [Amended by 1985 c.673 §45]

## CONSERVATION AND USE OF CONSERVED WATER

**537.455 Definitions for ORS 537.455 to 537.500 and 540.510.** As used in ORS 537.455 to 537.500 and 540.510:

(1) "Conservation" means the reduction of the amount of water diverted to satisfy an existing beneficial use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.

(2) "Conserved water" means that amount of water that results from conservation measures, measured as the difference between:

(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and

(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate. [1987 c.264 §1; 1993 c.641 §1]

**Note:** 537.455 to 537.500 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.460 Legislative findings; policy.** (1) The Legislative Assembly finds and declares that conservation and efficient utilization of water benefits all water users, provides water to satisfy current and future needs through reduction of consumptive waste, improves water quality by reducing contaminated return flow, prevents erosion and allows increased in-stream flow.

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Aggressively promote conservation;

(b) Encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water; and

(c) Encourage local cooperation and coordination in development of conservation projects to provide incentives for increased efficiency and to improve streamflows.

(3) As used in this section, "efficient utilization" means use without waste, upgrading of irrigation equipment to comply with modern practices within a reasonable time period or other methods used to meet both current and future water needs at the least cost. [1987 c.264 §2; 1993 c.641 §2; 2003 c.93 §1; 2005 c.22 §379]

**Note:** See note under 537.455.

**537.463 Applicability of ORS 537.455 to 537.500.** The provisions of ORS 537.455 to 537.500 establish a voluntary program and apply only to those persons who choose to apply for an allocation of conserved water under ORS 537.465. [1993 c.641 §11; 2003 c.93 §2]

**Note:** See note under 537.455.

**537.465 Application for allocation of conserved water; submission; required contents.** (1) Any person or group of persons holding a water use subject to transfer as defined in ORS 540.505 may submit an application to the Water Resources Commission for approval of an allocation of conserved water for a measure that:

(a) The person or group of persons intends to implement; or

(b) Was implemented by the person or group of persons within five years prior to the submission of the application.

(2) An application submitted under subsection (1)(a) of this section shall include:

(a) A description of the proposed measures;

(b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities;

(c) The amount of water that will be needed to supply existing rights after implementation of the conservation measures;

(d) The amount of conserved water expected from implementation of the conservation measures;

(e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470;

(f) The intended use of any water allocated to the applicant;

(g) The applicant's choice of priority date for the conserved water; and

(h) Any other information the commission considers necessary to evaluate the effectiveness of the proposal.

(3) An application under subsection (1)(b) of this section shall include:

(a) A description of the measure as implemented and the date on which the measure was implemented;

(b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented;

(c) The amount of water needed to supply existing rights after implementation of the conservation measure;

(d) The amount of water conserved by implementing the conservation measure;

(e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470;

(f) The intended use of any water allocated to the applicant;

(g) The applicant's choice of priority date for the conserved water;

(h) Evidence that the measure was implemented within five years prior to the date of filing the application; and

(i) Any other information the commission considers necessary to evaluate the application.

(4) If a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the application, the person also must submit evidence that the district has approved the conservation application. [1987 c.264 §3; 1993 c.641 §3; 1995 c.274 §10; 2003 c.93 §3]

**Note:** See note under 537.455.

**537.470 Allocation of conserved water by commission; criteria; percentage to state; certificates showing change in original water right.** (1) Upon receipt of an application for allocation of conserved water under ORS 537.465, the Water Resources Commission shall give notice of receipt of the application in accordance with ORS 540.520 (5).

(2) The commission shall allocate conserved water as provided in subsection (3) of this section and approve modifications of water rights as provided in subsection (6) of this section. The commission may not allocate conserved water pursuant to an application under ORS 537.465 if the application is filed more than five years after the conservation measure was implemented.

(3) After determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

(4) The commission shall notify the applicant and any other person requesting notice, of the action the commission intends to take under subsection (3) of this section. Any

person objecting to the proposed allocation may file a protest requesting a contested case hearing before the commission.

(5) The modification of water rights under an allocation of conserved water may not require a separate request for transfer under ORS 540.520.

(6) After the commission completes the allocation of conserved water under subsection (3) of this section, the commission shall issue orders for proposed new certificates covering the changes in the original water rights. Once the conservation project is completed, separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates indicating the priority of rights as set forth in ORS 537.485 shall be issued to cover the right to the use of the allocated water. [1987 c.264 §4; 1989 c.62 §1; 1993 c.641 §4; 1995 c.274 §13; 1999 c.664 §7; 2003 c.93 §4]

**Note:** See note under 537.455.

**537.475** [1987 c.264 §5; repealed by 1993 c.641 §13]

**537.480 Rules; criteria for evaluating allocation and determining mitigation required.** The Water Resources Commission shall adopt rules and standards necessary to carry out the provisions of ORS 537.455 to 537.500. The rules may include formulas or other criteria for evaluating the effects of allocation of water on existing rights and for determining whether, and to what extent, mitigation shall be required. [1987 c.264 §6; 1993 c.641 §5]

**Note:** See note under 537.455.

**537.485 Priority of right to use conserved water; choice of priority.** (1) Notwithstanding any other provision of ORS chapter 536, 537, 538, 539, 540, 541, 542 or 543, the priority of any right to the use of conserved water, including an in-stream water right, under an application submitted and approved by the Water Resources Commission under ORS 537.465 and 537.470 shall be either the same as or one minute after the priority of the water right held by the person implementing the conservation measures.

(2) A person who implements a conservation measure may choose the priority of the water right for the conserved water in accordance with subsection (1) of this section. However, the priority date chosen must be the same for the portion of water allocated to the applicant and the portion of water allocated to the state. [1987 c.264 §7; 1993 c.641 §6; 2003 c.93 §5]

**Note:** See note under 537.455.

**537.490 Use of conserved water; notice of dispensation of right to use.** (1) Any person or agency allocated conserved water under ORS 537.470 may reserve the water in stream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the commission of the dispensation of the right to the use of conserved water. The notice shall include:

(a) The name and address of the person buying or leasing the right to the use of conserved water;

(b) The use to which the conserved water is to be put; and

(c) The terms of any agreement between the appropriator and the person using the conserved water.

(2) Notwithstanding any other provision of law, a person who holds a water right permit or certificate having a subsequent priority to a certificate issued under ORS 537.470 may not acquire a vested right to any water or return flow of water that results from either the lease of the right to the use of conserved water or the reservation of conserved water in stream for future use under subsection (1) of this section.

(3) Any right to the use of conserved water sold under subsection (1) of this section:

(a) Shall become appurtenant to the premises upon which the purchaser uses the water; and

(b) Shall be subject to the provisions of ORS 540.505 to 540.585 and 540.610 to 540.650.

(4) When the commission receives notice of the sale of the right to the use of conserved water under subsection (1) of this section, the commission shall issue to the purchaser a new water right certificate covering the right to the use of conserved water that was sold. The certificate shall indicate the priority of the water right according to the provisions of ORS 537.485. [1987 c.264 §8; 1993 c.641 §7]

**Note:** See note under 537.455.

**537.495 Receipt by state agency or political subdivision of right to use conserved water.** Any agency or political subdivision of this state may purchase a right to the use of conserved water, as defined under ORS 537.455, or accept a gift of a right to the use of conserved water as defined under ORS 537.455. If an agency or political subdivision requests that the conserved water remain in the stream, the commission shall manage the water in a manner that results in the conserved water remaining in the stream. [1987 c.264 §9; 1993 c.641 §8]

**Note:** See note under 537.455.

**537.500 Legal status of conserved water right.** (1) A water right for conserved water under ORS 537.455 to 537.500 and 540.510 shall have the same legal status as any other water right for which a certificate has been issued.

(2) A water right for conserved water that is reserved in stream for future out-of-stream use under ORS 537.490 or that the commission manages under ORS 537.495 is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 or to abandonment or forfeiture under ORS 540.610 to 540.650. [1987 c.264 §10; 1989 c.699 §3]

**Note:** See note under 537.455.

## GROUND WATER

### (Generally)

**537.505 Short title.** ORS 537.505 to 537.795 and 537.992 shall be known as the "Ground Water Act of 1955." [1955 c.708 §1; 1963 c.293 §1]

**537.510** [Repealed by 1955 c.708 §38]

**537.515 Definitions for ORS 537.505 to 537.795 and 537.992.** As used in ORS 537.505 to 537.795 and 537.992, unless the context requires otherwise:

(1) "Altering" a well means the deepening, recasing, perforating, reperforating, the installation of packers or seals and other material changes in the design of the well.

(2) "Constructing" a well includes boring, digging, drilling or excavating and installing casing or well screens.

(3) "Converting" a well means changing the use of an existing well or hole not previously used to withdraw water such that the well or hole can be used to seek or withdraw water.

(4) "Geothermal fluid" means any ground water used for its thermal characteristics that is encountered in a well with a bottom hole temperature of less than 250 degrees Fahrenheit or any other fluid that is circulated within a well with a bottom hole temperature of less than 250 degrees Fahrenheit and used for its acquired thermal characteristics.

(5) "Ground water" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(6) "Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(7) "Pollution" of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(8) "Public agency" means the United States or any agency thereof, the State of Oregon or any agency thereof or any county, city, district organized for public purposes or other public corporation or political subdivision of this state.

(9) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn. "Well" does not include a temporary hole drilled for the purpose of gathering geotechnical ground water quality or ground water level information, a natural spring or a hole drilled for the purpose of:

(a) Prospecting, exploration or production of oil or gas;

(b) Prospecting or exploration for geothermal resources, as defined in ORS 522.005;

(c) Production of geothermal resources, as defined in ORS 522.005, derived from a depth of greater than 2,000 feet; or

(d) Exploration for minerals as defined in ORS 517.750 and 517.910.

(10) "Well drilling machine" means any power driven percussion, rotary, boring, digging or augering machine used in the construction of water wells. [1959 c.708 §3; 1961 c.334 §6; 1975 c.552 §35; 1989 c.201 §1; 1989 c.939 §1; 1991 c.200 §1; 1995 c.79 §302; 1999 c.293 §1]

**537.520** [Repealed by 1955 c.708 §38]

**537.525 Policy.** The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the ba-

sis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

(11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS 468B.155. [1955 c.708 §2; 1985 c.673 §46; 1989 c.201 §2; 1989 c.833 §56]

**537.530** [Repealed by 1955 c.708 §38]

### (Aquifer Storage and Recovery)

**537.531 Legislative findings.** The Legislative Assembly declares that aquifer storage and recovery is a beneficial use inherent in all water rights for other beneficial uses. Aquifer storage and recovery is the storage of water from a separate source that meets drinking water standards in a suitable aquifer for later recovery and not having as one of its primary purposes the restoration of an aquifer. [1995 c.487 §2]

**537.532 Injection of ground water into aquifers; standards.** (1) Notwithstanding any other provision of law, the injection into aquifers of water that complies with drinking water standards established by the Oregon Health Authority under ORS 448.273 under an aquifer storage and recovery limited license or permit:

(a) Shall not be considered a waste, contaminant or pollutant;

(b) Shall be exempt from the requirement to obtain a discharge permit under ORS 468B.050 or 468B.053 or a concentration limit variance from the Department of Environmental Quality;

(c) Shall comply with all other applicable local, state or federal laws; and

(d) May be located within or outside an urban growth boundary in conformance with land use laws.

(2) In order to continue to protect the high quality of Oregon's aquifers for present and future uses, the Legislative Assembly recognizes the need to minimize concentrations of constituents in the injection source water that are not naturally present in the aquifer. Each aquifer storage and recovery limited license or permit shall include conditions to minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer. In no case may an aquifer storage and recovery limited license or permit establish concentration limits for water to be injected in excess of the standards established by the authority under ORS 448.273 or the maximum measurable levels established by the Environmental Quality Commission under ORS 468B.165, whichever are more stringent.

(3) Except as otherwise provided, if the injection source water contains constituents regulated under ORS 448.273 or 468B.165 that are detected at greater than 50 percent of the established levels, the aquifer storage and recovery limited license or permit may require the permittee to employ, or continue the employment of, technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water. Constituents that have a secondary maximum contaminant level or constituents that are associated with disinfection of the water may be injected into the aquifer up to the standards established under ORS 448.273.

(4) The Water Resources Department may, based upon valid scientific data, further limit certain constituents in the injection source water if the department finds the constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses. [1995 c.487 §3; 1997 c.286 §9; 2009 c.595 §984]

**537.534 Rules for permitting and administering aquifer storage and recovery projects; limited license for test program; fees.** (1) In accordance with this section, the Water Resources Commission shall establish rules for the permitting and administration of aquifer storage and recovery projects. The rules shall establish the Water Resources Department as the sole permitting agency for the projects, but the Department of Environmental Quality and the Oregon Health Authority may comment on permits for a project and recommend conditions to be included on the permit. When necessary, the applicant also shall obtain land use and development approval from a local government.

(2) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission shall establish by rule a procedure to allow a person to obtain a limited license to store and use water injected into an underground aquifer for aquifer storage and recovery testing purposes for a short term or fixed duration after the person complies with the notice provision set forth in ORS 537.144. The rules shall provide a 30-day public comment period before issuance of a limited license. The Water Resources Department may attach conditions to the limited license regarding monitoring, sampling and rates of recovery up to 100 percent of the injection quantity. Aquifer storage and recovery under a limited license may be conditioned by the Water Resources Department to protect existing ground water rights that rely upon the receiving aquifer and the injection source water. The Water Resources Department may revoke or modify the limited license to use the stored water acquired under a limited license if that use causes injury to any other water right or to a minimum perennial streamflow. The Water Resources Director may issue a limited license for aquifer storage and recovery purposes for a term of not more than five years. The license may be renewed if the applicant demonstrates further testing is necessary.

(3) To obtain a limited license for aquifer storage and recovery, the applicant shall provide to the Water Resources Department:

(a) Well construction information;

(b) Test results of the quality of the injection source water;

(c) Test results of the quality of the receiving aquifer water;

(d) The proposed injected water storage time, recovery rates and recovery schedule;

(e) Preliminary hydrogeologic information including a description of the aquifer, estimated flow direction and rate of movement, allocation of surface water, springs or wells within the area affected by aquifer storage and recovery wells;

(f) The fee established by rule by the commission pursuant to ORS 536.050 (1)(L); and

(g) Any other information required by rule of the commission.

(4) Only after completion of a test program under a limited license issued under subsection (3) of this section may the applicant apply for a permanent aquifer storage and recovery permit. Each application for an aquifer storage and recovery permit shall be accompanied by the fee set forth in ORS 536.050 for examination of an application for a permit to store water. The Water Resources Department shall be the sole permitting agency for the project and may place conditions on the permit consistent with rules adopted by the commission, but the Department of Environmental Quality and the Oregon Health Authority may review, comment on and recommend conditions to be included on the permit. When necessary, the applicant shall obtain land use and development approval from a local government. Where existing water rights for the injection source water have been issued, the Water Resources Department shall receive comments from interested parties or agencies, but the public interest review standards shall apply only to the matters raised by the aquifer storage and recovery permit application in the same manner as any new water right application, not to the underlying water rights. If new water rights for injection source water and aquifer storage and recovery are necessary, then the public interest review standards shall apply to the new permit application in the same manner as any new water right application. The Water Resources Director may refer policy matters to the commission for decision.

(5) The commission shall adopt rules consistent with this section to implement an aquifer storage and recovery program. The rules shall include:

(a) Requirements for reporting and monitoring the aquifer storage and recovery project aquifer impacts and for constituents reasonably expected to be found in the injection source water.

(b) Provisions that allow any person operating an aquifer storage and recovery proj-

ect under a permit, upon approval by the Water Resources Department, to recover up to 100 percent of the water stored in the aquifer storage facility if valid scientific data gathered during operations under the limited license or permit demonstrate that the injected source water is not lost through migration or other means and that ground water otherwise present in the aquifer has not been irretrievably lost as a result of aquifer storage or retrieval. The Water Resources Department may place such other conditions on withdrawal of stored water necessary to protect the public health and environment, including conditions allowing reconsideration of the permit to comply with ORS 537.532.

(c) The procedure for allowing the Department of Environmental Quality and the Oregon Health Authority to comment on and recommend permit conditions.

(6) The use of water under a permit as injection source water for an aquifer storage and recovery project up to the limits allowed in subsection (5)(b) of this section shall not affect the priority date of the water right permit or otherwise affect the right evidenced by the permit.

(7) The holder of a permit for aquifer storage and recovery shall apply for a transfer or change of use if the use of recovered water is different from that which is allowed in the source water permit or certificate. [1995 c.487 §4; 1997 c.587 §2; 1999 c.665 §3; 2003 c.594 §6; 2009 c.595 §985]

**(Appropriation of Ground Water)**

**537.535 Unlawful use or appropriation of ground water, including well construction and operation.** (1) No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992.

(2) Except for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water. [1955 c.708 §4; 1957 c.341 §5; subsection (2) enacted as 1961 c.668 §2; 1985 c.673 §47]

**537.540** [Repealed by 1955 c.708 §38]

**537.545 Exempt uses; map; filing of use; fee; rules.** (1) No registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is required for the use of ground water for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;

(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes;

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day; or

(g) Land application, so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

(2) A ground water use for a purpose that is exempt under subsection (1) of this section, to the extent that the use is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700.

(3) Except for the use of water under subsection (1)(g) of this section, the Water Resources Commission by rule may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof. For a use of water described in subsection (1)(g) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.

(4) If it is necessary for the Water Resources Department to regulate the use or distribution of ground water, including uses for purposes that are exempt under subsection (1) of this section, the department shall use as a priority date for the exempt uses the date indicated in the log for the well filed with the department under ORS 537.765 or other documentation provided by the well owner showing when water use began.

(5) The owner of land on which a well is drilled to allow ground water use for a purpose that is exempt under subsection (1) of this section shall provide the Water Resources Department with a map showing the exact location of the well on the tax lot. The landowner shall provide a map required by this subsection to the department no later than 30 days after the well is completed. The map must be prepared in accordance with standards established by the department.

(6) The owner of land on which a well described in subsection (5) of this section is located shall file the exempt ground water use with the Water Resources Department for recording. The filing must be accompanied by the fee described in subsection (7) of this section. The filing must be received by the department no later than 30 days after the well is completed.

(7) The Water Resources Department shall collect a fee of $300 for recording an exempt ground water use under subsection (6) of this section. Moneys from fees collected under this subsection shall be deposited to the credit of the Water Resources Department Water Right Operating Fund. Notwithstanding ORS 536.009, moneys deposited to the fund under this subsection shall be used for the purposes of evaluating ground water supplies, conducting ground water studies, carrying out ground water monitoring, processing ground water data and the administration and enforcement of this subsection and subsections (3), (5), (6) and (8) of this section.

(8) The Water Resources Commission shall adopt rules to implement, administer and enforce subsections (5) to (7) of this section. [1955 c.708 §5; 1983 c.372 §1; 1983 c.698 §1; 1985 c.673 §48; 1989 c.99 §1; 1989 c.833 §57; 1997 c.244 §3; 2001 c.248 §12; 2003 c.594 §2; 2009 c.819 §1]

**537.550** [Repealed by 1955 c.708 §38]

**537.560** [Repealed by 1955 c.708 §38]

**537.570** [Repealed by 1955 c.708 §38]

**537.575 Permits granted, approved or pending under former law.** Any permit granted or application for a permit approved under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to and still valid and in effect on August 3, 1955, is considered to be a permit issued under ORS 537.625. Any application for a permit under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to, pending and not yet approved on August 3, 1955, shall be governed as an application for a permit under ORS 537.615, 537.620, 537.621, 537.622 and 537.625. [1955 c.708 §6(1); 1999 c.59 §171]

**537.580** [Repealed by 1955 c.708 §38]

**537.585 Beneficial use of ground water prior to August 3, 1955, recognized as right to appropriate water when registered.** Except as otherwise provided in ORS 537.545 or 537.575 or 537.595 and subject to determination under ORS 537.670 to 537.695, actual and lawful application of ground water to beneficial use prior to August 3, 1955, by or under the authority of any person or public agency or by or under the authority of a predecessor in interest of such person or public agency, when registered under ORS 537.605 and 537.610, is recognized as a right to appropriate ground water to the extent of the maximum beneficial use thereof at any time within two years prior to August 3, 1955. [1955 c.708 §6(2)]

**537.590** [Repealed by 1955 c.708 §38]

**537.595 Construction or alteration of well commenced prior to August 3, 1955, recognized as right to appropriate water when registered.** Except as otherwise provided in ORS 537.545 or 537.575 or 537.585 and subject to determination under ORS 537.670 to 537.695, when any person or public agency on August 3, 1955, is lawfully engaged in good faith in such construction, alteration or extension of a well for the application of ground water to beneficial use, the right to appropriate such ground water, upon completion of such construction, alteration or extension and application of the ground water to beneficial use within a reasonable time fixed by the Water Resources Commission, when registered under ORS 537.605 and 537.610, is recognized to the extent of the beneficial use of the ground water. [1955 c.708 §6(3); 1985 c.673 §49]

**537.597** [1989 c.939 §4; repealed by 1991 c.200 §3]

**537.599** [1989 c.939 §5; repealed by 1991 c.200 §3]

**537.600** [Repealed by 1955 c.708 §38]

**537.605 Registration of right to appropriate ground water claimed under ORS 537.585 or 537.595; registration statement.** (1) Any person or public agency claiming any right to appropriate ground water under ORS 537.585 or 537.595, except for any purpose exempt under ORS 537.545, is entitled to receive from the Water Resources Commission within three years after August 3, 1955, a certificate of registration as evidence of a right to appropriate ground water as provided in ORS 537.585 or 537.595. Failure of such person or public agency to file a registration statement within such period creates

a presumption that any such claim has been abandoned.

(2) Upon receipt of a request for registration by any person or public agency referred to in subsection (1) of this section within the period specified, the commission shall provide such person or public agency with a separate registration statement for each well, which shall be completed and returned to the commission.

(3) Each registration statement shall be in a form prescribed by the commission, shall be under oath and shall contain:

(a) The name and post-office address of the registrant.

(b) The nature of the use by the registrant of the ground water upon which the claim of the registrant is based.

(c) The dates when the ground water was or will be first applied to beneficial use and the dates when construction of the well was begun and completed.

(d) The amount of ground water claimed.

(e) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision, the dates of reclamation of each such legal subdivision and the date when the ground water was or will be completely applied.

(f) The depth to the water table.

(g) The location of the well with reference to government survey corners or monuments or corners of recorded plats.

(h) The depth, diameter and type of the well, and the kind and amount of the casing.

(i) The capacity of the well and well pump in gallons per minute, and the horsepower of the well pump motor.

(j) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the commission may prescribe.

(k) The amount of ground water pumped or otherwise taken from the well each year.

(L) A copy of the log of the completed well, if such log is available.

(m) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certification or adjudicated right to appropriate water made or held by the registrant.

(n) Such other information as the commission considers necessary.

(4) Each registration statement shall be accompanied by maps, drawings and other data as the commission considers necessary.

(5) The commission may require that any registration statement be supplemented after any well is fully completed by a statement containing such additional information as the commission considers necessary.

(6) Any person or public agency who failed to file a registration statement within the period set forth in subsection (1) of this section may file within one year after May 29, 1961, a petition with the commission requesting that the person be given an opportunity to rebut the presumption that the person has abandoned the claim. Upon the filing of such a petition the commission may schedule a hearing to take testimony and evidence on the date of well construction and the use of ground water or the commission may accept sworn statements in writing in support of such petition. No petition shall be denied without a public hearing. If it appears after hearing or from such sworn statements, that the person or public agency has a use of ground water that would be subject to determination under ORS 537.670 to 537.695 as defined in ORS 537.585 and 537.595, the commission shall issue an order authorizing the petitioner to file a registration statement as described under subsection (3) of this section. Upon receipt of the completed registration statement the commission shall issue to the registrant a certificate of registration, as provided in ORS 537.610. [1955 c.708 §7; 1957 c.341 §6; 1961 c.668 §3; 1985 c.673 §50]

**537.610 Recording registration statement; issuing certificate of registration; effect of certificate; rules; fees.** (1) The Water Resources Commission shall accept all registration statements referred to in ORS 537.605 completed and returned to the commission in proper form, endorse on the registration statement the date of the return and record each statement. Upon recording the statement, the commission shall issue to the registrant a certificate as evidence that the registration is completed.

(2) The issuance of the certificate of registration serves as prima facie evidence that the registrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and in the certificate of registration.

(3) A certificate of registration issued under this section may not be construed as a final determination of any matter stated in the certificate of registration. The right of the registrant to appropriate ground water under a certificate of registration is subject to determination under ORS 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate ground water under a certificate of registration has

a tentative priority from the date when the construction of the well was begun.

(4) The commission shall adopt by rule the process and standards by which the commission will recognize changes in the place of use, type of use or point of appropriation for claims to appropriate ground water registered under this section. The commission shall adopt fees not to exceed $1,250 for actions taken to modify a certificate of registration. [1955 c.708 §8; 1985 c.673 §51; 2005 c.614 §1; 2009 c.819 §§8,15; 2013 c.644 §6]

**Note:** The amendments to 537.610 by section 7, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

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

(2) The issuance of the certificate of registration serves as prima facie evidence that the registrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and in the certificate of registration.

(3) A certificate of registration issued under this section may not be construed as a final determination of any matter stated in the certificate of registration. The right of the registrant to appropriate ground water under a certificate of registration is subject to determination under ORS 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate ground water under a certificate of registration has a tentative priority from the date when the construction of the well was begun.

(4) The commission shall adopt by rule the process and standards by which the commission will recognize changes in the place of use, type of use or point of appropriation for claims to appropriate ground water registered under this section. The commission shall adopt fees not to exceed $1,125 for actions taken to modify a certificate of registration.

**537.615 Application for permit to acquire new right or enlarge existing right to appropriate ground water; plans and drawings.** (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 a mining operation as defined in ORS 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. [1955 c.708 §9; 1959 c.437 §3; 1985 c.673 §54; 1987 c.542 §7; 1991 c.735 §34; 1993 c.557 §4; 1995 c.416 §22; 1997 c.446 §6; 1997 c.587 §8; 2013 c.371 §33]

**537.620 Determination of completeness of application; initial review; preliminary determination; notice; public comments.** (1) The Water Resources Department shall accept all applications for permits submitted under ORS 537.615 in proper form.

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

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

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

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

(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 (2) 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 $225. 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)(p). [1955 c.708 §10; 1981 c.589 §4; 1985 c.673 §55; 1989 c.201 §3; 1991 c.102 §2; 1991 c.400 §3; 1991 c.735 §35; 1993 c.557 §5; 1995 c.416 §23; 1997 c.587 §9; 2007 c.267 §3; 2009 c.819 §§9,16; 2013 c.644 §8]

**Note:** The amendments to 537.620 by section 9, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

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

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

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

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

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

(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 (2) 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 $200. 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)(p).

**537.621 Review of application; proposed final order; presumption; rebuttal; findings and conclusions; flow rate and duty; standing; protest; final order; contested case hearing.** (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.620 (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 537.627 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 determine whether the proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525. The department shall presume that a proposed use will ensure the preservation of the public welfare, safety and health 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 would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the department that shows:

(A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely 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 ensure the preservation of

the public welfare, safety and health as described in ORS 537.525;

(f) A draft permit, including any proposed conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption under subsection (2) of this section has been established;

(h) The date by which protests to the proposed final order must be received by the department; and

(i) The flow rate and duty of water allowed.

(4) In establishing the flow rate and duty of water allowed, the department may consider a general basin-wide standard, but first shall evaluate information submitted by the applicant to demonstrate the need for a flow rate and duty higher than the general standard. If the applicant provides such information, the department shall authorize the requested rate and duty except upon specific findings related to the application to support a determination that a lesser amount is needed. If the applicant does not provide information to demonstrate the need for a flow rate and duty higher than the general basin-wide standard, the department may apply the general standards without specific findings related to the application.

(5) 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.

(6) 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).

(7) 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.

(8) 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 537.620 (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).

(9) 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 537.625 (1); 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 §25; 1995 c.549 §1a; 1997 c.446 §7; 1997 c.587 §10; 2007 c.188 §3; 2009 c.819 §§10,17; 2013 c.644 §10]

**537.622 Contested case hearing; parties; issues.** (1) Within 45 days after the Water Resources Director schedules a contested case hearing under ORS 537.621 (9), 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 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 537.621 (6) 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) 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. [1957 c.341 §2; 1983 c.740 §213; 1985 c.673 §56; 1995 c.416 §27; 2003 c.75 §97]

**537.625 Final order; appeal; contents of permit.** (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 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 mining operation. [1955 c.708 §11; 1959 c.437 §4; 1981 c.61 §3; 1985 c.673 §57; 1995 c.416 §28; 1997 c.587 §11; 2013 c.371 §34]

**537.626 Exceptions to final order; modified order.** (1) Within 20 days after the Water Resources Director issues a final order under ORS 537.625 after the conclusion of a contested case hearing, any party may file with the Water Resources Commission exceptions to the order.

(2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60 days after close of the exception period under subsection (1) of this section. [1995 c.416 §29]

**537.627 Time limit for issuing final order or scheduling contested case hearing; extension; writ of mandamus.** (1) Except as provided in subsection (2) of this section, the Water Resources Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.615 within 180 days after the department proceeds with the application under ORS 537.620 (5).

(2) At the request of the applicant, the department may extend the 180-day period set forth in subsection (1) of this section for a reasonable period of time.

(3) If the applicant does not request an extension under subsection (2) of this section and the department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the department proceeds with the application under ORS 537.620 (5), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the department to issue a final order or schedule a contested case hearing on an application for a water right. The writ of mandamus shall compel the department to issue a water right permit, unless the department shows by affidavit that to issue a permit may result in harm to an existing water right holder. [1995 c.416 §31]

**537.628 Terms; conditions; time limit for issuing final order after contested case hearing.** (1) The Water Resources Department may approve an application for less ground water than applied for or upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health. In any event the department shall not approve the application for more ground water than is applied for or than can be applied to a beneficial use. No application shall be approved when the same will deprive those having prior rights of appropriation for a beneficial use of the amount of water to which they are lawfully entitled.

(2) If a contested case hearing is held, the department shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings. [1995 c.416 §30]

**537.629 Conditions or limitations to prevent interference with other users.** (1) When an application discloses the probability of wasteful use or undue interference with existing wells or that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water by others, or that any proposed use or well will impair or substantially interfere with existing rights to appropriate ground water for the beneficial use of the water for its thermal characteristics, the Water Resources Department may impose conditions or limitations in the permit to prevent the same or reject the same after hearing, or, in the department's discretion, request the Water Resources Commission to initiate a rulemaking proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(2)(a) When an application discloses the probability that a proposed use or well will impair or interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250 degrees Fahrenheit, the department may:

(A) Approve the permit;

(B) Impose conditions or limitations in the permit to prevent the probable interference or impairment;

(C) After a hearing under ORS 537.622, reject the application; or

(D) Request the commission to initiate a rulemaking proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(b) In deciding whether to issue, deny or condition a permit under this subsection, the department shall consider any orders or permits applicable to the ground water reservoir issued by the State Geologist or the govern-

ing board of the State Department of Geology and Mineral Industries under ORS chapter 522. [1995 c.416 §26]

**537.630 Time allowed for construction work under permit; certificate of completion; survey; ground water right certificate; requirements for supplemental water right.** (1) Except for the holder of a permit for municipal use, the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

(2) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which the permit for municipal use is issued under ORS 537.625. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

(b) The extension of time is conditioned to provide that the holder may divert water beyond the maximum rate diverted for beneficial use before the extension only upon approval by the department of a water management and conservation plan; and

(c) For the first extension issued after June 29, 2005, for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

(3) If the construction of any well or other means of developing and securing the ground water is completed after the date of approval of the application for a permit under ORS 537.625, within 30 days after the completion, or if the construction is completed before the date of approval, within 30 days after the date of approval, the permit holder shall file a certificate of completion with the Water Resources Department, disclosing:

(a) The depth to the water table;

(b) The depth, diameter and type of each well, and the kind and amount of the casing;

(c) The capacity of the well pump in gallons per minute and the drawdown thereof;

(d) The identity of the record owner of any property that was described in the application for a permit under ORS 537.625 but is not included in the certificate of completion; and

(e) Any other information the department considers necessary.

(4) Upon completion of beneficial use necessary to secure the ground water as required under this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after applying the water to beneficial use or the beneficial use date allowed in the permit, the permit holder shall submit the survey as required by the Water Resources Department to the department along with the certificate of completion required under subsection (3) of this section. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

(5) After the department has received a certificate of completion and a copy of the survey as required by subsections (3) and (4) of this section that show, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795 and 537.992, the department shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certif-

icate shall be recorded and transmitted to the applicant as provided in ORS 537.700.

(6) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

(7) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under subsection (5) of this section for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions. [1955 c.708 §12; 1959 c.437 §5; 1985 c.617 §2; 1985 c.673 §202; 1987 c.542 §8; 1995 c.367 §3; 1995 c.416 §34; 1997 c.446 §8; 1999 c.453 §2; 2005 c.410 §2]

**537.632** [1959 c.437 §2; 1961 c.334 §10; renumbered 537.762]

**537.635 Assignment of application, certificate of registration or permit.** (1) Any certificate of registration issued under ORS 537.610 or permit issued under ORS 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department.

(2) An assignment of an application filed under ORS 537.615 or a permit issued under ORS 537.625 and filed for record with the Water Resources Department shall identify the current record owners of all property described in the application or permit. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [1955 c.708 §13; 1985 c.673 §59; 1995 c.367 §4]

**537.665 Investigation of ground water reservoirs; defining characteristics and assigning names and numbers.** (1) Upon its own motion, or upon the request of another state agency or local government, the Water Resources Commission, within the limitations of available resources, shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The commission may make any investigation and gather all data and information essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water from each ground water reservoir.

(2) In identifying the characteristics of each ground water reservoir under subsection (1) of this section, the commission shall coordinate its activities with activities of the Department of Environmental Quality under ORS 468B.185 in order that the final characterization may include an assessment of both ground water quality and ground water quantity.

(3) Before the commission makes a final determination of boundaries and depth of any ground water reservoir, the Water Resources Director shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695.

(4) The commission shall forward copies of all information acquired from an assessment conducted under this section to the central repository of information about Oregon's ground water resource established pursuant to ORS 468B.167. [1955 c.708 §14; 1985 c.673 §60; 1989 c.833 §58]

**537.670 Determination of rights to appropriate ground water of ground water reservoir.** (1) The Water Resources Director upon the motion of the director or, in the discretion of the director, upon receipt of a petition therefor by any one or more appropriators of ground water from such ground water reservoir, may proceed to make a final determination of the rights to appropriate the ground water of any ground water reservoir in this state.

(2) The director shall prepare a notice of intent to begin a determination referred to in subsection (1) of this section. The notice shall set forth a place and time when the director or the authorized assistant of the director shall begin the taking of testimony as to the rights of the various claimants to appropriate the ground water of the ground water reservoir and as to the boundaries and depth thereof. A copy of the notice shall be delivered to each person or public agency known to the director from an examination of the records in the Water Resources Department to be a claimant to a right to appropriate ground water of the ground water reservoir or any surface water within the area in which the ground water reservoir is located. The notice shall also be published in at least one issue each week for at least two consecutive weeks in a newspaper of general

circulation published in each county in which the ground water reservoir or any part thereof is located. If the ground water reservoir is located in whole or in part within the limits of any city, the notice shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and copies of the notice shall be delivered to the mayor or chairperson of the governing body of the city. Copies of the notice shall be delivered and the last publication date of published notices shall be at least 30 days prior to the taking of any testimony.

(3) The director shall enclose with each copy of the notice referred to in subsection (2) of this section delivered to each person or public agency known to be a claimant to a right to appropriate ground water of the ground water reservoir a blank form on which such claimant shall present in writing all the particulars necessary for determination of the right of the claimant as may be prescribed by the director. The director may require each claimant to certify to the statements of the claimant under oath, and the director or the authorized assistant of the director may administer such oaths. [1955 c.708 §15; 1991 c.102 §3]

**537.675 Determination of rights in several reservoirs or of critical ground water area in same proceeding.** (1) Whenever the Water Resources Director has reason to believe that two or more ground water reservoirs overlie one another wholly or in part, the director may proceed to a final determination of the rights to appropriate the ground water of each of such ground water reservoirs in the same proceeding under ORS 537.670 to 537.695.

(2) The director may include in a determination proceeding under ORS 537.670 to 537.695 a determination of a critical ground water area under ORS 537.730 to 537.740. [1955 c.708 §16]

**537.680 Taking testimony; inspecting evidence; contesting claim.** Testimony shall be taken, evidence shall be open to inspection and claims shall be subject to contest in a proceeding to determine rights to appropriate the ground water of any ground water reservoir initiated under ORS 537.670 as nearly as possible in the same manner as provided in ORS 539.070, 539.090, 539.100 and 539.110 for the determination of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §17]

**537.685 Findings of fact and order of determination.** As soon as practicable after compilation of the evidence obtained in proceedings under ORS 537.665 to 537.680, the Water Resources Director shall make and cause to be entered of record in the Water Resources Department findings of fact and an order of determination, determining and establishing the several rights to appropriate the ground water of the ground water reservoir. The findings of fact and order of determination shall also include:

(1) The boundaries and depth of each ground water reservoir.

(2) The lowest permissible water level in each ground water reservoir.

(3) The location, extent, quality and other pertinent characteristics of the ground water supply.

(4) The serviceable methods of withdrawal of the ground water from each ground water reservoir.

(5) Rules for controlling the use of the ground water from each ground water reservoir.

(6) Such general or special rules or restrictions with respect to the construction, operation and protection of wells and the withdrawal of ground water thereby as in the judgment of the director the public welfare, health and safety may require.

(7) The name and post-office address of each claimant.

(8) The nature of the use of the ground water allowed for each well, together with the maximum permissible use of the ground water, the place of use of the ground water and the date of priority of each use.

(9) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision.

(10) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(11) The depth, diameter and type of each well, the kind and amount of the casing, the capacity of each well in gallons per minute and such other information concerning each well as in the opinion of the director may be pertinent. [1955 c.708 §18; 1991 c.102 §4]

**537.690 Filing evidence, findings and determinations; court proceedings.** The evidence relied upon by the Water Resources Director in the entry of the findings of fact and order of determination under ORS 537.685, together with a copy of such findings and order, shall be certified to by the director and filed with the clerk of the circuit court wherein the determination is to be heard, which shall be the circuit court of any county in which the ground water reservoir or any part thereof is located. A certified copy of the findings of fact and the order of determination shall also be filed with the

county clerk of every other county in which the ground water reservoir or any part thereof is located. Thereafter, proceedings shall be had as nearly as possible in the same manner as provided in ORS 539.130 (2), (3) and (4), 539.150, 539.160, 539.170, 539.180, 539.190 and 539.210 for the final adjudication of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §19]

**537.695 Conclusive adjudication.** The determination of the Water Resources Director under ORS 537.685, as confirmed or modified by the circuit court or Supreme Court, shall be a conclusive adjudication as to all claimants of rights to appropriate the ground water of each ground water reservoir included within the order of determination. [1955 c.708 §20]

**537.700 Issuing ground water right certificate.** Upon the final determination under ORS 537.670 to 537.695 of the rights to appropriate the ground water of any ground water reservoir, the Water Resources Director shall issue to each person or public agency represented in the determination proceedings and who is determined to have such a right a ground water right certificate, setting forth the name and post-office address of the owner of the right; the priority of the date, extent and purpose of the right; and, if the ground water is for irrigation purposes, a description of the legal subdivisions of land to which the ground water is appurtenant. [1955 c.708 §21; 1957 c.341 §7; 1969 c.629 §2; 1971 c.621 §36; 1975 c.607 §39; 1979 c.67 §1]

**537.705 Ground water appurtenant; change in use, place of use or point of appropriation.** All ground water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any ground water for any purpose may be made without compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530. However, the owner of any ground water right may, upon compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530, change the use and place of use, the point of appropriation or the use theretofore made of the ground water in all cases without losing priority of the right theretofore established. [1955 c.708 §22]

**537.710** [Renumbered 537.800]

**537.715** [1955 c.708 §23; repealed by 1957 c.341 §12]

**537.720 Violation of terms of law or permit or certificate; action by Water Resources Commission.** Whenever, after notice to and opportunity to be heard by such holder, the Water Resources Commission finds that the holder of any permit or certificate of registration issued under ORS 537.505 to 537.795 and 537.992 is willfully violating any provision of the permit or certificate of registration or any provision of ORS 537.505 to 537.795 and 537.992, the commission may cancel or suspend the permit or certificate of registration or impose conditions on the future use thereof to prevent such violation. [1955 c.708 §24; 1985 c.673 §61]

**537.730 Designation of critical ground water area; rules; notice.** (1) The Water Resources Commission by rule may designate an area of the state a critical ground water area if:

(a) Ground water levels in the area in question are declining or have declined excessively;

(b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;

(c) The department finds a pattern of interference or potential interference between wells of ground water claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;

(d) The department finds a pattern of substantial interference between wells within the area in question and:

(A) An appropriator of surface water whose water right has an earlier priority date; or

(B) A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the ground water appropriation;

(e) The available ground water supply in the area in question is being or is about to be overdrawn;

(f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or

(g) Ground water temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(2) The proceeding to designate a critical ground water area shall be conducted according to the provisions under ORS chapter 183 applicable to the adoption of rules by an agency, except that a hearing on a critical ground water declaration shall occur at least 60 days after notice has been given.

(3) In addition to the notice requirements under ORS 183.335, the department shall give notice by regular mail to:

(a) The owners of record of all ground water registrations, permits and certificates for water use within the affected area; and

(b) Each water well constructor licensed under ORS 537.747.

(4) If the department satisfies the notice requirements under ORS 183.335 and subsection (3) of this section, a person shall not contest a critical ground water area designation on grounds of failure to receive notice by regular mail. [1955 c.708 §26; 1957 c.341 §8; 1981 c.589 §5; 1985 c.673 §62; 1987 c.442 §1; 1989 c.201 §4; 1991 c.400 §4]

**537.735 Rules designating critical ground water area.** (1) A rule adopted by the Water Resources Commission under ORS 537.730 shall:

(a) Define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located either in whole or in part within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.

(b) Contain a provision requiring a periodic review of conditions in the critical ground water area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground water area designation and shall occur no less frequently than once every 10 years.

(2) In adopting the rule, the commission shall consider any orders or permits applicable to the reservoir issued by the governing board or State Geologist of the State Department of Geology and Mineral Industries under ORS chapter 522.

(3) A rule by the commission under subsection (1) of this section may include any one or more of the following corrective control provisions:

(a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area.

(b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year.

(c) The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process.

(d) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(e) A provision closing all or part of the critical ground water area to further appropriation of ground water for its thermal characteristics.

(f) A provision determining the permissible change in thermal characteristics of ground water in all or part of the critical ground water area each day, month or year. Insofar as may be reasonably done, the Water Resources Director shall apportion the permissible total temperature impact among those appropriators whose exercise of valid rights in the critical area affect the thermal characteristics of the ground water, in accordance with the relative dates of priority of such rights. [1955 c.708 §27; 1981 c.589 §6; 1981 c.919 §1; 1985 c.673 §63; 1989 c.201 §5; 1991 c.400 §5]

**537.740 Filing rules designating critical ground water area.** In addition to any applicable requirements under ORS chapter 183, the Water Resources Commission shall file a copy of any rules designating a critical ground water area under ORS 537.730 to 537.740 with the county clerk of each county within which any part of the critical ground water area lies, and the county clerk shall record the designation in the deed records of the county. [1955 c.708 §28; 1985 c.673 §64; 1991 c.400 §6]

**537.742 Contested case proceeding to limit use of ground water in critical ground water area.** (1) Any time after the Water Resources Commission adopts a rule under ORS 537.730 designating a critical ground water area, the commission may initiate a contested case proceeding to limit the use of ground water in the area if the commission has reason to believe that any of the qualifying criteria of ORS 537.730 (1) exists.

(2) Upon the conclusion of a contested case proceeding initiated under subsection (1) of this section and upon finding that the problems that resulted in the designation of a critical ground water area under ORS 537.730 can be resolved by implementing one or more of the corrective control provisions of this section, the commission shall issue a final order establishing any one or more of the following corrective control provisions:

(a) A provision apportioning the permissible total withdrawal as established by rule under ORS 537.730, among the appropriators holding valid rights to ground water in the critical area in accordance with the relative dates of priority of such rights.

(b) A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical

area for residential and livestock watering purposes first. Thereafter, the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer.

(c) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.

(d) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.

(e) A provision requiring the abatement, in whole or part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.

(f) A provision requiring and specifying a system of rotation of use of ground water in the critical area.

(3) The commission shall conduct the proceeding under this section according to the provisions of ORS chapter 183 applicable to contested case proceedings. [1991 c.400 §2]

**537.745 Voluntary agreements among ground water users from same reservoir.** (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir. When the commission finds that any such agreement, executed in writing and filed with the commission, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, the commission shall approve the agreement. Thereafter the agreement, until terminated as provided in this subsection, shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992. Any agreement approved by the commission may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the commission if the commission finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the commission may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the commission shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section. [1955 c.708 §31; 1985 c.673 §65]

**537.746 Mitigation credits for projects in Deschutes River Basin; relationship to water made available; rules; annual report.** (1) The Water Resources Commission may by rule establish a system of credits that may be used to offset the potential interference with hydraulically connected surface waters caused by ground water withdrawals within the Deschutes River Basin to account for projects performed in the basin that make water available for mitigation.

(2) A person proposing a project that makes water available for mitigation may apply to the Water Resources Department for approval of the project and a preliminary finding as to the amount of mitigation credits available, based on the amount of water made available by the project. Projects approved by the department shall comply with all other applicable provisions of law, including relevant portions of ORS 390.835, and may not result in injury to existing water rights.

(3)(a) The amount of mitigation credits awarded for a completed project, or any completed phase of the project, shall be equal to the amount of water made available by the project as determined and approved by the department.

(b) A final award of mitigation credits by the department shall be made upon completion of the approved project by the applicant and verification by the department that the project is complete. The department may provide for a partial award of mitigation credits to correspond with completion of approved phases of project implementation.

(c) Mitigation credits shall remain valid until exercised by the holder.

(4) The commission may by rule provide for the recognition or establishment of mitigation banks to facilitate transactions among the holders of mitigation credits and persons who desire to acquire mitigation credits. The mitigation credits may be assigned by the person creating the project to another person or a mitigation bank.

(5) The Water Resources Department shall prepare an annual report on the implementation and management of the system of mitigation credits established by subsections (1) to (4) of this section. [2001 c.659 §§2,3]

### (Deschutes Basin Ground Water Study Area)

**Note:** Sections 1, 2, 4 and 5, chapter 669, Oregon Laws 2005, provide:

**Sec. 1.** Section 2 of this 2005 Act is added to and made a part of ORS 537.505 to 537.795. [2005 c.669 §1]

**Sec. 2.** The Legislative Assembly declares that rules adopted by the Water Resources Commission for the Deschutes Basin ground water study area and certified effective by the Secretary of State on September 27, 2002, satisfy the requirements relating to mitigation under ORS 390.805 to 390.925, 537.332 to 537.360 and 537.505 to 537.795. [2005 c.669 §2]

**Sec. 4.** Section 2 of this 2005 Act applies to all ground water permits containing a ground water mitigation requirement, all final orders approving water right applications containing a ground water mitigation requirement, all mitigation credits, all ground water mitigation projects and all mitigation banks issued or approved in the Deschutes River Basin by the Water Resources Department or the Water Resources Commission before, on or after the effective date of this 2005 Act [July 29, 2005]. [2005 c.669 §4]

**Sec. 5.** (1) The Water Resources Commission shall repeal the rules referred to in section 2, chapter 669, Oregon Laws 2005, on January 2, 2029.

(2) Ground water permits and mitigation projects approved before the repeal remain valid and effective. [2005 c.669 §5; 2011 c.694 §1]

### (Water Well Constructors)

**537.747 Water well constructor's license; rules; fees.** (1) No person shall advertise services to construct, alter, abandon or convert wells, offer to enter or enter into a contract with another person or public agency to construct, alter, abandon or convert a well for such other person, cause any well construction, alteration, abandonment or conversion to be performed under such a contract or operate well drilling machinery without possessing a water well constructor's license therefor in good standing issued by the Water Resources Department. The department shall adopt a single water well constructor's license that may specify the type of well, type of well alteration or construction or type of well drilling machine operation for which the water well constructor is qualified.

(2) Notwithstanding subsection (1) of this section, a person may operate a well drilling machine without a water well constructor's license if supervised by one who possesses such a license.

(3) A person shall be qualified to receive a water well constructor's license if the person:

(a) Is at least 18 years of age.

(b) Has passed a written examination conducted by the department to determine fitness to operate as a water well constructor.

(c) Has paid a license fee and an examination fee according to the fee schedule set forth under subsection (6) of this section.

(d) Has one year or more experience in the operation of well drilling machinery.

(4) Upon fulfillment of all the requirements set out in subsection (3) of this section, the department shall issue the applicant a water well constructor's license in a form prescribed by the department. The license may be issued for a period of two years.

(5) A water well constructor's license shall expire on June 30 or on such date as may be specified by department rule. A person may renew a license by submitting an application and the appropriate fees any time before the license expires but not later than one year after the license expires. A person who renews a license within the 12 months after the license expires may either pay a penalty fee set forth under subsection (6)(d) of this section or requalify for a water well constructor's license in accordance with subsection (3) of this section. If a person fails to renew a license within 12 months after expiration, the person must comply with the requirements of subsection (3) of this section for a new water well constructor's license.

(6) The department shall collect in advance the following fees:

(a) An examination fee of $20.

(b) A license fee of $150.

(c) A renewal fee of $150.

(d) Unless a person requalifies for a water well constructor's license in accordance with subsection (3) of this section, a water well constructor shall pay a renewal fee of $250 if the license is renewed within 12 months after expiration.

(e) If a person requalifies for a water well constructor's license under subsection (3) of this section, the person shall pay the renewal fee established under paragraph (c) of this subsection.

(7) The department may revoke, suspend or refuse to renew any water well constructor's license when it appears to the satisfaction of the department, after notice and opportunity to be heard by the licensee,

that the licensee has failed to comply with the provisions of ORS 537.505 to 537.795 and 537.992 applicable to such licensee or any order or rule adopted thereunder applicable to such licensee, or has made a material misstatement of fact on an application for a license or well log or established a pattern of conduct that willfully or negligently violates any provision of ORS 537.505 to 537.795 and 537.992, or any rule adopted pursuant thereto, applicable to such licensee.

(8) The provisions of subsection (3) of this section requiring one year or more experience in the operation of well drilling machinery do not apply to any person who, on July 1, 1981, holds the license required by this section and who continues thereafter to maintain the license in good standing.

(9) The fees collected under subsection (6) of this section shall be paid into the Water Resources Department Water Right Operating Fund. Such moneys are continuously appropriated to the Water Resources Department to pay the department's expenses in administering and enforcing the water well constructor's licensing program. [1961 c.334 §2; 1971 c.591 §1; 1973 c.827 §58; 1981 c.416 §2; 1985 c.615 §2; 1985 c.673 §66; 1987 c.109 §1; 1989 c.758 §2; 1999 c.293 §2; 2001 c.496 §§5,8; 2003 c.594 §§9,10; 2007 c.221 §1; 2007 c.768 §§11,12]

**537.750 Examination for license.** (1) The written examination required under ORS 537.747 (3)(b) shall be prepared to test the applicant's knowledge and understanding of the following subjects:

(a) Laws of the state pertaining to the appropriation and use of ground water, the licensing requirements of ORS 537.747 to 537.765, the construction of wells and the preparation and filing of well logs.

(b) Rules of the Water Resources Commission pertaining to the appropriation and use of ground water, the construction of wells and the preparation and filing of well logs.

(c) Basic information on ground water geology, the occurrence and movement of ground water, and the design, construction and development of wells.

(d) Types, uses and maintenance of drilling tools and equipment, drilling problems and corrective procedures, repair of faulty wells, sealing of wells and safety rules and practices.

(2) Examinations shall be given during the months of January, April, July and October. The date, time and place of the examination are to be established by the commission. The examination shall be given only to those applicants who have met the requirement set out in ORS 537.747 (3)(a) and have paid the $20 examination fee. An applicant who fails to pass the examination by not attaining a grade of 70 or better may retake the examination after three months and the payment of another $20 examination fee. [1961 c.334 §3; 1981 c.416 §3; 1985 c.673 §67]

**537.753 Bond or letter of credit; landowner's permit and bond.** (1) Any person who contracts or offers services to contract to construct, alter, abandon or convert wells shall have in effect a surety bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, running to the State of Oregon in the sum of $10,000, ensuring that in the construction, alteration, abandonment or conversion of wells, the principal shall comply with all the provisions of ORS 537.505 to 537.795 and 537.992 that are applicable to such construction, alteration, abandonment or conversion and to the rules and standards of well construction, alteration, abandonment and conversion that have been prescribed by the Water Resources Commission. The bond or letter of credit shall be filed with the Water Resources Commission.

(2) The Water Resources Commission or any person injured by failure of a water well constructor to comply with the provisions of the bond or letter of credit has a right of action on the bond or letter of credit in the name of the injured person. However, the aggregate liability of the surety or letter of credit issuer to all such persons may not exceed the sum of the bond or letter of credit.

(3) A proceeding against the bond or letter of credit under subsection (2) of this section may not be commenced unless the commission notifies the water well constructor of the alleged violation within three years after the date the water well report is filed with the commission.

(4) If a well is to be constructed, altered, abandoned or converted by a person on property owned by that person, by means of a well drilling machine, the person shall obtain a permit from the commission before beginning work. Application for the permit shall be in the form prescribed by the commission and must be accompanied by a fee of $25. At the time the permit is obtained, the applicant also shall file with the commission a bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 running to the State of Oregon in the sum of $5,000, ensuring that in the construction, alteration, abandonment or conversion of the well the landowner shall comply with all the provisions of ORS 537.505 to 537.795 and 537.992 that are applicable to the construction, alteration, abandonment or conversion of wells and to the rules and standards of well construction, alteration, abandonment and conversion that have been prescribed by the commission. Be-

fore the person who constructs, alters, abandons or converts a well referred to in this subsection seals the well, the person must give 10 days' written notice of the construction, alteration, abandonment or conversion to the commission. After expiration of the notice period, the well may be sealed even if the commission has not caused the well to be inspected. [1961 c.334 §4; 1971 c.591 §2; 1981 c.416 §4; 1985 c.615 §1; 1985 c.673 §198; 1991 c.331 §78; 1997 c.631 §485; 1999 c.293 §3; 2003 c.144 §1]

**537.756** [1961 c.334 §7; 1971 c.591 §3; repealed by 1981 c.416 §10]

**537.759** [1961 c.334 §8; repealed by 1981 c.416 §10]

**537.762 Report of constructor before beginning work on well; rules; fees.** (1) Each person required to possess a license under ORS 537.747 who has entered into a contract to construct, alter, abandon or convert a well or cause a well to be constructed, altered, abandoned or converted shall, before beginning work on the well, make a report to the Water Resources Commission containing:

(a) The name and post-office address of the owner of the well.

(b) The approximate location of the well.

(c) The proposed depth and diameter of the well.

(d) The proposed purpose or use of the ground water from the well.

(2) The commission shall furnish a convenient means for submitting the reports referred to in subsection (1) of this section to each person who possesses a license under ORS 537.747.

(3) A separate report shall be furnished under subsection (1) of this section for each well that is constructed, altered, abandoned or converted.

(4) The report furnished under subsection (1) of this section shall be confidential and maintained as such for one year or until the well log required under ORS 537.765 is received by the commission, whichever is earlier. Nothing in this subsection prohibits the commission from using the report for enforcement actions during the period the report is considered confidential.

(5) Each report form submitted under subsection (1) of this section for the construction of a new well, deepening of an existing well, or conversion of a well shall be accompanied by a fee of $225. Notwithstanding the fee established pursuant to this subsection, the commission may adopt by rule a reduced fee for persons submitting materials to the Water Resources Department in a digital format approved by the department.

(6) The moneys paid to the commission under subsection (5) of this section shall be paid into the Water Resources Department Operating Fund. All interest, if any, from moneys received under subsection (5) of this section shall inure to the benefit of the Water Resources Department. Such moneys and interest earned on such moneys are continuously appropriated to the department to be used to pay the costs of the department to employ personnel to inspect wells and well construction. [Formerly 537.632; 1981 c.416 §5; 1985 c.615 §7; 1985 c.673 §69; 1987 c.109 §2; 1989 c.129 §1; 1999 c.293 §4; 2003 c.594 §3; 2005 c.156 §2; 2009 c.766 §1]

**537.763 Water Resources Department Operating Fund.** (1) There is established in the State Treasury the Water Resources Department Operating Fund to provide for the payment of the administrative expenses of the Water Resources Commission in carrying out the provisions of ORS 537.762.

(2) The Water Resources Department Operating Fund shall consist of:

(a) Fees received pursuant to ORS 537.762.

(b) All moneys received on behalf of the fund by gift, grant or appropriation, from whatever source.

(3) The Water Resources Department Operating Fund shall be separate and distinct from the General Fund. All interest, if any, shall inure to the benefit of the Water Resources Department Operating Fund.

(4) In expending moneys in the Water Resources Department Operating Fund received from fees pursuant to ORS 537.762, the biennial limitations on expenditures of the Water Resources Department shall be:

(a) No more than five percent for well inspection administrative support;

(b) No more than 20 percent for well inspection technical and information services; and

(c) No less than 75 percent for well inspection field investigation and enforcement. [1989 c.129 §4; 2003 c.594 §4]

**Note:** 537.763 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.765 Log of constructing, altering, abandoning or converting well; furnishing samples to Water Resources Commission.** (1) The business or activity of constructing new wells or altering, abandoning or converting existing wells is declared to be a business or activity affecting the public welfare, health and safety. In order to enable the state to protect the welfare, health and safety of its citizens, any person licensed under ORS 537.747, or any person or public agency constructing, altering, abandoning or converting a well, shall keep a log of each well constructed, altered,

abandoned or converted and shall furnish a certified copy of the log to the Water Resources Commission within 30 days after the completion of the construction, alteration, abandonment or conversion.

(2) The commission shall provide acknowledgment to the constructor of receipt of a well log submitted under subsection (1) of this section within 120 days of receipt.

(3) Each log required under subsection (1) of this section shall be in a form prescribed by the commission and shall show:

(a) The name and post-office address of the owner of the well and the person or public agency performing or causing the performance of the work of constructing, altering, abandoning or converting the well.

(b) The location of the well by county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system, or with reference to government survey corners or monuments or corners of recorded plats.

(c) The dates of commencement and completion of the work of constructing, altering, abandoning or converting the well.

(d) The depth, diameter and type of the well.

(e) The kind and amount of the casing and where placed in the well, including the number and location of perforations or screens.

(f) The flow in cubic feet per second or gallons per minute of a flowing well, and the shut-in pressure in pounds per square inch.

(g) The static water level with reference to the land surface, and the drawdown with respect to the amount of water pumped per minute, when a pump test is made.

(h) The kind and nature of the material in each stratum penetrated, with at least one entry for each change of formation, and the thickness of aquifers.

(i) The temperature of the ground water encountered and other characteristics of the ground water in detail as required by the commission.

(4) If required by the commission, the person, public agency or licensee referred to in subsection (1) of this section shall furnish to the commission samples of the ground water and of each change of formation in containers furnished and transportation expense paid by the commission. [1955 c.708 §29; 1961 c.334 §11; 1981 c.416 §6; 1985 c.673 §70; 1993 c.774 §5; 1995 c.77 §1; 1999 c.293 §5]

## (Well Constructors Continuing Education Committee)

**Note:** Sections 2, 4 and 7, chapter 496, Oregon Laws 2001, provide:

**Sec. 2.** (1) There is established a Well Constructors Continuing Education Committee consisting of four members appointed by the Water Resources Director as follows:

(a) Three persons from the well drilling industry licensed pursuant to ORS 537.747; and

(b) One person from the regulatory community.

(2) The term of office of each member is three years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become effective immediately for the unexpired term.

(3) A member of the committee is entitled to travel expenses as provided in ORS 292.495.

(4) Members of the committee must be residents of this state who are knowledgeable about the principles of well construction.

(5) The committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with the duties and powers necessary for the performance of the functions of such offices as the committee determines.

(6) Three members of the committee constitute a quorum for the transaction of business. At least three members of the committee must approve all official actions or decisions of the committee. [2001 c.496 §2]

**Sec. 4.** (1) The Well Constructors Continuing Education Committee shall recommend to the Water Resources Commission a process for reviewing and approving continuing education requirements for licensed water well constructors established by rule pursuant to subsection (2) of this section.

(2) The commission shall adopt rules necessary for the administration of a continuing education program for licensed water well constructors consistent with the recommendations of the committee.

(3) The rules adopted by the commission under this section for the continuing education program shall:

(a) Authorize the committee to review and approve continuing education courses and to assign continuing education credits.

(b) At a minimum require, for renewal of a license issued under ORS 537.747, that an applicant:

(A) Through clinics, schools, professional organizations or seminars, lectures or other courses of study that relate to the practice of well construction and that are approved by the committee, obtain continuing education credits during each licensing period in an amount designated by the commission, but not to exceed 14 credits; and

(B) Furnish proof on a form approved by the committee that the applicant has complied with the continuing education requirements during the preceding licensing period unless the applicant is exempt under subsection (4) of this section.

(4) The commission may waive the continuing education requirements established by rule pursuant to subsection (2) of this section for a licensed water well constructor if the constructor submits satisfactory evidence of inability to attend continuing education courses because of health, military duty or other circumstances beyond the control of the constructor.

(5) For courses sponsored by the Water Resources Department, the fee for one continuing education credit is $40, and the total fees per day may not exceed $250.

(6) The fees collected under this section for continuing education courses sponsored by the department shall be paid into the Water Resources Department Water Right Operating Fund. Notwithstanding ORS 536.009, such moneys shall be used to pay the department's expenses associated with conducting continuing education courses.

(7) At the time of application to renew a water well constructor's license pursuant to ORS 537.747 (5), a person shall provide the department with evidence of compliance with the continuing education requirements established pursuant to this section. [2001 c.496 §4; 2007 c.221 §2]

**Sec. 7.** Sections 2 and 4, chapter 496, Oregon Laws 2001, are repealed January 2, 2022. [2001 c.496 §7; 2007 c.221 §3; 2014 c.57 §1]

**Note:** Section 2, chapter 57, Oregon Laws 2014, provides:

**Sec. 2.** The amendments to section 7, chapter 496, Oregon Laws 2001, by section 1 of this 2014 Act revive sections 2 and 4, chapter 496, Oregon Laws 2001. This 2014 Act shall be operative retroactively to January 1, 2014, and the operation and effect of sections 2 and 4, chapter 496, Oregon Laws 2001, shall continue unaffected from January 1, 2014, to the effective date of this 2014 Act [March 13, 2014] and thereafter. Any otherwise lawful action taken or otherwise lawful obligation incurred under authority of sections 2 and 4, chapter 496, Oregon Laws 2001, on or after January 2, 2014, and before the effective date of this 2014 Act is ratified and approved. [2014 c.57 §2]

## (Local Regulation)

**537.769 Local regulation of wells and water well constructors.** The Legislative Assembly finds that ground water protection is a matter of statewide concern. No ordinance, order or regulation shall be adopted by a local government to regulate the inspection of wells, construction of wells or water well constructors subject to regulation by the Water Resources Commission or the Water Resources Department under ORS 537.747 to 537.795 and 537.992. [1989 c.129 §3]

**537.770** [1955 c.708 §30; 1957 c.341 §9; repealed by 1961 c.334 §12]

## (Regulation of Ground Water Wells)

**537.772 Pump tests; report; rules for waiver.** (1) The owner or operator of any well, except wells used for purposes listed in ORS 537.545, shall conduct a pump test at least once every 10 years and report the results of that test to the Water Resources Commission. The owner or operator may conduct the test in conjunction with normal pump service and testing or at any time more convenient to the owner or operator of the well.

(2) The owner or operator shall report the results of the pump test on a form provided by the commission. The form shall include but need not be limited to the duration of the test, rate of pumping, total water level decrease and time required for 90 percent recovery of water level.

(3) The commission may establish by rule criteria for waiver of the pump test requirement. [1987 c.649 §5]

**537.775 Wasteful or defective wells; permanent abandonment of old well.** (1) Whenever the Water Resources Commission finds that any well, including any well exempt under ORS 537.545, is by the nature of its construction, operation or otherwise causing wasteful use of ground water, is unduly interfering with other wells or surface water supply, is a threat to health, is polluting ground water or surface water supplies, is causing substantial alteration of ground water temperatures or is causing substantial thermal interference with other wells contrary to ORS 537.505 to 537.795 and 537.992, the commission may order discontinuance of the use of the well, impose conditions upon the use of such well to such extent as may be necessary to remedy the defect or order permanent abandonment of the well according to specifications of the commission.

(2) In the absence of a determination of a critical ground water area, any order issued under this section imposing conditions upon interfering wells shall provide to each party all water to which the party is entitled, in accordance with the date of priority of the water right.

(3) A landowner who replaces an old well by drilling a new well shall permanently abandon the old well if the old well is within a setback as defined in well construction rules adopted by the commission. Permanent abandonment of a well located within a setback shall occur within one year after the function of the well is replaced or within one year after the water right, if applicable, is transferred to the new well, whichever is later. [1955 c.708 §25; 1981 c.919 §2; 1985 c.673 §71; 1987 c.442 §2; 1989 c.201 §6; 1989 c.833 §59; 1993 c.774 §12]

**537.777 Regulation of controlling works of wells and distribution of ground water.** (1) The Water Resources Commission shall regulate or cause to be regulated the controlling works of wells and distribute ground water to secure compliance or equal and fair distribution if the commission finds that:

(a) Any person or public agency is using or attempting to use any ground water or is operating or permitting the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule of the commission under ORS 537.505 to 537.795 and 537.992; or

(b) It is necessary in order to secure the equal and fair distribution of ground water in accordance with the rights of the various ground water users.

(2) The regulation of controlling works and distribution of ground water under subsection (1) of this section shall be as nearly as possible in the same manner as provided in ORS 540.010 to 540.130. [1957 c.341 §4; 1985 c.673 §72]

**537.780 Powers of Water Resources Commission; rules; limitations on authority.** (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may:

(a) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(b) Enforce:

(A) General standards for the construction and maintenance of wells and their casings, fittings, valves, pumps and backsiphoning prevention devices; and

(B) Special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.

(c)(A) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or

(B) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.

(d) Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.

(e) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps, measuring devices and backsiphoning prevention devices.

(f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

(g) Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.

(h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and 537.992 including but not limited to rules governing:

(A) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;

(B) Procedure in hearings held by the commission; and

(C) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.

(i) In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753.

(2) Notwithstanding any provision of subsection (1) of this section, in administering the provisions of ORS 537.505 to 537.795 and 537.992, the commission may not:

(a) Adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions.

(b) Make any determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source unless the determination is based on substantial evidence. Such evidence may include reports or studies prepared with relation to the specific use or may be based on the application of generally accepted hydrogeological principles to the specific use.

(3) At least once every three years, the commission shall review any rule adopted under subsection (2) of this section that restricts ground water use in an area. The review process shall include public notice and an opportunity to comment on the rule. [1955 c.708 §32; 1981 c.416 §7; 1985 c.673 §73; 1989 c.833 §60; 1995 c.549 §2]

**537.783 Reinjection of geothermal fluids; rules and standards; water pollution control facilities permit.** (1) The Water Resources Commission shall adopt rules which govern the disposal by reinjection or other means of geothermal fluids derived from:

(a) Geothermal or hot water wells less than 2,000 feet deep producing fluids of less than 250 degrees Fahrenheit bottom hole temperature; or

(b) Geothermal or hot water wells less than 2,000 feet deep producing fluids that have been appropriated pursuant to ORS 537.505 to 537.795 and 537.992.

(2) The rules adopted under subsection (1) of this section shall include standards whereby contamination may be determined, construction standards for reinjection wells, testing procedures for identifying aquifers, standards and procedures for determining whether adjacent aquifers are being degraded by the reinjection process, guidelines for conservation of the resource, criteria for evaluating reservoirs or zones for geothermal fluid disposal and requirements for prior approval of all geothermal fluid reinjection proposals.

(3) A water pollution control facilities permit shall be obtained from the Department of Environmental Quality under ORS 468B.050 before reinjection is commenced. The Department of Environmental Quality may, by agreement with the Water Resources Commission, waive this requirement for reinjection into the reservoir from which the fluid came where adequate standards and tests have been adopted to insure the fluid and its residues are uncontaminated. [1979 c.547 §3; 1985 c.673 §74]

**537.785 Fees.** (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission shall collect in advance, the fees set forth in ORS 539.081 for any service similar to any of those referred to in ORS 539.081.

(2) All fees collected by the commission under subsection (1) of this section shall be paid into the General Fund of the State Treasury. [1955 c.708 §33; 1969 c.629 §1; 1979 c.67 §2; 1985 c.673 §75; 2009 c.819 §11]

**537.786** [1957 c.341 §3; repealed by 1969 c.629 §3]

**537.787 Investigation of violation of ground water laws; remedies for violation.** (1) The Water Resources Commission, upon the commission's own initiative, or upon complaint alleging violation of any provision of ORS 537.505 to 537.795 and 537.992, or any rule adopted pursuant thereto, may investigate to determine whether a violation has occurred. If the investigation indicates that a violation has occurred, the commission shall notify the persons responsible for the violation, including:

(a) Any well constructor involved; and

(b) The landowner, if the violation involves construction, alteration, operation, abandonment or conversion of a well.

(2) If, after notice and opportunity for hearing under ORS chapter 183 the commission determines that one or more violations have occurred, the commission may:

(a) Provide additional time for remedy of the violation if the commission has reason to believe adequate repair or other remedy will be carried out within the specified period.

(b) If one or more persons responsible for the violation hold a water well constructor's license, suspend, revoke or refuse to renew the license.

(c) Assess a civil penalty under ORS 537.992, on the well constructor or other responsible party, including the landowner if the landowner was involved in the well construction.

(d) If an involved constructor or landowner has a surety bond required by ORS 537.753 (1) or (4) in effect, make demand on the bond in an amount not to exceed the cost of remedying the violation.

(e) Impose any reasonable condition on the water well constructor's license to insure compliance with applicable laws and provide protection to the ground water of the State of Oregon. Such action shall be conducted as a contested case proceeding according to the applicable provisions of ORS chapter 183.

(f) Any other action authorized by law.

(3) The commission may terminate proceedings against a person if:

(a) The landowner does not permit the person involved in proceedings to be present at any inspection made by the commission; or

(b) The commission determines that the person involved in proceedings is capable of complying with recommendations made by the commission, but the landowner does not permit the person to comply with the recommendations. [1985 c.615 §5; 1985 c.673 §199; 1999 c.293 §6]

**537.788** [1993 c.774 §8; repealed by 2005 c.14 §4]

**537.789 Well identification number.** (1) The well identification number provided by the Water Resources Department when the reporting requirement of ORS 537.762 is satisfied shall be recorded on the well by a person licensed under ORS 537.747 within 30 days after the associated well work is completed.

(2) If a well does not have an identification number recorded on it at the time the property upon which the well is located is transferred, the owner of the property shall record on the well the identification number obtained from the Water Resources Department under ORS 537.791 within 30 days.

(3) The identification number on the well shall be clearly visible to a person looking for the number and shall meet minimum standards as recommended by the ground water advisory committee appointed under ORS 536.090 and adopted by the Water Resources Commission. [1993 c.774 §9]

**537.790** [1955 c.708 §34; 1973 c.612 §15; repealed by 1985 c.673 §185]

**537.791 Request for well identification number.** (1) A landowner may apply to the Water Resources Department for a number to identify a well on the landowner's property.

(2) The Water Resources Department shall issue a number to identify a well that has not received a number through the reporting process required for wells under ORS 537.762 within 10 days after receipt of the application. [1993 c.774 §10]

**537.792** [1985 c.615 §6; 1985 c.673 §200; 1991 c.734 §52; renumbered 537.992 in 1993]

**537.793 Effect of failure to comply with ORS 537.789 or 537.791.** Failure of a seller to comply with the provisions of ORS 537.789 or 537.791 does not invalidate an instrument of conveyance of real estate. [1993 c.774 §11; 2005 c.14 §3]

**537.795 ORS 537.505 to 537.795 supplementary.** ORS 537.505 to 537.795 and 537.992 are intended to be supplementary and in addition to and are not intended to repeal any law relating to the surface waters of this state. [1955 c.708 §35]

**537.796 Rules regarding low temperature geothermal appropriations.** The Water Resources Commission shall adopt by rule an initial temperature below which low temperature geothermal appropriations shall not be protected from thermal interference caused by ground water appropriations for other purposes. [1989 c.201 §§7,8]

**Note:** 537.796 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## WATER RIGHT EXAMINERS; SURVEYS

**537.797 Criteria for certification of land surveyors, engineers and geologists to determine work completion; rules.** The Water Resources Commission by rule shall establish criteria for the certification of registered, professional land surveyors and engineers and geologists practicing as defined in ORS 672.005 and 672.505, respectively, to conduct surveys to determine whether a permittee has completed all work necessary to perfect an appropriation of water under ORS 537.230, 537.630 and 540.530. [1987 c.542 §1; 1989 c.171 §70; 1995 c.7 §1; 2009 c.259 §29]

**Note:** 537.797, 537.798 and 537.799 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.798 Water right examiner certificate; regulation of profession; rules; fees.** (1) The State Board of Examiners for Engineering and Land Surveying may issue a water right examiner certificate to a registered professional land surveyor, registered professional engineer or registered geologist who meets the criteria established by the Water Resources Commission under ORS 537.797. The board shall require an applicant for the certificate to pass an examination establishing the qualification of the applicant to be a water right examiner. The Water Resources Department shall prepare, administer and score the examination.

(2) The board shall establish fees for the examination, certification and renewal of certification of water right examiners. The fees shall be based upon the expenses of the board and the department in conducting the certification program. The board shall reimburse the department for department expenses related to the preparation, administration and scoring of the examination.

(3) The board may adopt rules to regulate persons certified as water right examiners. The rules may include, but need not be limited to, rules establishing standards of professional conduct and rules establishing professional development or continuing education requirements.

(4) Upon receipt of a complaint, or upon its own initiative, the board may investigate any alleged or suspected violation by a water right examiner of ORS 672.002 to 672.325, the criteria established under ORS 537.797, commission rules or a board rule adopted under this section or ORS 672.255. If the board finds that a violation has occurred, in addition to any other disciplinary or regulatory authority of the board, the board may suspend, revoke or modify a certificate issued under this section. Board action to suspend, revoke or modify the certificate is subject to the provisions of ORS chapter 183 relating to contested cases. [1987 c.542 §2; 1995 c.7 §2; 2009 c.259 §30; 2011 c.167 §1]

**Note:** See note under 537.797.

**537.799 Survey for issuance of water right certificate.** Any person who has applied for or received a permit or a transfer to appropriate water under ORS 537.211, 537.625 or 540.530 on or before July 9, 1987, shall notify the Water Resources Department that the work has been completed and either:

(1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or

(2) Continue to appropriate water under the water right permit or transfer issued under ORS 537.211, 537.625 or 540.530 until the Water Resources Department conducts a survey and the commission issues a water right certificate under ORS 537.250 or 537.625. [1987 c.542 §3]

**Note:** See note under 537.797.

## WASTE, SPRING AND SEEPAGE WATERS

**537.800 Waste, spring and seepage waters; laws governing.** (1) All ditches now or hereafter constructed, for the purpose of utilizing waste, spring or seepage waters, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the waters of running streams. However, the person upon whose lands the seepage or spring waters first arise shall have the right to the use of such waters.

(2) As used in this section, "spring" means a point where water emerges naturally from the earth as a result of gravity flow or artesian pressure. [Formerly 537.710; 1989 c.939 §2; 1991 c.200 §2; 1995 c.79 §303]

## DIVERSION OF WATERS FROM BASIN OF ORIGIN

**537.801 Definitions; findings.** (1) As used in ORS chapters 537 and 540:

(a) "Basin" means one of the river basins within this state, as defined by Water Resources Department Map No. 0.2, dated 1987, and entitled "Oregon Drainage Basins," unless the context requires otherwise.

(b) "Basin of origin" means the basin in which surface or ground water that is the subject of an application under ORS 537.211, 537.400, 537.620, 540.520, 543.210 or 543.290 is located.

(2) The Legislative Assembly finds that the transport of significant quantities of water outside the boundaries of the basin of origin may have a significant impact on the water and other resources of the basin of origin.

(3) Therefore, the Legislative Assembly declares that the waters of the state may not be appropriated, stored or diverted for use outside the basin of origin except in compliance with the provisions of ORS 537.801 to 537.860, including, if applicable, the prior approval of the Legislative Assembly under ORS 537.810. [1989 c.936 §§2,3]

**537.803 Application proposing use of water outside of basin of origin; contents.** (1) When an application for appropriation of water submitted under ORS 537.211, 537.400, 537.620, 543.210, 543.290 or for a change in the place of use of an existing water right submitted under ORS 540.520 proposes use of water outside the basin of origin, the application shall include, in addition to any other information required, an analysis of the following:

(a) The amount of water in the basin of origin available for future appropriation.

(b) Projected future needs for water in the basin of origin.

(c) Benefits presently and prospectively derived from the return flow of water used within the basin of origin that will be eliminated by the proposed out-of-basin use.

(d) The correlation between surface water and ground water in the basin of origin, and whether the proposed use will be harmful to the supply of either.

(e) Injury to existing water rights of other appropriators or interference with planned uses or developments within the basin of origin for which a permit has been issued or for which an application is pending.

(f) Whether the proposed use will adversely affect the quantity or quality of water available for domestic or municipal use within the basin of origin.

(g) Whether the proposed use will adversely affect public uses, as defined in ORS 537.332, in the basin of origin.

(h) Alternative sources of water for the proposed use that would not rely on transfer of water out of its basin of origin.

(2) This section shall apply only to an application filed on and after October 3, 1989.

(3) This section shall not apply to an application for exchange of water under ORS 540.533 to 540.543.

(4) This section shall not apply to an application for the transfer of less than 0.5 cubic feet per second of water.

(5) Subsection (1) of this section shall not apply to an appropriation or diversion by a city to facilitate regional municipal water service if the city has historically transported water between the basin of origin and proposed receiving basins identified in the application. [1989 c.936 §4]

**537.805 Processing of application; hearing; action on application.** Notwithstanding any other provision of ORS 537.801 to 537.809, an application governed by ORS 537.803 shall be processed as follows:

(1) Upon determination that the application is acceptable, the Water Resources Commission shall conduct a comprehensive review of the application, at the applicant's expense.

(2) When the comprehensive review is complete, the commission shall issue a preliminary analysis of the application that addresses the factors under ORS 537.803 and any other information the commission considers relevant. The preliminary analysis, or a reasonable summary, shall be published at the applicant's expense for two consecutive

weeks in a newspaper of general circulation in the basin of origin of the proposed appropriation, diversion or impoundment.

(3) Following publication, the commission shall conduct a public hearing at the applicant's expense, in the basin of origin. The hearing shall be for comment on the factors analyzed under ORS 537.803 and standards that otherwise apply to the proposed appropriation or transfer.

(4) After considering the application, the information generated during the comprehensive review of the application, all comments received at the hearing and written comments received within 20 days after the date of the public hearing, the commission shall:

(a) If the application requires legislative approval under ORS 537.810, submit a report to the Legislative Assembly that addresses all factors analyzed under ORS 537.803 and recommends whether to approve or deny the application for use of water outside the basin of origin; or

(b) If the application does not require legislative approval under ORS 537.810, approve or deny the application in accordance with the procedures and standards that otherwise govern the application, giving due consideration to factors set forth in ORS 537.803. [1989 c.936 §5; 2011 c.52 §5]

**537.807** [1989 c.939 §6; repealed by 1991 c.200 §3]

**537.809 Reservation of water in basin of origin.** Before approving or recommending approval of an application subject to ORS 537.803, the Water Resources Commission shall reserve an amount of water adequate for future needs in the basin of origin, including an amount sufficient to protect public uses, and subordinate the out-of-basin use to that reservation. [1989 c.936 §6]

**537.810 Diversion or appropriation of waters from basin of origin without legislative consent prohibited; terms of consent; exceptions.** (1) No waters located or arising within a basin shall be diverted, impounded or in any manner appropriated for diversion or use beyond the boundaries of that basin except upon the express consent of the Legislative Assembly. In the event the Legislative Assembly shall give its consent to any such request it may attach thereto such terms, conditions, exceptions, reservations, restrictions and provisions as it may care to make in the protection of the natural resources of the basin and the health and welfare of the present and future inhabitants of the basin within which the water arises or is located.

(2) Subsection (1) of this section shall not apply to appropriations or diversions of less than 50 cubic feet per second out of the basin of origin.

(3) Subsection (1) of this section shall not apply to appropriations or diversions within the Klamath River Basin as defined in ORS 542.620 or within the Goose Lake Basin as defined in ORS 542.520, so long as those statutes remain in effect.

(4) This section shall not apply to an appropriation or diversion by a city to facilitate regional municipal water service if the city has historically transported water between the basin of origin and proposed receiving basins identified in the application. [Amended by 1989 c.936 §7]

**537.820 Application of provisions to waters forming common boundary between states.** ORS 537.801 to 537.860 shall also apply to the waters located within the boundaries of this state of any river, stream, lake or other body of water serving as part of the common boundary of this state and any other state and over which this state has concurrent jurisdiction, except that said sections shall not apply to the diversion, impoundment or appropriation of waters for the development of hydroelectric energy, flood control, irrigation or other uses in waters forming a boundary of the state in cases where such waters are not to be diverted from the drainage basin wherein such waters are located.

**537.830 Condemnation of waters for use outside basin of origin.** No person, or agency of any state or of the United States, shall attempt to condemn any waters within the boundaries of this state for use outside the basin of origin without first complying with the requirements of ORS 537.801 to 537.810 and this section. [Amended by 1989 c.936 §8]

**537.835 City of Walla Walla, Washington, may appropriate, impound and divert certain waters from Mill Creek.** (1) Pursuant to the provisions of ORS 537.810, consent is hereby given to the City of Walla Walla, a municipal corporation of the State of Washington, to appropriate, impound and divert certain waters from Mill Creek, a tributary of the Walla Walla River, located in Township 6 North, Range 38, E.W.M., Umatilla County, Oregon, for the beneficial use of both the State of Oregon and within the City of Walla Walla, State of Washington, subject to the following terms and conditions:

(a) The City of Walla Walla shall pay the entire cost of constructing and maintaining this project; and

(b) The City of Walla Walla shall employ only residents and inhabitants of the State

of Oregon in the construction and maintenance of the project.

(2) The Water Resources Commission may from time to time direct that a designated portion of the impounded waters shall be held in the State of Oregon for fire protection, for use by Oregon residents, for wildlife habitat needs, and to maintain proper streamflow during the summer months.

(3) Prior to commencing construction, the City of Walla Walla shall make application for such appropriation, impoundment and diversion to the Water Resources Commission and such appropriation, impoundment and diversion shall be allowed upon such additional terms, conditions, reservations, restrictions and provisions, including minimum streamflow, as the Water Resources Commission shall impose for the protection and benefit of the State of Oregon. [1975 c.732 §2; 1985 c.673 §76]

**537.840 Legislative consent; filing of certified copy; appropriation rights and procedure.** Upon receiving legislative permission to appropriate waters under ORS 537.801 to 537.860, the permittee, upon filing in the Water Resources Department a certified copy of the Act, certified to by the Secretary of State, may proceed to obtain an appropriation of waters in the manner provided by the laws of this state for the appropriation of waters for beneficial use, subject to all existing rights and valid prior appropriations and subject to the terms, conditions, exceptions, reservations, restrictions and provisions of such legislative consent. [Amended by 1985 c.673 §77]

**537.850 Suits to protect state interests; right of redress to private persons.** In the event of any violation or attempt to violate any of the provisions of ORS 537.801 to 537.860, the Governor shall cause to be instituted such suits and actions as may be necessary to protect and defend the sovereign rights and interests of the state in the premises. Persons are given right of redress against such violator at private suit or action under any appropriate remedy at law or in equity.

**537.855 Domestic water supply district permitted to divert water out of state; conditions.** (1) Pursuant to the provisions of ORS 537.810, consent is hereby given to any domestic water supply district formed under ORS chapter 264 to permit the diversion of water for use on property a portion of which is within a state adjoining Oregon, subject to the following conditions:

(a) The majority of the property is within Oregon.

(b) The property is developed with economic benefit to Oregon as well as to the adjoining state, in the judgment of the domestic water supply district.

(c) The costs of the diversion are borne by the developer or owner of the property.

(d) The developer employs only residents of Oregon in the construction necessary for the diversion of water.

(2) The diversion of water under this section shall be subject to additional terms, conditions, reservations, restrictions and provisions as the Water Resources Commission shall impose for the protection and benefit of the State of Oregon. [1985 c.572 §2; 1987 c.158 §115]

**537.860 Vested rights protected.** ORS 537.810 to 537.850 shall not affect any valid prior appropriation or water right existing on May 12, 1951.

**537.870 Out-of-state municipalities; acquisition of land and water rights in Oregon.** Subject to the limitations imposed by ORS 537.801 to 537.860, any municipal corporation of any state adjoining Oregon may acquire title to any land or water right within Oregon, by purchase or condemnation, which lies within any watershed from which the municipal corporation obtains or desires to obtain its water supply.

## GEOTECHNICAL HOLES

**537.880 Policy; log requirement; reporting.** (1) The activity of drilling geotechnical holes is declared to be an activity affecting the public welfare, health and safety. In order to enable this state to protect the welfare, health and safety of its citizens, any person that drills a geotechnical hole shall keep a log of each geotechnical hole that is drilled and submit a report to the Water Resources Commission within 30 days after the completion of the drilling.

(2) This section applies to geotechnical holes that are:

(a) Greater than 18 feet deep;

(b) Within 50 feet of a water supply or a monitoring well;

(c) Used to determine water quality and open less than 72 hours; or

(d) Drilled in an area known or reasonably suspected to be contaminated. [2009 c.767 §2]

**537.885 Licensing or registration required for drilling of geotechnical hole.** The person responsible for the drilling of a geotechnical hole for which a report is required under ORS 537.880 must have:

(1) A current monitoring well constructor's license as specified in rules adopted by the Water Resources Commission;

(2) A current water supply well constructor's license as specified in rules adopted by the commission;

(3) A current certificate of registration as a geologist issued under ORS 672.505 to 672.705; or

(4) A current certificate of registration as an engineer issued under ORS 672.002 to 672.325. [2009 c.767 §3]

**537.890 Report form; rules; fees.** (1) The Water Resources Commission may prescribe by rule the form, contents, filing deadline and other requirements for the report required under ORS 537.880.

(2)(a) Except as provided in paragraph (b) of this subsection, each report required to be submitted under ORS 537.880 must be accompanied by a recording fee of $25.

(b) If more than one geotechnical hole is drilled within seven days at the same project site, each report for each geotechnical hole drilled after the first geotechnical hole must be accompanied by a recording fee of $10.

(3) Fees collected under this section shall be deposited to the Water Resources Department Geotechnical Fund. [2009 c.767 §4]

**537.895 Water Resources Department Geotechnical Fund.** (1) The Water Resources Department Geotechnical Fund is established in the State Treasury, separate and distinct from the General Fund.

(2) The Water Resources Department Geotechnical Fund shall consist of:

(a) Recording fees paid under ORS 537.890; and

(b) All moneys from gifts, grants or appropriations to the fund.

(3) Moneys in the Water Resources Department Geotechnical Fund are continuously appropriated to the Water Resources Department for department duties, functions and powers related to geotechnical holes. [2009 c.767 §5]

## PENALTIES

**537.990 Criminal penalties.** (1) Violation of ORS 537.130 (2) is a Class B misdemeanor.

(2) Any person who willfully diverts or uses water to the detriment of others without compliance with law shall be punished as provided in subsection (1) of this section. The possession or use of water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it.

(3) Violation of ORS 537.535 (1) or 537.747 is a Class B misdemeanor. [Subsection (3) enacted as 1955 c.708 §36; 1963 c.293 §3; 1981 c.416 §8; 2011 c.597 §225]

**537.992 Civil penalties; schedule of penalties; rules.** (1) In addition to any other remedy provided by law, the Water Resources Commission may impose a civil penalty against any person who, in the construction of a well, violates any provision of ORS 537.747 to 537.795 and 537.992, or any rule promulgated pursuant thereto. A civil penalty shall be in an amount determined by the commission in accordance with the rules adopted under subsection (2) of this section. However, the commission shall not impose a civil penalty under this section if the commission, by exercising other authority granted under ORS 537.505 to 537.795 and 537.992, causes the person to comply with the provisions of ORS 537.747 to 537.795 and 537.992 or rules adopted thereunder.

(2) The commission shall adopt by rule a schedule of penalties for violation of ORS 537.747 to 537.795 and 537.992, not to exceed $1,000 for each occurrence defined in the rules as a major violation, and not to exceed $250 for each occurrence defined in the rules as a minor violation. Under no circumstances may a penalty for a violation of ORS 537.762 or 537.765 exceed $250.

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

(4) All amounts recovered under this section shall be deposited in the General Fund. [Formerly 537.792]

# Chapter 538

## 2015 EDITION

# Withdrawal of Certain Waters From Appropriation; Special Municipal and County Water Rights


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## DIVERSION BY MORROW COUNTY

**538.010 Waters diverted from Ditch Creek; rights of use and appropriation; certificate; time limitation.** (1) The waters of Ditch Creek which were diverted to and became a part of the waters of Willow Creek, under the provisions of chapter 324, Oregon Laws 1939, are subject to the same rights of use and appropriation as the original waters of Willow Creek.

(2) The right of the county court of Morrow County to divert and store the waters of Ditch Creek, acquired under the certificate issued by the Water Resources Director licensing such diversion and storage, shall date from the time the application to divert and store such waters was filed. The waters shall be used for the purposes, in the manner and under the conditions set forth in the certificate, for such time as the use is for the public interest. If the waters are not used under the license for a five-year period, the license shall expire.

**538.020 Acquisition of property necessary for storage and diversion.** The county court of Morrow County may, for the purposes set forth in chapter 324, Oregon Laws 1939, acquire, in the name of the county and for the use of the public, by purchase, eminent domain proceedings, lease, grant, gift, bequest, devise or any other legal means, real and personal property, rights of way, easements and other property rights or privileges necessary to effect the storage and diversion of the waters referred to in that Act, and maintain and care for such property and rights in the manner provided by statute for the care and maintenance of other county property.

## WITHDRAWALS FROM APPROPRIATION

**538.110 Tumalo Creek, Deschutes County; diversion prohibited; excepted uses; existing rights.** For the purpose of maintaining and perpetuating the recreational and scenic resources of Oregon, the waters of that portion of Tumalo Creek, in Deschutes County, situated above a point one-half mile above the intake of the Columbia Southern Canal in section 2, township 18 south, range 10 east, Willamette Meridian, in Deschutes County, shall not be diverted for any purposes whatsoever, except for municipal, domestic and stock uses. Nothing in this section shall be construed to impair any vested rights existing as of June 4, 1929, in the creek or its tributaries. This section shall not apply to the waters of the south fork of Tumalo Creek. [Amended by 1959 c.223 §1]

**538.120 Silver Creek, Marion County, and Brushes Creek, Curry County, and tributaries; diversion prohibited.** The waters of the north and south forks of Silver Creek and of all tributaries thereof above the confluence of the north and south forks of Silver Creek, all in Marion County, also Brushes Creek and all its tributaries in township 33 south, range 14 west, Willamette Meridian, in Curry County, are withdrawn from appropriation or condemnation, and shall not be diverted or interrupted for any purpose whatsoever, except for use in state parks and except as set forth in ORS 538.130 and section 2 of chapter 480, Oregon Laws 1965. [Amended by 1965 c.480 §1]

**538.125 Certain appropriations vested notwithstanding ORS 538.120.** All appropriations made under the provisions of section 2, chapter 480, Oregon Laws 1965, shall become vested when completed as provided by ORS 537.250. Any person having obtained a vested water right prior to April 19, 1967, under the provisions of section 2, chapter 480, Oregon Laws 1965, may apply to the Water Resources Commission for an increase of vested water rights, as provided by ORS chapter 537. [1967 c.169 §1; 1985 c.673 §78]

**538.130 Condemnation of lands for park; vested and riparian rights not affected.** ORS 538.120 shall not prevent the condemnation for public park purposes of any lands through which any of the streams flow, nor affect vested rights or the rights of riparian proprietors of such lands in or to the water of the creeks or streams.

**538.140 Diamond Lake and tributaries; diversion, interruption or appropriation of waters prohibited; excepted uses.** In order to maintain, increase and perpetuate game fish and game fish propagation within Oregon, the waters or use of the waters of Diamond Lake and its tributaries situated in Douglas County shall not be diverted, interrupted or appropriated for any purpose whatsoever, except for domestic use on contiguous and surrounding land or other water uses necessary to maintain, increase and perpetuate game fish and game fish propagation in Diamond Lake and its tributaries. [Amended by 1999 c.252 §1]

**538.150 Hackett Creek, Clackamas County, and tributaries; appropriation, condemnation and diversion prohibited; protection of fish.** The waters of Hackett Creek, a tributary of the Sandy River located in Clackamas County, and of the tributaries of Hackett Creek, are withdrawn from appropriation or condemnation and shall not be diverted or interrupted for any purpose whatsoever, except for protecting fish life therein by the State Fish and Wildlife Commission.

**538.160 Hackett Creek; vested rights not affected; condemnation of land for park not prevented.** ORS 538.150 shall not affect vested water rights or prevent condemnation for public park purposes of lands through which Hackett Creek or its tributaries flow.

**538.170 Johnson Creek in Multnomah and Clackamas Counties; limitations on appropriation or diversion.** (1) Except as provided in subsection (2) of this section, the waters of Johnson Creek, a tributary of the Willamette River and located in Multnomah and Clackamas Counties and all tributaries thereof, except flows of Crystal Springs Creek and its tributaries in excess of 10 cubic feet per second measured at the mouth of Crystal Springs Creek:

(a) Are withdrawn from appropriation or condemnation; and

(b) Shall not be diverted or interrupted for any purpose whatsoever, except for the purpose of protecting fish life therein by the State Department of Fish and Wildlife or for the purpose of developing hydroelectric power not to exceed 25 theoretical horsepower if such hydroelectric development does not diminish perennial streamflow required for the maintenance of fish life.

(2) The tributaries withdrawn from appropriation and condemnation, but not the main channel, of Johnson Creek are open to appropriation and storage from December 1 to June 1 of each year. Water stored during this period may be used at any time. [Amended by 1953 c.221 §2; 1965 c.249 §1; 1973 c.50 §1; 1979 c.360 §1]

**538.180 Johnson Creek; existing rights; condemnation of land for park.** ORS 538.170 shall not affect rights to the use of Johnson Creek recognized or acquired pursuant to section 2, chapter 273, Oregon Laws 1935; nor shall anything contained in ORS 538.170 prevent condemnation for public park purposes of lands through which Johnson Creek flows.

**538.190 Lake of the Woods and tributaries, Klamath County; diversion, interruption or appropriation of waters prohibited; excepted uses.** In order to maintain, increase and perpetuate game fish and game fish propagation within Oregon, the waters or use of the waters of Lake of the Woods and its tributaries, situated in Klamath County, not already appropriated, shall not be diverted, interrupted or appropriated for any purpose whatsoever, except for domestic use on contiguous and surrounding land.

**538.200 Streams forming waterfalls near Columbia River Highway; withdrawal from appropriation or condemnation; diversion or interruption prohibited.** The following streams and waters thereof forming waterfalls or cascades in view of, or near, the Columbia River Highway, from Sandy River to Hood River, the first 17 of which are in Multnomah County and the remainder of which are in Hood River County, are withdrawn from appropriation or condemnation, and shall not be diverted or interrupted for any purpose whatsoever, except as mentioned in ORS 538.210:

(1) Latourell Creek—forming Latourell Falls.

(2) An unnamed stream whose waterfall is approximately at the southwest quarter of the southwest quarter of the northwest quarter of section 28, township 1 north, range 5 east, at the northern edge of Tax Lot 27/28. The fall is on the south side of the old Columbia River Highway 0.7 mile west of the highway bridge at Young Creek.

(3) An unnamed stream whose waterfall is approximately at the southeast quarter of the southwest quarter of the northwest quarter of section 28, township 1 north, range 5 east, at the northern intersection of Tax Lot 27/26. The falls are on the south side of the old Columbia River Highway 0.6 mile west of the highway bridge at Young Creek.

(4) An unnamed stream whose waterfall is approximately at the northeast quarter of the northeast quarter of the northwest quarter of section 28, township 1 north, range 5 east, Tax Lot 3. The falls are on the south side of the old Columbia River Highway 0.1 mile west of the highway bridge at Young Creek.

(5) Young Creek—forming Shepperd Dell Falls.

(6) Bridal Veil Creek—forming Bridal Veil Falls.

(7) Coopey Falls Creek.

(8) Mist Falls Creek.

(9) Wahkeena Creek—forming Wahkeena Falls, formerly known as Gordon Falls.

(10) Multnomah Creek—forming Multnomah Falls.

(11) Oneonta Creek—forming Oneonta Falls and Gorge.

(12) Horse Tail Creek—forming Horse Tail Falls.

(13) Tumalt Creek.

(14) McCord Creek, formerly known as Kelly Creek—forming Elowah Falls.

(15) Moffatt Creek—forming Wahe Falls.

(16) Tanner Creek—forming Wahclella Falls.

(17) Eagle Creek—forming Metlako Falls.

(18) Ruckle Creek, formerly known as Deadman's Creek.

(19) Herman Creek.

(20) Grays Creek.

(21) Gorton Creek—forming Gorton Creek Falls.

(22) Harphan Creek.

(23) Summit Creek—forming Camp Benson Falls.

(24) Lindsey Creek—forming Lindsey Falls.

(25) Spring Creek, also known as Wonder Creek—forming Lancaster Falls.

(26) Warren Creek.

(27) Cabin Creek.

(28) Starvation Creek—forming Starvation Falls.

(29) Viento Creek.

(30) Perham Creek.

(31) Phelps Creek, except those creeks which are tributary to Phelps Creek and which arise in the north one-half of section 5, township 2 north, range 10 east of the Willamette Meridian, subject to prior rights. [Amended by 1953 c.48 §2; 1985 c.261 §1]

**538.210 Condemnation of lands for park not prevented; vested and riparian rights not affected; condemnation of lands or appropriation of waters for fish culture not prevented.** ORS 538.200 shall not prevent the condemnation for public park purposes of any lands through which any of the streams flow; nor affect vested rights or the rights of riparian proprietors of such lands in or to the waters of the creeks or streams; nor prevent the condemnation of any lands through which any of the streams flow, for the purpose of establishing, maintaining and operating thereon salmon fish culture work, nor prevent the State Fish and Wildlife Commission from appropriating any waters for fish culture work; nor prevent the appropriation, for irrigation purposes, of waters between the Union Pacific Railroad tracks and the Columbia River that flow from any of the streams other than Herman Creek; provided, that no waters shall be taken from above the falls in the streams mentioned in ORS 538.200. [Amended by 1978 s.s. c.2 §1]

**538.220 Waters of Mill and Barr Creeks, Jackson County, withdrawn; exceptions.** (1) The waters described as follows are withdrawn from appropriation or condemnation, and shall not be diverted or interrupted for any purpose whatsoever, except for domestic purposes and protecting fish life therein by the State Fish and Wildlife Commission:

(a) The waters of Mill Creek, in Jackson County, beginning in section 22, township 31 south, range 4 east, Willamette Meridian, running thence southwesterly through township 31 south, range 3 east, Willamette Meridian, and township 32 south, range 3 east, Willamette Meridian, to a junction with the Rogue River in section 32, township 32 south, range 3 east, Willamette Meridian, together with the tributaries of said Mill Creek; and

(b) Barr Creek, in Jackson County, beginning in section 1, township 32 south, range 3 east, Willamette Meridian, and in section 6 and section 7, township 32 south, range 4 east, Willamette Meridian, running thence in a general southwesterly direction through township 32 south, range 3 east, Willamette Meridian, to a junction with the Rogue River in section 32, township 3 east, Willamette Meridian, together with the tributaries of said Barr Creek.

(2) Subsection (1) of this section shall not prevent the appropriation of the waters of Mill Creek, in Jackson County, for the development of hydroelectric power not to exceed one megawatt if:

(a) The hydroelectric project is located on Mill Creek at a point at least two miles above the confluence of Mill Creek and the Rogue River;

(b) All water appropriated from the stream is returned to the stream at a point at least one-half mile above the confluence of Mill Creek and the Rogue River; and

(c) The facility will be constructed and operated in compliance with recommendations by the State Department of Fish and Wildlife concerning fish conservation, including streamflow requirements based upon biological criteria. [Amended by 1959 c.104 §1; 1983 c.650 §1]

**538.230 Vested water rights not affected; condemnation for park not prevented.** ORS 538.220 shall not affect vested water rights or prevent condemnation for public park purposes of lands through which Mill and Barr Creeks or their tributaries flow.

**538.240** [Repealed by 1963 c.95 §1]

**538.250** [Repealed by 1953 c.222 §3]

**538.251 Tributaries of Columbia River; limitations on appropriation or diversion.** Except as otherwise provided in this section, the following waters, all being tributaries of the Columbia River, are withdrawn from appropriation and shall not be diverted or interrupted for any purpose, except for

protecting fish life therein by the State Fish and Wildlife Commission:

(1) Clatskanie River and its tributaries, except Fall Creek in Columbia County, for purposes of hydroelectric generation if the facility is constructed and operated in compliance with recommendations by the State Department of Fish and Wildlife concerning fish conservation, including streamflow requirements based upon biological criteria.

(2) Klaskanine River and its tributaries in Clatsop County except an unnamed tributary of the South Fork Klaskanine River in Clatsop County, on which there is located an existing fish culture project, for purposes of hydroelectric generation if the facility is less than 100 horsepower and the electricity generated is for use in conjunction with the existing fish culture project.

(3) Lewis and Clark River in Clatsop County.

(4) Sandy River and its tributaries in Multnomah and Clackamas Counties, except:

(a) Beaver Creek and its tributaries.

(b) Buck Creek and its tributaries.

(c) The tributary of the Sandy River in Multnomah County which empties into the Sandy River near the north quarter corner, section 10, township 1 south, range 4 east, Willamette Meridian, and its tributaries, and is locally known as Big Creek.

(d) All tributaries, but not the main channel, of the Sandy River are open for appropriation and storage from December 1 to June 1 of each year. Water stored during this period may be used at any time.

(e) Trout Creek in Multnomah County and its tributaries.

(5) Scappoose Creek in Columbia County.

(6) Tillasqua Creek in Clatsop County. [1953 c.222 §2; 1961 c.366 §1; 1971 c.139 §1; 1983 c.807 §4; 1987 c.392 §1]

**538.260 Existing rights not affected; appropriation and use for certain purposes permitted.** ORS 538.251 shall not affect any existing rights to appropriate or use water, or any renewals or extensions thereof, or prevent appropriation and use of such water for domestic, stock, municipal, fish culture, aesthetic, recreational, or public park purposes. [Amended by 1971 c.139 §2]

**538.270 Rogue River; withdrawal from appropriation; excepted water uses; tributaries.** Subject to water rights existing on May 26, 1967, the waters flowing in the main channel of the Rogue River from its intersection with the south line of section 27, township 33 south, range 1 east of the Willamette Meridian in Jackson County, to its confluence with the Pacific Ocean, are withdrawn from appropriation; except that this section shall not prevent the appropriation and use of such waters for domestic, stock, irrigation, municipal, fish, wildlife, recreation and road maintenance purposes, nor prevent the appropriation, diversion and use of the waters of any stream tributary to the river. [Amended by 1959 c.205 §1; 1967 c.310 §1; 1989 c.291 §1]

**538.280 McNulty Creek; withdrawal from appropriation; exceptions.** The waters of McNulty Creek, a tributary of Scappoose Bay, in Columbia County, are withdrawn from appropriation except for storage during the period beginning November 1 and ending on March 31 of each year in reservoirs not constructed in the channel of McNulty Creek below a line one mile west of the range line between ranges 1 and 2 west, Willamette Meridian. [Amended by 1955 c.82 §1]

**538.290 McNulty Creek; existing rights not affected.** ORS 538.280 shall not affect any existing rights to the waters of McNulty Creek that have been acquired or are in the process of being acquired under the water laws of this state. [Amended by 1955 c.82 §2]

**538.300 Milton Creek and tributaries; withdrawal from appropriation; exception; existing rights.** The unappropriated waters of Milton Creek and its tributaries, in Columbia County, are withdrawn from appropriation except for domestic use through the year and storage during the period beginning November 1 and ending April 30 of each year. Nothing contained in this section shall impair the existing rights of any person to the use of such waters.

## MUNICIPAL WATER SUPPLY

**538.410 Confirmation of water rights acquired prior to February 24, 1909, for municipal supply; rejection of applications injurious to municipal supply; statements of supply.** All rights to the waters of the lakes, rivers and streams of this state acquired before February 24, 1909, for the purposes of municipal water supply are confirmed, and no rights acquired under the Water Rights Act (as defined in ORS 537.010) shall impair the rights of any municipal corporation to waters taken before February 24, 1909. The Water Resources Commission shall reject, or grant subject to municipal use, all applications where, in the commission's judgment, the appropriation of the waters applied for impairs a municipal water supply. Municipal corporations of the state, on request of the Water Resources Commission, shall furnish a statement of the amount and source of the municipal water supply, with probable increase or extension of the same. [Amended by 1985 c.673 §79]

**538.420 Portland's right to waters of Bull Run and Little Sandy Rivers; vested rights not impaired; applicability of law.** (1) Exclusive right to the use of waters of Bull Run and Little Sandy Rivers is granted to the City of Portland. However, the Water Rights Act (as defined in ORS 537.010) shall not impair the rights of any person who, on February 24, 1909, had any vested right to or valid appropriation or bona fide notice of appropriation of the waters of either Bull Run River or Little Sandy River, under laws theretofore in effect or under any valid contract or deed of conveyance theretofore made with or by the City of Portland.

(2) ORS 541.010 to 541.080 shall not apply to Bull Run Creek or River.

**538.430 Medford and Eagle Point Irrigation District; right to waters of Big Butte Creek; generation, sale and distribution of electric energy by irrigation district.** (1) Subject to water rights existing on May 29, 1925, the City of Medford, in Jackson County, is granted the exclusive right to use for municipal purposes all the waters of Big Butte Creek, a tributary of Rogue River situated in Jackson County, and of the springs at the head which form the creek, and of its tributaries. The City of Medford, any of its officers, and others on its behalf may appropriate all the waters for these purposes and an application therefor may be made for the benefit of the city, either by it in its own name, or by any of its officers or by any other person on its behalf. No person shall appropriate or be granted a permit to use any of the waters except as provided in this section, and for the use and benefit of the city. But the City of Medford may, under this grant, divert such waters from their watershed and convey them to the city and elsewhere for use by it for municipal purposes, either within or without the city limits. All of such waters are withdrawn from future appropriation, except for such use and benefit of the City of Medford; provided however, that the Eagle Point Irrigation District may establish and use an additional point of diversion below the diversion point in use on April 1, 1953, under its permit number 6396 which authorizes the appropriation of not to exceed 100 cubic feet per second.

(2) Subject to rights existing on July 21, 1953, to the use of the waters of Big Butte Creek, and of the springs at the head which form the creek, and of its tributaries, including the rights granted in subsection (1) of this section to the City of Medford to the use of such waters and the right of future appropriation of such waters, the Eagle Point Irrigation District is granted the right to appropriate and use up to and including 100 cubic feet per second of the waters of Big Butte Creek, using the diversion site of the Eagle Point Irrigation District existing on April 1, 1953, for the purpose of generating electric energy; provided, however, that not less than 10 cubic feet per second of said waters shall be permitted to pass said diversion point and remain in the channel of said stream at all times other than times when said waters are diverted for irrigation purposes. The Eagle Point Irrigation District may:

(a) Enter into such contracts and perform such other acts as it deems necessary or desirable for the generation of electric energy and the construction and maintenance of facilities for the generation of electric energy.

(b) Enter into such arrangements as it deems proper for the use, sale or distribution of the electric energy which is generated.

(3) In performing any of the acts under subsection (2) of this section, the Eagle Point Irrigation District shall not be deemed a public utility as defined in ORS 757.005.

(4) Subsections (1) and (2) of this section shall not prevent the appropriation of the waters of Clark Creek, in Jackson County, for the development of hydroelectric power not to exceed two megawatts if the facility will be constructed and operated in compliance with recommendations by the State Department of Fish and Wildlife concerning fish conservation, including streamflow requirements based upon biological criteria. [Amended by 1953 c.572 §2; 1963 c.231 §1; 1983 c.650 §2]

**538.440 Bend; right to waters of Tumalo Creek.** Whenever the City of Bend, Deschutes County, shall have acquired the right to appropriate or use from the Deschutes River at least 11 cubic feet per second of water for delivery into the feed canal belonging to Deschutes County Municipal Improvement District, which feed canal is now supplied from the Deschutes River at a diversion located in or near Bend, then the city may take from the direct flow of Tumalo Creek, in Deschutes County, not to exceed 11 cubic feet per second of water for providing a supply of water for domestic and municipal purposes; provided, however, that should the waters of the Deschutes River so acquired for the purpose of the exchange be appurtenant to lands calling for a different point of diversion, the place of use and point of diversion of the water may be changed to meet the requirements of this section.

**538.450 Pendleton; right to waters of Umatilla River; notice of intent; agreement with tribes.** (1) Subject to water rights existing on March 8, 1941, there is granted to the City of Pendleton, Umatilla County, and its water commission, the exclusive right to use for public or municipal

purposes or use, or for the general use and benefit of people within or without the city, all waters of the north fork of the Umatilla River, the springs at the head which form the stream, and its tributaries to the confluence of the north fork with the main stream of the Umatilla River in the northwest quarter of section 22, township 3 north of range 37 east of the Willamette Meridian, which north fork is a tributary of the Umatilla River situated in Umatilla County.

(2) The City of Pendleton, its water commission, any of the city's agents, agencies and officers, and others on its behalf, may appropriate all such waters for these purposes and uses for the benefit and use of the city, as above set forth, either by the city in its own name, or by any of its agents, agencies or officers or by any other persons on its behalf.

(3) No person shall appropriate or be granted a permit to the use of any of such waters, except as provided in this section. But the City of Pendleton may, under this grant, divert such waters from their watershed and convey them to the city and elsewhere for use by it for public or municipal purposes or use or for the general use and benefit of people within or without the city. All of such waters are withdrawn from future appropriation, except for use and benefit of the city as set forth in this section.

(4) The point of diversion of a water right granted under this section may be exercised at the main stem of the Umatilla River situated in Umatilla County to a point not below the westerly city limit of the City of Pendleton.

(5) Prior to exercising the right granted under this section, the City of Pendleton shall submit to the Water Resources Department a notice of intent to exercise the right. The notice of intent shall be made on a form prescribed by the department and shall set forth:

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

(b) The source of the 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 the amount of the proposed use;

(d) The time within which construction of the right is proposed to begin;

(e) The time required to complete construction of the right;

(f) The time required for the complete application of the water to the proposed beneficial use;

(g) The point of diversion of the exercise of the right; and

(h) Any other information required by the department that is necessary to understand the nature of the proposed project.

(6) Prior to submitting a notice of intent pursuant to subsection (5) of this section, the City of Pendleton shall hold a public meeting in the water basin in which the right is located to discuss the proposed project and receive comments from the public.

(7) Within 14 days after receiving a notice of intent submitted pursuant to subsection (5) of this section, the department shall, in the weekly notice published by the department, give public notice of the submission of the notice of intent.

(8) The Confederated Tribes of the Umatilla Indian Reservation and the City of Pendleton have entered into an agreement addressing the development and use of the City of Pendleton's water rights in the Umatilla River and the impact on tribal interests from such development. The agreement includes implementation of the minimum streamflow in the main stem of the Umatilla River resulting from the exercise by the City of Pendleton of its surface water right of the north fork of the Umatilla River under this section. The City of Pendleton shall exercise such right consistent with the agreement or successor agreements between the City of Pendleton and the tribes provided in this subsection. In no event will the City of Pendleton exercise the right granted under this section so as to reduce streamflows in the Umatilla River to be less than state instream water rights for the Umatilla River existing as of January 1, 2002. [Amended by 1995 c.359 §1; 2001 c.298 §1]

# Chapter 539

## 2015 EDITION

# Determination of Water Rights Initiated Before February 24, 1909; Determination of Water Rights of Federally Recognized Indian Tribes


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## WATER RIGHTS BEFORE 1909

**539.005 Purpose of chapter; rules.** (1) The Legislative Assembly declares that it is the purpose of this chapter to set forth the procedures for carrying out a general stream adjudication in Oregon.

(2) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Director shall adopt rules necessary to carry out the provisions of this chapter. [1989 c.691 §§2,3]

**539.010 Protection of water rights vested or initiated prior to February 24, 1909.** (1) Actual application of water to beneficial use prior to February 24, 1909, by or under authority of any riparian proprietor or the predecessors in interest of the riparian proprietor, shall be deemed to create in the riparian proprietor a vested right to the extent of the actual application to beneficial use; provided, such use has not been abandoned for a continuous period of two years.

(2) Where any riparian proprietor, or any person under authority of any riparian proprietor or the predecessor in interest of the riparian proprietor, was, on February 24, 1909, engaged in good faith in the construction of works for the application of water to a beneficial use, the right to take and use such water shall be deemed vested in the riparian proprietor; provided, that the works were completed and the water devoted to a beneficial use within a reasonable time after February 24, 1909. The Water Resources Director, in the manner provided in subsection (5) of this section, may determine the time within which the water shall be devoted to a beneficial use. The right to water shall be limited to the quantity actually applied to a beneficial use within the time so fixed by the director.

(3) Nothing contained in the Water Rights Act (as defined in ORS 537.010) shall affect relative priorities to the use of water among parties to any decree of the courts rendered in causes determined or pending prior to February 24, 1909.

(4) The right of any person to take and use water shall not be impaired or affected by any provisions of the Water Rights Act (as defined in ORS 537.010) where appropriations were initiated prior to February 24, 1909, and such appropriators, their heirs, successors or assigns did, in good faith and in compliance with the laws then existing, commence the construction of works for the application of the water so appropriated to a beneficial use, and thereafter prosecuted such work diligently and continuously to completion. However, all such rights shall be adjudicated in the manner provided in this chapter.

(5) The director shall, for good cause shown upon the application of any appropriator or user of water under an appropriation of water made prior to February 24, 1909, or in the cases mentioned in subsections (2) and (4) of this section, where actual construction work was commenced prior to that time or within the time provided in law then existing, prescribe the time within which the full amount of the water appropriated shall be applied to a beneficial use. In determining said time the director shall grant a reasonable time after the construction of the works or canal or ditch used for the diversion of the water, and in doing so, the director shall take into consideration the cost of the appropriation and application of the water to a beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demands therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment. For good cause shown the director may extend the time.

(6) Where appropriations of water attempted before February 24, 1909, were undertaken in good faith, and the work of construction or improvement thereunder was in good faith commenced and diligently prosecuted, such appropriations shall not be set aside or voided in proceedings under this chapter because of any irregularity or insufficiency of the notice by law, or in the manner of posting, recording or publication thereof.

(7) In any proceeding to adjudicate water rights under this chapter, the Water Resources Department may adjudicate federal reserved rights for the water necessary to fulfill the primary purpose of the reservation or any federal water right not acquired under ORS chapter 537 or ORS 540.510 to 540.530.

(8) All rights granted or declared by the Water Rights Act (as defined in ORS 537.010) shall be adjudicated and determined in the manner and by the tribunals provided therein. The Water Rights Act shall not be held to bestow upon any person any riparian rights where no such rights existed prior to February 24, 1909. [Amended by 1989 c.691 §6; 1993 c.157 §1]

**539.015 Certification of statements of claimants; oaths.** Each claimant or owner who files a statement and proof of claim form or a registration statement shall be required to certify to the statements of the claimant or owner under oath. The Water Resources Director or the authorized assistant of the director may administer such oaths, which shall be done without charge, as also shall

be the furnishing of blank forms for the statement. [1989 c.691 §4]

**539.020** [Repealed by 1987 c.541 §1 (539.021 enacted in lieu of 539.020)]

**539.021 Determination by Water Resources Director of rights of claimants; transfer of action to director.** (1) The Water Resources Director upon the motion of the director or, in the discretion of the director, upon receipt of a petition from one or more appropriators of surface water from any natural watercourse in this state shall make a determination of the relative rights of the various claimants to the waters of that watercourse.

(2) If an action is brought in the circuit court for determination of rights to the use of water, the case may, in the discretion of the court, be transferred to the director for determination as provided in this chapter. [1987 c.541 §2 (enacted in lieu of 539.020)]

**539.030 Notice of investigation of stream.** The Water Resources Director shall prepare a notice, setting forth the date when the director or the assistant of the director will begin such investigation as may be necessary for a proper determination of the relative rights of the various claimants to the use of the waters of the stream. The notice shall be published in two issues of one or more newspapers having general circulation in the counties in which the stream is situated, the last publication of the notice to be at least 10 days prior to the date set in the notice for the beginning of the investigation by the director or the assistant of the director. [Amended by 1955 c.669 §1; 1979 c.53 §1; 1987 c.541 §8]

**539.040 Notice of hearing by director.** (1) As soon as practicable after the examination and measurements are completed, as described in ORS 539.120, the Water Resources Director shall prepare a notice setting forth a place and time certain when the director or the authorized assistant of the director shall begin taking testimony as to the rights of the various claimants to the use of the waters of the stream or its tributaries. The notice shall be published in two issues of one or more newspapers having general circulation in the counties in which the stream is situated, the last publication of the notice to be at least 30 days prior to the beginning of taking testimony by the director or the authorized assistant of the director.

(2) The director shall also send by registered mail or by certified mail with return receipt to each claimant or owner who filed with the director a registration statement as provided in ORS 539.240 and to the Attorney General of the United States or the designated representative of the Attorney General of the United States, on behalf of the United States and its agencies and as trustee for the Indian tribes, a notice similar to that provided in subsection (1) of this section setting forth the date when the director or the authorized assistant of the director will take testimony as to the rights to the use of the water of the stream. The notice must be mailed at least 30 days prior to the date set therein for taking testimony.

(3)(a) For purposes of the Klamath Basin adjudication, the Water Resources Department will provide notice, substantially like that specified in subsection (2) of this section, to claimants or owners who desire to claim a water right under this chapter, or to contest the claims of others, and have so notified the director. The notice shall be accompanied by a blank form on which the claimant or owner shall present in writing all of the particulars necessary for determination of the right of the claimant or owner to contest the claims of others or to the use of the waters of a stream to which the claimant or owner lays claim. That form shall require substantially the same information required in a registration statement, as provided in ORS 539.240 (2), except that the map need not be prepared by a certified water right examiner, as required by ORS 539.240 (2)(d).

(b) In the already adjudicated areas of the Klamath Basin, the notice provided to holders of permitted or certificated surface water rights acquired under ORS chapter 537 will specify that they may contest the statement and proof of claims of others made under this chapter, but only in the unadjudicated areas of the Klamath Basin. [Amended by 1955 c.669 §2; 1987 c.541 §9; 1989 c.691 §7; 1991 c.249 §45; 1993 c.157 §2; 2013 c.1 §77]

**539.050** [Amended by 1955 c.669 §3; repealed by 1987 c.541 §10]

**539.060** [Repealed by 1987 c.541 §10]

**539.070 Hearing by director; adjournments.** Upon the date named in the notice for taking testimony, the Water Resources Director or the authorized assistant of the director shall begin taking testimony and shall continue until completed. But the director may adjourn the taking of testimony from time to time and from place to place, to suit the convenience of those interested.

**539.080** [Amended by 1971 c.621 §37; 1975 c.607 §40; 1979 c.67 §3; 1981 c.627 §2; 1983 c.256 §2; repealed by 1987 c.541 §6 (539.081 enacted in lieu of 539.080)]

**539.081 Fees; exemption; disposition.** (1) At the time the owner or registrant submits a registration statement under ORS 539.240 or, if a registration statement is not filed, when a statement and proof of claim is filed pursuant to notice by the Water Resources Director under ORS 539.030, the

owner or registrant shall pay a fee as follows:

(a) If for irrigation use, $2 for each acre of irrigated lands up to 100 acres and $1 for each acre in excess of 100 acres. The minimum fee for any owner or registrant for irrigation use shall be $100.

(b) If for power use, $2 for each theoretical horsepower up to 100 horsepower, 75 cents for each horsepower in excess of 100 up to 500 horsepower, 50 cents for each horsepower in excess of 500 horsepower up to 1,000 horsepower and 35 cents for each horsepower in excess of 1,000 horsepower, as set forth in the proof. The minimum fee for any owner or registrant for power use shall be $300.

(c) If for mining or any other use, $500 for the first second-foot or fraction of the first second-foot and $100 for each additional second-foot.

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

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

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

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

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

(5) No registration statement or statement and proof of claim shall be accepted for filing unless the registration statement or claim is accompanied by the fee in the amount set forth in this section. If the federal government is determined to be immune from the payment of such fees, the director may elect to accept a federal claim for filing without the accompanying fees. [1987 c.541 §7 (enacted in lieu of 539.080); 1989 c.691 §8; 1993 c.157 §3; 1993 c.535 §1; 2013 c.644 §11]

**Note:** The amendments to 539.081 by section 12, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

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

(a) If for irrigation use, $2 for each acre of irrigated lands up to 100 acres and $1 for each acre in excess of 100 acres. The minimum fee for any owner or registrant for irrigation use shall be $30.

(b) If for power use, $2 for each theoretical horsepower up to 100 horsepower, 50 cents for each horsepower in excess of 100 up to 500 horsepower, 35 cents for each horsepower in excess of 500 horsepower up to 1,000 horsepower and 25 cents for each horsepower in excess of 1,000 horsepower, as set forth in the proof. The minimum fee for any owner or registrant for power use shall be $200.

(c) If for mining or any other use, $200 for the first second-foot or fraction of the first second-foot and $50 for each additional second-foot.

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

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

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

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

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

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

**539.090 Notice of right to inspect evidence, and of place of court hearing.** Upon the completion of the taking of testimony by the Water Resources Director, the director shall at once give notice by registered mail or by certified mail with return receipt to the various claimants and to any party who has notified the director that the party wishes to contest the claims of others, that all of the evidence will be open to inspection of the various claimants or owners.

The notice shall specify the times when and the places where the evidence will be open to inspection, and the director shall keep the evidence open for inspection at the specified times and places. The earliest time for inspection shall be at least 10 days after mailing the notice; and, in the aggregate, the hours during which the director is to keep the evidence open to inspection shall at least equal 80 hours, counting only the hours between 8 a.m. and 5 p.m. during any day of the week except Sunday. The director shall also state in the notice the county in which the determination will be heard by the circuit court; provided, that the cause shall be heard in the county in which the stream or some part thereof is situated. [Amended by 1955 c.191 §1; 1989 c.691 §9; 1991 c.249 §46]

**539.100 Contest of claims submitted to director; notice by contestant; service on contestee.** Any person owning any irrigation works, or claiming any interest in the stream involved in the determination shall be a party to, and bound by, the adjudication. Any party who desires to contest any of the rights of the persons who have submitted their evidence to the Water Resources Director as provided in ORS 539.021 to 539.090 shall, within 15 days after the expiration of the period fixed in the notice for public inspection, or within such extension of the period, not exceeding 20 days, as the director may allow, notify the director in writing, stating with reasonable certainty the grounds of the proposed contest, which statement shall be verified by the affidavit of the contestant, the agent or attorney of the contestant. A party not claiming an undetermined vested right under this chapter or not contesting the claim of another need not participate further in the proceeding, nor be served with further notices or documents regarding the adjudication. Upon the filing of a statement of contest, service thereof shall be made by the contestant upon the contestee by mailing a copy by registered mail or by certified mail, return receipt requested, addressed to the contestee or to the authorized agent or attorney of the contestee at the post-office address of the contestee as stated in the statement and proof of claim of the contestee. Proof of service shall be made and filed with the Water Resources Department by the contestant as soon as possible after serving the copy of statement of contest. [Amended by 1989 c.691 §10; 1991 c.102 §5; 1991 c.249 §47]

**539.110 Hearing of contest; notice of; procedure.** The Water Resources Director shall fix the time and a convenient place for hearing the contest, and shall notify the contestant and the person whose rights are contested to appear before the director or the authorized assistant of the director at the designated time and place. The date of hearing shall not be less than 30 nor more than 60 days from the date the notice is served on the parties. The notice may be served personally or by registered or certified mail, return receipt requested, addressed to the parties at their post-office addresses as stated in the statement and proof of claimant. The director may adjourn the hearing from time to time upon reasonable notice to all the parties interested; may issue subpoenas and compel the attendance of witnesses to testify, which subpoenas shall be served in the same manner as subpoenas issued out of the circuit court; may compel the witnesses so subpoenaed to testify and give evidence in the matter; and may order the taking of depositions and issue commissions therefor in the same manner as depositions are taken in the circuit court. The witnesses shall receive fees as provided in ORS 44.415 (2), the costs to be taxed in the same manner as are costs in suits in equity. The evidence in the proceedings shall be confined to the subjects enumerated in the notice of contest. The burden of establishing the claim shall be upon the claimant whose claim is contested. The evidence may be taken by a duly appointed reporter. [Amended by 1989 c.980 §14d; 1991 c.249 §48]

**539.120 Examination by director of stream and diversions in contest; record; map.** The Water Resources Director, or a qualified assistant, shall proceed at the time specified in the notice to the parties on the stream given as provided in ORS 539.030, to make an examination of the stream and the works diverting water therefrom used in connection with water rights subject to this chapter, for which a registration statement has been filed as provided in ORS 539.240. The examination shall include the measurement of the discharge of the stream and of the capacity of the various diversion and distribution works, and an examination and approximate measurement of the lands irrigated from the various diversion and distribution works. The director shall take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested. The observations and measurements shall be made a matter of record in the Water Resources Department. The department shall make or have made a map or plat on a scale of not less than one inch to the mile, showing with substantial accuracy the course of the stream, the location of each diversion point and each ditch, canal, pipeline or other means of conveying the water to the place of use, and the location of lands irrigated, or in connection with which the water is otherwise used,

within each legal subdivision. [Amended by 1955 c.669 §4; 1989 c.691 §11; 1991 c.102 §6]

**539.130 Findings of fact and determination of director; certification of proceedings; filing in court; fixing time for hearing by court; notice; force of director's determination.** (1) As soon as practicable after the compilation of the data the Water Resources Director shall make and cause to be entered of record in the Water Resources Department findings of fact and an order of determination determining and establishing the several rights to the waters of the stream. The original evidence gathered by the director, and certified copies of the observations and measurements and maps of record, in connection with the determination, as provided for by ORS 539.120, together with a copy of the order of determination and findings of fact of the director as they appear of record in the Water Resources Department, shall be certified to by the director and filed with the clerk of the circuit court wherein the determination is to be heard. A certified copy of the order of determination and findings shall be filed with the county clerk of every other county in which the stream or any portion of a tributary is situated.

(2) Upon the filing of the evidence and order with the court the director shall procure an order from the court, or any judge thereof, fixing the time at which the determination shall be heard in the court, which hearing shall be at least 40 days subsequent to the date of the order. The clerk of the court shall, upon the making of the order, forthwith forward a certified copy to the department by registered mail or by certified mail with return receipt.

(3) The department shall immediately upon receipt thereof notify by registered mail or by certified mail with return receipt each claimant or owner who has appeared in the proceeding of the time and place for hearing. Service of the notice shall be deemed complete upon depositing it in the post office as registered or certified mail, addressed to the claimant or owner at the post-office address of the claimant or owner, as set forth in the proof of the claimant or owner theretofore filed in the proceeding. Proof of service shall be made and filed with the circuit court by the department as soon as possible after mailing the notices.

(4) The determination of the department shall be in full force and effect from the date of its entry in the records of the department, unless and until its operation shall be stayed by a stay bond as provided by ORS 539.180. [Amended by 1991 c.102 §7; 1991 c.249 §49]

**539.140 Water right certificates.** Upon the final determination of the rights to the waters of any stream, the Water Resources Department shall issue to each person represented in the determination a certificate setting forth the name and post-office address of the owner of the right; the priority of the date, extent and purpose of the right, and if the water is for irrigation purposes, a description of the legal subdivisions of land to which the water is appurtenant. The original certificate shall be mailed to the owner and a record of the certificate maintained in the Water Resources Department. [Amended by 1971 c.621 §38; 1975 c.607 §41; 1979 c.67 §4; 1991 c.102 §8]

**539.150 Court proceedings to review determination of director.** (1) From and after the filing of the evidence and order of determination in the circuit court, the proceedings shall be like those in an action not triable by right to a jury, except that any proceedings, including the entry of a judgment, may be had in vacation with the same force and effect as in term time. At any time prior to the hearing provided for in ORS 539.130, any party or parties jointly interested may file exceptions in writing to the findings and order of determination, or any part thereof, which exceptions shall state with reasonable certainty the grounds and shall specify the particular paragraphs or parts of the findings and order excepted to.

(2) A copy of the exceptions, verified by the exceptor or certified to by the attorney for the exceptor, shall be served upon each claimant who was an adverse party to any contest wherein the exceptor was a party in the proceedings, prior to the hearing. Service shall be made by the exceptor or the attorney for the exceptor upon each such adverse party in person, or upon the attorney if the adverse party has appeared by attorney, or upon the agent of the adverse party. If the adverse party is a nonresident of the county or state, the service may be made by mailing a copy to that party by registered mail or by certified mail with return receipt, addressed to the place of residence of that party, as set forth in the proof filed in the proceedings.

(3) If no exceptions are filed the court shall, on the day set for the hearing, enter a judgment affirming the determination of the Water Resources Director. If exceptions are filed, upon the day set for the hearing the court shall fix a time, not less than 30 days thereafter, unless for good cause shown the time be extended by the court, when a hearing will be had upon the exceptions. All parties may be heard upon the consideration of the exceptions, and the director may appear on behalf of the state, either in person or by the Attorney General. The court may, if necessary, remand the case for further testi-

mony, to be taken by the director or by a referee appointed by the court for that purpose. Upon completion of the testimony and its report to the director, the director may be required to make a further determination.

(4) After final hearing the court shall enter a judgment affirming or modifying the order of the director as the court considers proper, and may assess such costs as it may consider just except that a judgment for costs may not be rendered against the United States. An appeal may be taken to the Court of Appeals from the judgment in the same manner and with the same effect as in other cases in equity, except that notice of appeal must be served and filed within 60 days from the entry of the judgment. [Amended by 1979 c.284 §165; 1989 c.691 §12; 1991 c.249 §50]

**539.160 Transmittal of copy of decree to department; instructions to watermasters.** The clerk of the circuit court, upon the entry of any decree by the circuit court or judge thereof, as provided by ORS 539.150, shall transmit a certified copy of the decree to the Water Resources Department where a record of the decree shall be maintained. The Water Resources Director shall issue to the watermasters instructions in compliance with the decree, and in execution thereof. [Amended by 1991 c.102 §9]

**539.170 Division of water pending hearing.** While the hearing of the order of the Water Resources Director is pending in the circuit court, and until a certified copy of the judgment, order or decree of the court is transmitted to the director, the division of water from the stream involved in the appeal shall be made in accordance with the order of the director.

**Note:** Sections 1 and 2, chapter 445, Oregon Laws 2015, provide:

**Sec. 1. Leasing or temporary transfer of determined claim.** (1) As used in this section, "determined claim" means a water right in the Upper Klamath Basin determined and established in an order of determination certified by the Water Resources Director under ORS 539.130.

(2) Except as provided in subsections (3) and (4) of this section, during the period that judicial review of the order of determination is pending, a determined claim is:

(a) An existing water right that may be leased for a term as provided under ORS 537.348; and

(b) A primary water right that is subject to temporary transfer for purposes of ORS 540.523.

(3) Subsection (2) of this section:

(a) Does not apply to a water right determined and established in an order of determination that has been stayed by the filing of a bond or irrevocable letter of credit under ORS 539.180;

(b) Does not apply to a water right transfer that includes changing the point of diversion upstream; and

(c) Does not allow a person to purchase, lease or accept a gift of a determined claim for conversion to an in-stream water right as described in ORS 537.348 (1).

(4) For purposes of determining under ORS 537.348 (5) or 540.523 (2) whether the Water Resources Department may approve a lease or temporary transfer of a determined claim, an injury to another determined claim is an injury to an existing water right. Notwithstanding ORS 537.348 (6) or 540.523 (5), the department shall deny, modify or revoke the lease or temporary transfer of a determined claim if the department determines that the lease or temporary transfer has resulted in, or is likely to result in:

(a) Injury to another determined claim or other existing water right; or

(b) Enlargement of the determined claim.

(5) The department shall revoke the lease or temporary transfer of a determined claim if a court judgment stays the determined claim.

(6) If a determined claim is removed from land by lease or temporary transfer, the land from which the determined claim is removed may not receive water during the term of the lease or temporary transfer. [2015 c.445 §1]

**Sec. 2.** (1) Section 1 of this 2015 Act is repealed January 2, 2026.

(2) Notwithstanding the repeal of section 1 of this 2015 Act by subsection (1) of this section, subject to modification or revocation under section 1 of this 2015 Act, a lease or temporary transfer of a determined claim under section 1 of this 2015 Act for a term beginning prior to January 2, 2026, may continue in effect for the term of the lease or temporary transfer. If a court judgment results in a modification of the determined claim, the parties may continue the lease or temporary transfer of all or part of the water right as modified for all or part of the original term of the lease or temporary transfer. [2015 c.445 §2]

**539.180 Bond or irrevocable letter of credit to stay operation of director's determination; notice to watermaster.** At any time after the determination of the Water Resources Director has been entered of record, the operation thereof may be stayed in whole or in part by any party by filing a bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the circuit court wherein the determination is pending, in such amount as the judge may prescribe, conditioned that the party will pay all damages that may accrue by reason of the determination not being enforced. Upon the filing and approval of the bond or letter of credit, the clerk of the circuit court shall transmit to the Water Resources Department a certified copy of the bond or letter of credit, which shall be recorded in the department records, and the department shall give notice thereof to the watermaster of the proper district. [Amended by 1991 c.102 §10; 1991 c.331 §79; 1997 c.631 §486]

**539.190 Rehearing by circuit court.** Within six months from the date of the decree of the circuit court determining the rights upon any stream, or if appealed, within six months from the date of the decree of the circuit court on the decision of the Supreme Court, the Water Resources Director or any party interested may apply to the circuit court for a rehearing upon grounds to be stated in the application. If in

the discretion of the court the application states good grounds for the rehearing, the circuit court or judge shall make an order fixing a time and place when the application shall be heard. The clerk of the circuit court shall, at the expense of the petitioner, forthwith mail written notice of the application to the director and to every party interested, and state in the notice the time and place when the application will be heard. [Amended by 1981 c.178 §15]

**539.200 Conclusiveness of determinations as to water rights.** The determinations of the Water Resources Director, as confirmed or modified as provided by this chapter in proceedings, shall be conclusive as to all prior rights and the rights of all existing claimants upon the stream or other body of water lawfully embraced in the determination.

**539.210 Duty of claimants to appear and submit proof; nonappearance as forfeiture; intervention in proceedings.** Whenever proceedings are instituted for determination of rights to the use of any water, it shall be the duty of all claimants interested therein to appear and submit proof of their respective claims, at the time and in the manner required by law. Any claimant who fails to appear in the proceedings and submit proof of the claims of the claimant shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings, and shall be held to have forfeited all rights to the use of the water theretofore claimed by the claimant. Any person interested in the water of any stream upon whom no service of notice has been had of the pendency of proceedings for determination of the rights to the use of water of the stream, and who has had no actual knowledge or notice of the pendency of the proceedings may, at any time prior to the expiration of one year after entry of the determination of the Water Resources Director, file a petition to intervene in the proceedings. The petition shall contain, among other things, all matters required by this chapter of claimants who have been duly served with notice of the proceedings, and also a statement that the intervenor had no actual knowledge or notice of the pendency of the proceedings. Upon the filing of the petition in intervention, the petitioner shall be allowed to intervene upon such terms as may be equitable and thereafter shall have all rights vouchsafed by this chapter to claimants who have been duly served.

**539.220 Procedure when rights to same stream have been determined in different proceedings.** Whenever the rights to the waters of any stream have been determined as provided in this chapter and it appears by the records of such determination that it had not been at one and the same proceeding, then the Water Resources Director may open to public inspection all proofs or evidence of rights to the water, and the findings of the director in relation thereto, in the manner provided in ORS 539.090. Any person who then desires to contest the claims or rights of other persons, as set forth in the proofs or established by the director, shall proceed in the manner provided for in ORS 539.100 and 539.110; provided, that contests may not be entered into and shall not be maintained except between claimants who were not parties to the same adjudication proceedings in the original hearings.

**539.230 Notice of need to file registration statement; publication requirements; additional methods of providing notice.** (1) In order to preserve information relating to claims to undetermined vested rights as described in ORS 539.010 and federal reserved rights, the Water Resources Director shall prepare a general notice stating the need for any person, corporation or governmental agency claiming an undetermined vested right, federal reserved right or a right derived from such rights to file a registration statement as required under ORS 539.240. The notice shall outline the process for obtaining a blank registration statement and shall describe the rights that may be claimed under this chapter.

(2) The notice required under subsection (1) of this section shall be published at least two times in one or more newspapers having general circulation in each county in which streams with potentially vested rights or reserved rights that have not been adjudicated under this chapter are located.

(3) In addition to the notice described under subsection (2) of this section, in any rural county in which there is not a newspaper having general circulation, the director shall use additional methods of providing notice of the requirement to file a registration statement. These methods may include but need not be limited to holding public meetings, inserting announcements in trade or organization newsletters, public service announcements on local radio stations and informing the county extension agent of the requirement. [1987 c.541 §4; 1989 c.691 §13; 1991 c.67 §154]

**539.240 Claim to undetermined right to appropriate surface water; registration statement; contents; effect of failure to file; recognizing changes to right; rules.** (1) Any person, corporation or governmental agency claiming an undetermined vested right, federal reserved right or right derived

from such rights to appropriate surface water under ORS 539.010 shall file in the office of the Water Resources Department, on or before December 31, 1992, a registration statement of the claim.

(2) Upon request, the Water Resources Director shall make available a blank registration statement required under subsection (1) of this section. The claimant shall complete the registration statement by providing the information necessary for determination of the claimed vested or reserved right. The registration statement shall include at least the following:

(a) The name and mailing address of the claimant.

(b) The claimed beneficial use of the water and the amount used.

(c) The stream from which the water is diverted.

(d) A map from a survey prepared by a water right examiner certified under ORS 537.798 showing:

(A) The location of the point of diversion in reference to an established corner of the United States Public Lands Survey or, if within a platted and recorded subdivision, from an established lot corner of the subdivision.

(B) The location of the place of use by quarter-quarter section of the United States Public Lands Survey. If the use is for irrigation, the number of acres irrigated within each quarter-quarter section.

(e) The time of commencement of the claimed use of water.

(f) The times of beginning and completion of any division and distribution works used to appropriate the claimed use of water and the water carrying capacity of such works, if known.

(g) The location of the place of use by quarter-quarter section of the United States Public Lands Survey. If the use is for irrigation, the number of acres irrigated within each quarter-quarter section during the first year of use and during each subsequent year until the full amount of claimed use was accomplished.

(h) The period of the year during which the claimed use of water is usually made.

(3) The failure of any person, corporation or governmental agency to file a registration statement for an undetermined vested right or federal reserved right shall create a rebuttable presumption that the claim has been abandoned.

(4) For good cause shown, any person who fails to file a registration statement within the period set forth in subsection (1) of this section may file within one year after December 31, 1992, a petition with the director requesting that the person be given an opportunity to rebut the presumption that the person has abandoned the claim. Upon the filing of such a petition, the director may schedule a hearing to take testimony and evidence on the date the water was applied to beneficial use or the director may accept sworn statements in writing in support of such petition. The director shall not deny a petition without first holding a contested case hearing. If it appears after hearing or from such sworn statements that the person has a use of water that would be subject to registration under this chapter, the director shall issue an order authorizing the person to file a registration statement as described under subsection (1) of this section. A person who files a petition under this subsection shall submit with the petition a fee, the amount of which shall be one and one-half times the amount the person would have submitted under ORS 539.081 with a timely registration statement.

(5) The director shall accept for filing all registration statements described in subsections (1) and (4) of this section made in proper form when the statements are accompanied by the fees prescribed in ORS 539.081. The director shall indorse the date of receipt on each registration statement.

(6) The director shall examine each registration statement to insure that the statement is complete and in proper form. If the director determines the information required under subsection (2) of this section is complete and in proper form, the director shall:

(a) Enter the indorsed statement in the record of the department;

(b) Mail a copy of the indorsed statement to the person filing the registration statement; and

(c) Include the person or the properly designated assignee of the person in any further proceeding to adjudicate the water rights represented by the indorsed registration statement.

(7) Upon entry of the indorsed statement in the department's records, the registrant is entitled to continue to appropriate the surface water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement. However, the registrant shall not be entitled to the benefits of an existing water right of record under ORS 540.045.

(8) No registration statement recorded under this section shall be construed as a final determination of any matter stated therein, nor shall the act of indorsement by the director constitute a determination of the

validity of the matters contained in the registration statement. The right of the registrant to appropriate surface water under a recorded registration statement is subject to determination under ORS 539.010 to 539.240, and is not final or conclusive until so determined. A right to appropriate surface water under a recorded registration statement has a tentative priority from the date claimed in the indorsed registration statement.

(9) Any indorsed registration statement may be assigned, subject to the conditions in the registration statement, but no such assignment will be binding, except upon the parties to the assignment, unless filed with the department.

(10) Notwithstanding the filing deadline prescribed under subsection (1) of this section, and the late filing period allowed under subsection (4) of this section, if any person submitted, before December 31, 1994, a registration statement or other similar documentation claiming a right to appropriate surface water under ORS 539.010, the director shall examine the material submitted to determine if the documents filed would substantially comply with the requirements of subsection (2) of this section. If the director determines that the documents substantially comply with the surface water registration filing requirements of subsection (2) of this section, the director may accept the registration. If the director determines that the documents filed under this subsection are incomplete or if additional information is required to comply with subsection (2) of this section, or fees required under ORS 539.081 have not been submitted, the director shall notify the claimant of the deficiency, setting a date certain for submittal of the information or fees. The time for submittal of additional information or fees shall be not less than 30 days nor more than 180 days after the director notifies the claimant of the deficiency. If the additional information or fees are not submitted on or before the date certain, the registration statement shall be considered void and shall be returned to the claimant.

(11) The director shall adopt by rule a process and standards for recognizing changes in the place of use, type of use or point of diversion of water uses registered pursuant to this section. [1987 c.541 §5; 1989 c.691 §14; 1993 c.157 §4; 1995 c.365 §7; 1999 c.860 §1]

## WATER RIGHTS OF FEDERALLY RECOGNIZED INDIAN TRIBES

**539.300 Legislative findings.** The Legislative Assembly of the State of Oregon finds it is desirable to provide a procedure for conducting negotiations to determine the water rights of any federally recognized Indian tribe that may have a federal reserved water right claim in Oregon. [1987 c.81 §2; 1993 c.67 §1]

**539.310 Negotiation for water rights.** (1) The Water Resources Director may negotiate with representatives of any federally recognized Indian tribe that may have a federal reserved water right claim in Oregon and representatives of the federal government as trustee for the federally recognized Indian tribe to define the scope and attributes of rights to water claimed by the federally recognized Indian tribe to satisfy tribal rights under treaty between the United States and the tribes of Oregon. All negotiations in which the director participates under this section shall be open to the public.

(2) During negotiations conducted under subsection (1) of this section, the director shall:

(a) Provide public notice of the negotiations;

(b) Allow for public input through the director; and

(c) Provide regular reports on the progress of the negotiations to interested members of the public. [1987 c.81 §3; 1993 c.67 §2]

**539.320 Agreement; submission to court.** When the Water Resources Director and the representatives of any federally recognized Indian tribe that may have a federal reserved water right claim in Oregon and the federal government have completed an agreement, the Water Resources Director shall submit an original copy of the agreement to the appropriate court. The copy shall be signed by the Water Resources Director on behalf of the State of Oregon and by authorized representatives of the Indian tribe and the federal government as trustee for the Indian tribe. [1987 c.81 §4; 1993 c.67 §3]

**539.330 Notice to persons affected by agreement.** (1) Upon filing of the agreement with the appropriate court under ORS 539.320, the Water Resources Director shall notify owners of water right certificates or permits that may be affected by the agreement:

(a) That the agreement has been filed with the court; and

(b) Of the time and manner specified by the court for filing an exception to the agreement.

(2) Unless notice by registered mail is required by the court, the notice required under subsection (1) of this section may be given by:

(a) Publication; or

(b) Any other method the director considers necessary. [1987 c.81 §5]

**539.340 Court decree; effective date of agreement; remand.** (1) An agreement negotiated under ORS 539.310 to 539.330 shall not be effective unless and until incorporated in a final court decree, after the court has provided an opportunity for an owner of a water right certificate or permit that may be affected by the agreement or for a claimant in an adjudication that may be affected by the agreement to submit an exception to the agreement.

(2) If the court does not sustain an exception, the court shall issue a final decree incorporating the agreement as submitted without alteration.

(3) If the court sustains an exception to the agreement, the court shall remand the agreement to the Water Resources Director for further negotiation according to the provisions of ORS 539.300 to 539.350, if desired by the parties to the agreement. [1987 c.81 §6; 1997 c.708 §1]

**539.350 Procedures after remand of agreement.** Within 180 days after the court remands the agreement under ORS 539.340, the Water Resources Director shall file with the court:

(1) An amended agreement complying with ORS 539.320, which shall be subject to the procedure specified by ORS 539.330;

(2) A motion to dismiss the proceedings, which shall be granted by the court; or

(3) A stipulated motion for a continuance for a period not to exceed 180 days, within which period the parties shall submit to the court an amended agreement, a motion to dismiss or a motion for further continuance. [1987 c.81 §7]

**539.360 Participation in management of Upper Klamath Basin Comprehensive Agreement.** (1) As used in this section:

(a) "Joint management entity" means the entity that is:

(A) Composed of the landowner entity, the Klamath Tribes, the United States and the State of Oregon; and

(B) Responsible for overseeing the implementation of the settlement agreement.

(b) "Landowner entity" means the entity formed by eligible landowners as provided in section 8 of the settlement agreement.

(c) "Settlement agreement" means the Upper Klamath Basin Comprehensive Agreement dated April 18, 2014.

(2) The Water Resources Department may participate in activities related to the joint management entity that are consistent with the terms of the settlement agreement. The activities may include, but need not be limited to:

(a) Providing assistance in the formation of an Oregon tax-exempt nonprofit corporation to function as the joint management entity for the settlement agreement;

(b) Drafting and giving approval of the articles of incorporation and bylaws of the corporation;

(c) Participating as a voting member of the board of directors for the corporation; and

(d) Participating as a member of the technical team for the corporation. [2015 c.449 §1]

**Note:** 539.360 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 539 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

# Chapter 540

## 2015 EDITION

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## DISTRIBUTION OF WATER GENERALLY; WATER DISTRICTS; WATERMASTERS

**540.010 Water districts; creation; purposes.** The Water Resources Commission shall divide the state into water districts, which shall be so constituted as to secure the best protection to the claimants for water and the most economical supervision on the part of the state. Water districts shall not be created until necessary. [Amended by 1985 c.673 §82]

**540.020 Watermasters; appointment; removal; powers of Water Resources Director.** (1) The Water Resources Director shall appoint one watermaster for each water district. The watermaster shall hold office until removed by the director, and shall be subject to any applicable provision of the State Personnel Relations Law. The director shall fill all vacancies which occur in the office.

(2) The director, or any duly authorized assistant, shall have the powers and authority of a watermaster in the distribution of water in any water district. [Amended by 1985 c.421 §5]

**540.030 Water Resources Director; duties regarding water distribution.** The Water Resources Director shall:

(1) Have general control over the watermasters.

(2) Execute the laws relative to the distribution of water and perform other functions as may be assigned to the director. [Amended by 1953 c.395 §3; 1985 c.673 §82a]

**540.040** [Amended by 1953 c.395 §3; 1957 c.341 §10; 1963 c.410 §1; repealed by 1985 c.421 §17]

**540.045 Watermaster duties.** (1) Each watermaster shall:

(a) Regulate the distribution of water among the various users of water from any natural surface or ground water supply in accordance with the users' existing water rights of record in the Water Resources Department.

(b) Upon the request of the users, distribute water among the various users under any partnership ditch, pipeline or well or from any reservoir, in accordance with the users' existing water rights of record in the department.

(c) Divide the waters of the natural surface and ground water sources and other sources of water supply among the canals, ditches, pumps, pipelines and reservoirs taking water from the source for beneficial use, by regulating, adjusting and fastening the headgates, valves or other control works at the several points of diversion of surface water or the several points of appropriation of ground water, according to the users' relative entitlements to water.

(d) Attach to the headgate, valve or other control works the watermaster regulates under paragraph (c) of this subsection, a written notice dated and signed by the watermaster, setting forth that the headgate, valve or other control works has been properly regulated and is wholly under the control of the watermaster.

(e) Perform any other duties the Water Resources Director may require.

(2) When a watermaster must rely on a well log or other documentation to regulate the use or distribution of ground water, the regulation shall be in accordance with ORS 537.545 (4).

(3) For purposes of regulating the distribution or use of water, any stored water released in excess of the needs of water rights calling on that stored water shall be considered natural flow, unless the release is part of a water exchange under the control of, and approved by, the watermaster.

(4) As used in this section, "existing water rights of record" includes all completed permits, certificates, licenses and ground water registration statements filed under ORS 537.605 and related court decrees. [1985 c.421 §3; 1989 c.691 §15; 1991 c.102 §11; 1993 c.157 §5; 1995 c.673 §3; 2009 c.819 §3]

**540.050 Appearance of district attorney.** The district attorney shall appear on behalf of the Water Resources Director or any watermaster in any case which may arise in the pursuance of the official duties of the director or watermaster within the jurisdiction of the district attorney. [Amended by 1985 c.421 §6]

**540.060 Arrest by watermaster; complaint against offender.** The watermaster or an assistant appointed by the watermaster shall have power to arrest any person violating a provision of the Water Rights Act (as defined in ORS 537.010), ORS 537.120 to 537.360 or 537.505 to 537.795 and 537.992 and turn the person over to the sheriff or other competent police officer within the county. At the time the watermaster delivers the arrested person into the custody of the sheriff, the watermaster or assistant watermaster making the arrest shall file a complaint, as defined in ORS 131.005, against the person arrested. [Amended by 1957 c.341 §11; 1985 c.421 §7]

**540.070** [Repealed by 1957 c.546 §8]

**540.071** [1957 c.546 §2; 1961 c.636 §1; 1963 c.410 §2; repealed by 1985 c.421 §17]

**540.075 Office and equipment for watermaster.** (1) The county court or board of county commissioners of each county in which the water district of the watermaster

is located shall furnish the watermaster a suitable office and office equipment.

(2) If a water district includes all or parts of two or more counties, the office of the watermaster for the water district shall be in the county designated by the Water Resources Director and the county court or board of county commissioners of that county shall provide a suitable office with necessary office equipment for the watermaster. [1985 c.421 §2]

**540.080 Assistant watermasters; compensation and expenses; termination.** (1) With the approval of the Water Resources Director, a watermaster may employ assistants to aid in the discharge of the watermaster's duties. The assistants shall take the same oath as the watermaster and shall obey the watermaster's instructions. Compensation and actual and necessary traveling expenses of an assistant shall be paid by the county court or board of county commissioners upon certificates of the watermaster by an order made at a regular term when sitting for the transaction of county business. If no provision for such payment is made, the assistant's compensation and expenses shall be paid by the water users concerned, as provided in ORS 540.100 to 540.130.

(2) The term of service of an assistant watermaster may be terminated at any time by the director or the watermaster. [Amended by 1957 c.546 §3; 1961 c.636 §2; 1985 c.421 §8]

**540.090** [Amended by 1957 c.546 §4; 1961 c.636 §3; 1979 c.18 §1; repealed by 1985 c.421 §17]

**540.100 Division of water among users; payment.** (1) When water users are unable to agree to the distribution or division of water, a majority of them may request the watermaster of the district in which the distribution or division is in dispute to make a just division or distribution of water among the parties entitled to the use of the water. The request shall be in writing and shall set forth the pertinent facts of the dispute.

(2) If no provision has been made for payment of the necessary assistant watermaster or expenses as provided by ORS 540.080, the assistant shall be paid by the water users among whom the distribution or division is made.

(3) The expense of any assistant watermaster shall be paid by the water users in proportion to the area of land for which each water user is entitled to the use of water, so that each one shall pay the same rate per acre. [Amended by 1957 c.546 §5; 1961 c.636 §4; 1979 c.18 §2; 1985 c.421 §9]

**540.110** [Amended by 1981 c.897 §58; repealed by 1985 c.421 §17]

**540.120 Lien for wages and expense; notice; foreclosure.** (1) If one or more of the water users concerned in a distribution or division under ORS 540.100 pay the wages and expenses for another user who fails to contribute a just share or proportion of the wages and expenses, the user paying the wages and expenses shall be entitled to a lien upon the lands of the delinquent user entitled to use of water, in the amount of the delinquent user's just share or proportion.

(2) The lien shall be made effective by filing written notice of intent to claim a lien for payment of wages and expenses under subsection (1) of this section with the county clerk of the county in which the lands of the delinquent water user are situated.

(3) The notice of intent filed under subsection (2) of this section shall:

(a) Be verified by the watermaster or assistant watermaster;

(b) Specify the particular items of wages and expenses for which the lien is claimed;

(c) Describe the lands of each water user upon which the lien is claimed; and

(d) State the name of the owner or reputed owner of the lands.

(4) The lien shall be filed within 60 days from the completion of the distribution or division, and suit to foreclose the lien shall be brought in the circuit court of the county in which the lands or any part of the lands are situated, within six months from the date of filing the notice of lien.

(5) The lien shall be foreclosed in the manner provided by law for the foreclosure of liens against real property. Except as provided in subsection (6) of this section, the court may award reasonable attorney fees to the prevailing party in an action to foreclose a lien under this section.

(6) The court may not award attorney fees to the state or a political subdivision of the state if the state or political subdivision prevails in an action to foreclose a lien under this section.

(7) A lien filed under this section shall not be considered an exclusive remedy. [Amended by 1985 c.421 §10; 1995 c.696 §26]

**540.130 Advance payment.** If no provision has been made for payment of the assistant watermaster or expenses as provided in ORS 540.080, before proceeding to make any distribution or division the Water Resources Director may require the water users requesting the distribution or division to pay in advance the estimated compensation and expenses involved in the work. The director shall keep a true and full account of all moneys paid in advance under this section. Upon the expiration of the period for which

the services are required, the director shall refund to the water users any unexpended balance of the moneys paid in advance. [Amended by 1957 c.546 §6; 1961 c.636 §5; 1979 c.18 §3; 1985 c.421 §11]

**540.135 Disposition of funds collected under ORS 540.100 to 540.130 and 540.220.** Any moneys collected under ORS 540.100 to 540.130 and 540.220 shall be paid to the Water Resources Director and deposited by the director in a revolving fund to be disbursed for the purpose for which it was collected. [1961 c.636 §9; 1985 c.421 §12; 1993 c.18 §128]

**540.140 Insufficiency of water; preference of uses.** When the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference over those claiming such water for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.

**540.145 Distribution of water; rules; applicability.** The Water Resources Commission may adopt rules to secure the equal and fair distribution of water in accordance with the rights of the various users. The rules shall apply to all water rights that have been established:

(1) By court decree;

(2) Under an order of the commission or the Water Resources Director in proceedings for the determination of relative rights to the use of water; or

(3) Through permits to appropriate water or certificates of water rights issued by the commission. [1985 c.673 §81]

**540.150 Rotation in water use; notice.** To bring about a more economical use of the available water supply, water users owning lands to which are attached water rights may rotate in the use of the supply to which they may be collectively entitled. Whenever two or more water users notify the watermaster that they desire to use the water by rotation, and present a written agreement as to the manner of rotation, the watermaster shall distribute the water in accordance with the written agreement.

**540.155 Periodic review and report regarding department program for Deschutes Basin ground water study area.** (1) As used in this section, "Deschutes Basin ground water study area" has the meaning given that term in ORS 540.531.

(2) The Water Resources Department shall periodically review the department program for the Deschutes Basin ground water study area. The review shall include, but need not be limited to, the identification of regulatory and statutory changes that may improve the program in order to address and mitigate injury to existing water rights and spring systems and to offset measurable reductions of scenic waterway flows.

(3) The department shall report to the Legislative Assembly every five years on outcomes of the department program for the Deschutes Basin ground water study area. The report shall include, but need not be limited to, program impacts on other users of the Deschutes River Basin, the potential timing of mitigation, identification of zones of impact, a review of impacts on the headwaters of the Metolius River and other key reaches of the Metolius River system, the potential timing of federal, state and local storage improvements and other issues identified by stakeholders. [2011 c.694 §2]

**Note:** 540.155 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## DISTRIBUTION OF WATER FROM IRRIGATION DITCHES AND RESERVOIRS

**540.210 Distribution from ditch or reservoir.** (1) Whenever any water users from any ditch or reservoir, either among themselves or with the owner thereof, are unable to agree relative to the distribution or division of water through or from the ditch or reservoir, either the owner or any such water user may apply to the watermaster of the district in which the ditch or reservoir is located, by written notice, setting forth such facts, and asking the watermaster to take charge of the ditch or reservoir for the purpose of making a just division or distribution of water from it to the parties entitled to the use thereof.

(2) The watermaster shall then take exclusive charge of the ditch or reservoir, for the purpose of dividing or distributing the water therefrom in accordance with the respective and relative rights of the various users of water from the ditch or reservoir, and shall continue the work until the necessity therefor shall cease to exist.

(3) The distribution and division of water shall be made according to the relative and respective rights of the various users from the ditch or reservoir, as determined by the Water Resources Director, by decree of the circuit court, or by written contract between all of the users filed with the watermaster.

(4) The circuit court having jurisdiction may request the watermaster of the district to take charge of any such ditch or reservoir, and to enforce any decree respecting such

ditch or reservoir made under the jurisdiction of the court.

**540.220 Payment of assistant watermaster.** (1) A watermaster may appoint an assistant to take charge of the ditch, pipeline or reservoir involved in a distribution or division of water under ORS 540.210. The assistant watermaster shall be paid by the water users from the ditch, pipeline or reservoir for the cost of the distribution. The Water Resources Commission may require the water users to pay in advance the estimated compensation and expenses of the assistant involved in the distribution or division of the water.

(2) In the case of partnership ditches, pipelines or mutual irrigation corporations organized for the benefit of the members or stockholders, the expense of the assistant shall be paid by the water users in proportion to the area of land for which each water user is entitled to the use of water from the ditch, pipeline or reservoir, so that each shall pay the same rate per acre.

(3) In the case of ditches, pipelines and reservoirs constructed and operated for sale or rental of water, the wages and expense of the assistant shall be paid by the owner of the ditch, pipeline or reservoir, unless otherwise provided in written contracts with water users using water from the ditches, pipelines and reservoirs involved in the distribution or division of water. [Amended by 1957 c.546 §7; 1961 c.636 §6; 1979 c.18 §4; 1985 c.421 §13; 1985 c.673 §83]

**540.230 Distribution of waste or seepage water; payment.** Whenever a watermaster is called upon, in accordance with the provisions of ORS 540.210, to distribute the waters of any ditch containing or carrying waste or seepage water, the holder of the right to the use of such waste or seepage water shall pay the total cost of the installation of measuring devices for the measurement of the waste or seepage water and the total expense of measuring and distributing it.

**540.240 Lien for wages and expense; property subject to lien; monthly payment.** In the case of a partnership ditch, pipeline or reservoir, or a ditch, pipeline or reservoir owned in common or by a mutual irrigation company incorporated under the laws of this state, the wages of the assistant watermaster and expenses incurred by the assistant in making the distribution provided for by ORS 540.210 to 540.240, and the necessary and proper expense of installation and maintenance of measuring devices and headgates to provide for the just distribution of water among the several users in accordance with their respective and relative rights, shall be a lien upon the ditch, pipeline or reservoir. The lien shall attach to each tract of land entitled to the use of water for irrigation from the ditch, pipeline or reservoir, and upon the crops produced upon the lands during the irrigation season for which the distribution is made. If a ditch, pipeline or reservoir is owned or operated by a person engaged in the business of selling or renting water from the ditch, pipeline or reservoir, the wages and expense shall be a lien upon the ditch, pipeline or reservoir. The wages and expense shall be paid monthly by the water users, the mutual irrigation company, or the person engaged in the business of selling or renting water from a ditch, pipeline or reservoir. [Amended by 1985 c.421 §14]

**540.250 Lien, notice of intent to claim; foreclosure; attorney fees.** (1) If not paid, the lien under ORS 540.240 may be made effective by the assistant filing a notice in writing of intention to claim a lien for the assistant's wages and expense with the county clerk of the county in which the ditch, pipeline or reservoir and lands are situated.

(2) The notice filed under subsection (1) of this section shall:

(a) Be verified and subscribed by the watermaster or assistant;

(b) Specify the particular items of wages and expense for which the lien is claimed;

(c) Describe the lands of each water user upon which the lien is claimed; and

(d) Set forth the name of the ditch, pipeline or reservoir and the name of the owner or reputed owner of the lands and ditch, pipeline or reservoir against which the lien is claimed.

(3) The lien shall be filed within 60 days from the completion of distribution. Suit to foreclose the lien shall be brought in the circuit court of the county in which all or part of the lands, ditch, pipeline or reservoir, or any part, are situated, within six months from the date of filing the notice.

(4) The lien shall be foreclosed in the manner provided by law for the foreclosure of liens against real property. The court may award reasonable attorney fees to the prevailing party in an action to foreclose a lien under this section. [Amended by 1981 c.897 §59; 1985 c.421 §15; 1995 c.618 §81]

**540.260 Lien for wages and expense; enforcement; remedy not exclusive.** (1) One or more of the water users from any partnership or mutual irrigation company ditch or pipeline may pay the wages and expense of the assistant watermaster and, as against any other user failing to contribute the user's share or proportion of the wages and expense, shall be entitled to a lien upon the lands of the delinquent user entitled to

the use of water from the ditch, pipeline and reservoir and upon the share or interest of the owner in the ditch, pipeline or reservoir, for the user's just share or proportion.

(2) The lien shall be made effective by filing a similar notice to that prescribed under ORS 540.250 within 60 days from the date of payment of the wages and expense, with the county clerk. It may be enforced and foreclosed, and the same procedure, including the allowance of reasonable attorney fees, shall be followed in the foreclosure as in the case of a lien claimed and foreclosed by the watermaster under ORS 540.250. The lien shall not be considered an exclusive remedy. [Amended by 1985 c.421 §16]

**540.270 Distribution from irrigation districts and improvement companies; applicability of ORS 540.210 to 540.260.** Nothing contained in ORS 540.210 to 540.260 shall be applicable to the distribution of water from the irrigation systems or works of irrigation districts or district improvement companies unless requested by the district. Distribution of water from such irrigation systems or works shall be under the exclusive control of the directors of the irrigation districts and district improvement companies unless the watermaster has been requested by the district to distribute the water. [Amended by 1969 c.303 §1]

## HYDRAULIC WORKS AND STRUCTURES; MEASURING DEVICES; DITCH RIGHT OF WAY

**540.310 Ditches and canals; headgates; measuring devices; flumes along lines of ditches.** (1) The owner of any ditch or canal shall maintain to the satisfaction of the Water Resources Commission a substantial headgate at the point where the water is diverted. It shall be of such construction that it can be locked and kept closed by the watermaster.

(2) The owner shall construct and maintain, when required by the commission, suitable measuring devices at such points along the ditch as may be necessary to assist the watermaster in determining the amount of water that is to be diverted into the ditch from the stream, or taken from it by the various users.

(3) When necessary for the protection of other water users, the commission may require flumes to be installed along the line of any ditch. [Amended by 1985 c.673 §84]

**540.320 Noncompliance with requirements; effect.** If any owner of irrigation works refuses or neglects to construct and put in headgates, flumes or measuring devices, as required under ORS 540.310, after 10 days' notice, the watermaster may close the ditch, and it shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the Water Resources Commission as to such headgates, flumes or measuring devices have been complied with. [Amended by 1985 c.673 §85]

**540.330 Reservoirs; measuring devices; effect of noncompliance.** (1) Any owner or manager of a reservoir, located across or upon the bed of a natural stream, shall construct and maintain, when required by the Water Resources Commission, a measuring device below, and one above, the reservoir on each stream or source of supply discharging into the reservoir, to assist the watermaster in determining the amount of water to which appropriators are entitled and thereafter diverting it for their use.

(2) If any owner or manager of a reservoir located across the bed of a natural stream neglects or refuses to put in a measuring device after 10 days' notice by the commission, the watermaster may open the sluicegate or outlet of the reservoir, and it shall not be closed, under penalties of the law for changing or interfering with headgates, until the requirements of the commission as to such measuring devices are complied with. [Amended by 1985 c.673 §86]

**540.340 Reservoir and diversion dam; suitable outlet; effect of noncompliance.** (1) Whenever it may be necessary for the protection of other water users, the Water Resources Commission shall require every owner or manager of a reservoir or diversion dam, located across or upon the bed of a natural stream, to construct and maintain a suitable outlet in the reservoir or diversion dam which will allow the free passage of the natural flow of the stream. The commission shall determine what constitutes a suitable outlet.

(2) If any owner or manager of a reservoir or diversion dam refuses or neglects to construct or put in such outlet in the reservoir or diversion dam after 10 days' notice by the commission, the commission may close the ditch carrying water from the reservoir or diversion dam and it shall not be opened or any water diverted from the reservoir or diversion dam, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the commission regarding such outlet have been complied with. [Amended by 1985 c.673 §87]

**540.350 Dams, dikes and other hydraulic works; examination and approval by commission; responsibility of owners; inspections; modification of works; hearing.** (1) No person, firm or private or municipal corporation shall construct any dam,

dike, or other hydraulic structure or works, the failure of which the Water Resources Commission finds would result in damage to life or property, unless the commission has made an examination of the site and of the plans and specifications and other features involved in the construction of such works, and has approved them in writing.

(2) When a person, firm or private or municipal corporation seeks the written approval of the Water Resources Commission, of the site, plans, specifications and features for a dam more than 25 feet high at a site where there is an average annual flow exceeding two cubic feet a second, that party must demonstrate that the dam includes measures that make it readily adaptable to power generation in a manner meeting statutory requirements for the safe passage of fish. These measures shall include the installation of a pressure conduit, penstock, drain or similar water diversion system at the time the dam is built.

(3) A person, firm or private or municipal corporation seeking approval for a dam described in subsection (2) of this section need not make the showing required by that subsection if that party demonstrates to the commission's satisfaction that:

(a) It is not likely the installation of hydroelectric generating facilities at the proposed site would be feasible anytime during the life of the proposed dam; or

(b) It would be more feasible to install hydroelectric facilities after construction of the proposed dam.

(4) The commission's approval of the site, plans and specifications, or other features involved in the construction, maintenance and operation of any hydraulic works whatsoever shall not relieve the owners of their legal responsibilities.

(5) The commission may make inspections of any hydraulic structure, the site thereof, and of the plans and specifications, and any other features involved in the construction, maintenance and operation of the works. If, as a result of the inspections, the commission considers any modifications necessary to insure the safety of the works with reference to possible damage to life or property, the commission shall notify the legal owners by registered mail or by certified mail with return receipt, stating why the works are unsafe. The notice shall set forth the modifications necessary to insure the safety of the works in so far as it affects possible damage to life or property. The notice also shall set a hearing at a time and place as will give the owners a reasonable time to prepare for the hearing. [Amended by 1981 c.210 §1; 1985 c.673 §88; 1991 c.249 §51]

**540.355 Inspection, evaluation and assessment of levees.** (1) In lieu of the authority granted to the Water Resources Commission under ORS 540.350 (5), the Water Resources Department may inspect, evaluate and assess the condition of a levee with the permission of the owner of the levee.

(2) In performing the actions under subsection (1) of this section, the department may:

(a) Provide recommendations and technical assistance;

(b) Advise on necessary maintenance and repairs;

(c) Require or assist with the development of emergency action plans to ensure the safety of life and property;

(d) Undertake activities necessary to identify the owner of a levee;

(e) Assist with mapping the locations of levees;

(f) Enter into contracts and intergovernmental agreements;

(g) Accept and receive moneys;

(h) Accept and receive payment for services performed; and

(i) Exchange information and perform other actions as necessary to cooperate with private, local, state and federal entities.

(3) The department's actions under this section shall not relieve the owners of levees of their legal liabilities and responsibilities. [2015 c.667 §5]

**Note:** 540.355 was added to and made a part of ORS chapter 540 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**540.360 Order to modify.** After the hearing the Water Resources Commission may issue a written order to the owners to make such modifications as the commission considers necessary to insure the safety of the works with reference to possible damage to life or property and shall fix the time within which work shall begin in good faith and the time for completion. The owners, upon receipt of the order, shall make the modifications ordered within the time limit prescribed or shall initiate an appeal as above provided. [Amended by 1975 c.581 §26a; 1981 c.210 §2; 1985 c.673 §89]

**540.370 Enforcing compliance with order or decree.** (1) If the owners fail to make the modifications within the time limits set by the Water Resources Commission, or to institute their appeal or to comply with the decree of the appellate court in case an appeal is taken, the commission shall issue an order in writing to the owners directing that the gates be kept open, or an opening made in the dam if necessary, or that the structure

shall not be used for the storage, restraint or conveyance of water until the modifications have been made.

(2) No owner shall refuse to comply with the orders of the commission or the decree of an appellate court.

(3) In case of noncompliance, the commission shall direct the watermaster or other authorized assistant to carry out the orders, or the commission may file a copy of the commission's order with the Attorney General or with the district attorney of the county within which the works are located. The Attorney General or district attorney shall bring proceedings in the name of the state, in the circuit court of the county within which the works or any part thereof are situated, to abate the offending works. The court, after a full hearing on the matter, may declare the works a nuisance and order their removal, or order any repairs or alterations, and may enforce its orders in the manner provided by law. [Amended by 1985 c.673 §90]

**540.380 Reports of consultants; payment.** The Water Resources Commission may accept the reports of consulting engineers, geologists or other specialists whom the owners of the works in question may have employed. But if, for any reason, the commission considers the reports insufficient, the commission may employ consulting engineers, geologists or other specialists outside the Water Resources Department to make special examinations and inspections and to prepare reports for the commission's guidance. The cost of such special examinations, inspections and reports shall be paid by the commission from any funds at the commission's disposal, or it may be divided by mutual agreement between the state and the owners. [Amended by 1985 c.673 §91]

**540.390 Inspection of dam, dike or hydraulic structure; expenses; deposit by applicant; payment by owner of works; lien.** Should any person residing on or owning land in the neighborhood of any dam, dike or other hydraulic structure after completion, or in course of construction, apply to the Water Resources Commission in writing desiring an inspection of the works, the commission may order an inspection, or the commission may make such order on the commission's own motion. Before doing so the commission may require the applicant for inspection to deposit a sum of money sufficient to pay the expenses of an inspection. If the application appears to the commission not to have been justified the commission may cause the whole or part of the expenses to be paid out of the deposit. If the application appears to have been justified, the commission may require the owner of the works to pay the whole or any part of the expenses of the inspection, and it shall constitute a valid lien against the works, which may be enforced in the same manner as provided for the enforcement of mechanic's liens. [Amended by 1985 c.673 §92]

**540.400 Applicability of ORS 540.350 to 540.390.** ORS 540.350 to 540.390 shall not apply to:

(1) Any dam less than 10 feet in height or impounding less than 3,000,000 gallons of water.

(2) Splash dams used for driving logs.

(3) Farm dikes constructed by individuals on their own property.

(4) Ditches carrying less than five cubic feet of water per second.

**540.410 Delivery of reservoir water; notice to watermaster; adjustment of headgates; expenses; payment.** Whenever the owner, manager or lessee of a reservoir constructed under the provisions of the Water Rights Act, as defined in ORS 537.010, desires to use the bed of a stream, or other watercourse, to carry stored or impounded water from the reservoir to the consumer of the water, the owner, manager or lessee shall, in writing, notify the watermaster of the district in which the stored or impounded water from the reservoir is to be used, giving the date when it is proposed to discharge water from the reservoir, its volume, and the names of all persons and ditches entitled to its use. The watermaster shall then close, or so adjust the headgates of all ditches from the stream or watercourse, not entitled to the use of such stored water, as will enable those having the right to secure the volume to which they are entitled. The watermaster shall keep a true and just account of the time spent in the discharge of the watermaster's duties as defined in this section, and the Water Resources Commission shall present a bill of one-half the expense so incurred to the reservoir owner, manager or lessee. If the owner, manager or lessee neglects for 30 days, after presentation of the bill of costs, to pay it, the costs shall be made a charge upon the reservoir and the state shall have a preference lien therefor. Upon notice from the commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed. [Amended by 1955 c.39 §1; 1961 c.636 §7; 1985 c.673 §93]

**540.420 Jointly owned ditches; performance by co-owner; recovery for default.** In all cases where ditches are owned by two or more persons and one or more of such persons fails or neglects to do a proportionate share of the work necessary for

the proper maintenance and operation of the ditch, or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, the owner desiring the performance of such work may, after having given 10 days' written notice to the other owner who has failed to perform a proportionate share of the work, perform such share, and recover therefor from the person in default the reasonable expense of the work.

**540.430 Nonpayment by ditch co-owner; lien on interest; foreclosure; stoppage of water delivery.** (1) Upon the failure of any co-owner to pay a proportionate share of the expense, as mentioned in ORS 540.420, within 30 days after receiving a statement of the same as performed by the co-owner, the latter may secure payment of the claim by filing an itemized and sworn statement thereof, setting forth the date of performance and the nature of the labor performed, with the county clerk of the county wherein the ditch is situated. When so filed it shall constitute a valid lien against the interest of the person in default, which lien may be established and enforced in the same manner as provided by law for the enforcement of mechanic's liens.

(2) In lieu of proceeding to enforce the lien, the person performing the labor may file an itemized and sworn statement with the watermaster of the district within which the ditch is located, setting forth the date of performance, the nature of the labor performed, the total expense incurred by the person and the proportion of the expense each owner should pay, together with a written request that the watermaster take charge of the distribution of the water from the ditch to the parties entitled to the use thereof. Thereupon the watermaster may proceed to distribute the water in accordance with established rights. However, if an owner or user has not paid the proportion of expenses of the owner or user incurred for the proper maintenance and operation of the ditch, the watermaster may serve such party with written notice, personally, by registered mail or by certified mail with return receipt, setting forth the proportion of expenses incurred for which the owner or user is obligated to pay. If the party so served refuses or neglects to pay that part of the expense within 10 days after the serving or mailing of the notice, the watermaster may refuse to deliver water to be used upon the lands of such person until after the expense has been paid. [Amended by 1991 c.249 §52]

**540.435 Installation of totalizing measuring device; annual water use report; hearing; effect of failure to comply with order.** (1) In addition to any other authority of the Water Resources Commission to order installation of a measuring device, if the commission finds accurate water use information necessary because of serious water management problems created by ground water decline, unresolved user disputes or frequent water shortages, the commission by rule may require a water right owner using any surface or ground water source within the state to install a totalizing measuring device and to submit annually a water use report.

(2) Before the commission implements any requirements under subsection (1) of this section the commission shall:

(a) Cause a hearing to be conducted in the affected area to determine whether a serious management problem exists; and

(b) Allow any affected person an opportunity to present alternative methods or devices that could be used to provide the information necessary to manage the water resource or to alleviate the water management problem.

(3) The watermaster may prohibit the diversion or use of water by anyone who has failed to comply with a commission rule or order requiring installation of measuring devices or submission of a water use report. [1987 c.649 §7]

**540.440 Owner to clear weeds from ditch right of way.** All persons owning or controlling any water ditches shall keep their right of way along the ditches clean and free from wild oats, mustard, thistles, or any weeds or noxious grasses whatsoever. [Amended by 2011 c.9 §73]

## CHANGES IN USE OF WATER; TRANSFER OF WATER RIGHTS; EXCHANGE

**540.505 Definitions.** As used in ORS 540.505 to 540.585:

(1) "District" means an irrigation district formed under ORS chapter 545, a drainage district formed under ORS chapter 547, a water improvement district formed under ORS chapter 552, a water control district formed under ORS chapter 553 or a corporation organized under ORS chapter 554.

(2) "Primary water right" means the water right designated by the Water Resources Commission as the principal water supply for the authorized use, or if no designation has been made, the water right designated by the applicant as the principal water supply for the authorized use.

(3) "Supplemental water right or permit" means an additional appropriation of water to make up a deficiency in supply from an existing water right. A supplemental water

right or permit is used in conjunction with a primary water right.

(4) "Water use subject to transfer" means a water use established by:

(a) An adjudication under ORS chapter 539 as evidenced by a court decree;

(b) A water right certificate;

(c) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

(d) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission. [1991 c.957 §2; 1995 c.274 §1; 1997 c.42 §2]

**540.510 Appurtenancy of water to premises; restrictions on change of use, place of use or point of diversion; application for transfer of primary and supplemental water rights; right to use conserved water.** (1) Except as provided in subsections (2) to (8) of this section, all water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the holder of any water use subject to transfer may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use theretofore made of the water in all cases without losing priority of the right theretofore established. A district may change the place of use in the manner provided in ORS 540.572 to 540.580 in lieu of the method provided in ORS 540.520 and 540.530. When an application for change of the use or place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to transfer the supplemental water right or permit, the applicant also shall include the information required under ORS 540.520 (2) for the supplemental water right or permit. If the applicant does not include the supplemental water right or permit in the transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the transfer of the primary water right, unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the transfer of the supplemental water right or permit in accordance with the provisions of ORS 540.520 and 540.530. The department shall not approve the transfer of a supplemental water right or permit if the transfer would result in enlargement of the original water right or injury to an existing water right. If the department approves the transfer of the primary water right but does not approve the transfer of the supplemental water right or permit, the department shall notify the applicant of the department's intent to cancel that portion of the supplemental water right or permit described in the transfer application before the department issues the primary water right transfer order, unless the applicant withdraws the transfer application within 90 days.

(2) Subject to the limitations in ORS 537.490, any right to the use of conserved water allocated by the Water Resources Commission under ORS 537.470 may be severed from the land and transferred or sold after notice to the commission as required under ORS 537.490.

(3)(a) Any water used under a permit or certificate issued to a municipality, or under rights conferred by ORS 538.410 to 538.450, or under the registration system set forth in ORS 537.132, may be applied to beneficial use on lands to which the right is not appurtenant if:

(A) The water is applied to lands which are acquired by annexation or through merger, consolidation or formation of a water authority, so long as the rate and use of water allowed in the original certificate is not exceeded;

(B) The use continues to be for municipal purposes and would not interfere with or impair prior vested water rights; or

(C) The use is authorized under a permit granted under ORS 468B.050 or 468B.053 and for which a reclaimed water registration form has been filed under ORS 537.132.

(b) As used in this subsection, "municipality" means a city, a port formed under ORS 777.005 to 777.725, 777.915 to 777.953 and 778.010, a domestic water supply district formed under ORS chapter 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450.

(4) Pursuant to the provisions of ORS 540.570 or 540.585, any water used under a permit or certificate issued to a district may be applied to beneficial use on lands within the district to which the right is not appurtenant.

(5) The relocation of a point of diversion as necessary to follow the movements of a naturally changing stream channel does not

constitute a change in point of diversion for purposes of ORS 540.520 if:

(a) The diversion point stays within 500 feet of the point of diversion on record with the Water Resources Department;

(b) The change does not move the diversion point upstream or downstream beyond the diversion point of another appropriator; and

(c) The diversion is provided with a proper fish screen, if requested by the State Department of Fish and Wildlife.

(6) In the event that government action results in or creates a reasonable expectation of a change in the surface level of a surface water source that impairs or threatens to impair access to a point of diversion authorized by a water right permit, certificate or decree, the owner of the water right may change the point of diversion or add an additional point of diversion in accordance with the provisions of this section in lieu of complying with the requirements of ORS 540.520 and 540.530. Before changing the point of diversion, the water right owner shall provide written notice of the proposed change to the Water Resources Department. Within 15 days after receipt of such notice, the department shall provide notice by publication in the department's public notice of water right applications. Within 60 days after the department receives notice from the owner, the Water Resources Director, by order, shall approve the change unless the director finds the changes will result in injury to other existing water rights. All other terms and conditions of the water right shall remain in effect.

(7) The sale or lease of the right to the use of conserved water under ORS 537.490 does not constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.

(8) Ground water applied to an exempt use as set forth in ORS 537.141 or 537.545 may be subsequently applied to land for irrigation purposes under ORS 537.141 (1)(i) or 537.545 (1)(g) without application for a change in use or place of use under this section. [Amended by 1987 c.264 §11; 1989 c.7 §1; 1989 c.707 §3; 1991 c.370 §5; 1991 c.957 §7; 1993 c.577 §36; 1993 c.641 §9; 1995 c.168 §1; 1995 c.274 §2; 1995 c.359 §2; 1997 c.244 §4; 1997 c.286 §10; 1999 c.335 §2; 2003 c.705 §8]

**540.520 Application for change of use, place of use or point of diversion; public notice; protest; hearing; exemptions.** (1) Except when the application is made under ORS 541.327 or when an application for a temporary transfer is made under ORS 540.523, if the holder of a water use subject to transfer for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change the place of use, the point of diversion, or the use made of the water, an application to make such change, as the case may be, shall be filed with the Water Resources Department.

(2) The application required under subsection (1) of this section shall include:

(a) The name of the owner;

(b) The previous use of the water;

(c) A description of the premises upon which the water is used;

(d) A description of the premises upon which it is proposed to use the water;

(e) The use that is proposed to be made of the water;

(f) The reasons for making the proposed change; and

(g) Evidence that the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or that the water right is not subject to forfeiture under ORS 540.610.

(3) If the application required under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying the requirements of subsection (2)(c) and (d) of this section. The assistance provided by the department may include, but need not be limited to, development of an application map.

(4) If the application is to change the point of diversion, the transfer shall include a condition that the holder of the water right provide a proper fish screen at the new point of diversion, if requested by the State Department of Fish and Wildlife.

(5) Upon the filing of the application the department shall give notice by publication in a newspaper having general circulation in the area in which the water rights are located, for a period of at least two weeks and not less than one publication each week. The notice shall include the date on which the last notice by publication will occur. The cost of the publication shall be paid by the applicant in advance to the department. In applications for only a change in place of use or for a change in the point of diversion of less than one-fourth mile, and where there are no intervening diversions between the old diversion of the applicant and the proposed new diversion, no newspaper notice need be published. The department shall in-

clude notice of such applications in the weekly notice published by the department.

(6) Within 30 days after the last publication of a newspaper notice of the proposed transfer or the mailing of the department's weekly notice, whichever is later, any person may file, jointly or severally, with the department, a protest against approval of the application.

(7) If a timely protest is filed, or in the opinion of the Water Resources Director a hearing is necessary to determine whether the proposed changes as described by the application would result in injury to existing water rights, the department shall hold a hearing on the matter. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183, pertaining to contested cases, and shall be held in the area where the rights are located unless all parties and persons who filed a protest under this subsection stipulate otherwise.

(8) An application for a change of use under this section is not required if the beneficial use authorized by the water use subject to transfer is irrigation and the owner of the water right uses the water for incidental agricultural, stock watering and other uses related to irrigation use, so long as there is no increase in the rate, duty, total acreage benefited or season of use.

(9) A water right transfer under subsection (1) of this section is not required for a general industrial use that was not included in a water right certificate issued for a specific industrial use if:

(a) The quantity of water used for the general industrial use is not greater than the rate allowed in the original water right and not greater than the quantity of water diverted to satisfy the authorized specific use under the original water right;

(b) The location where the water is to be used for general industrial use was owned by the holder of the original water right at the time the water right permit was issued; and

(c) The person who makes the change in water use provides the following information to the Water Resources Department:

(A) The name and mailing address of the person using water under the water right;

(B) The water right certificate number;

(C) A description of the location of the industrial facility owned by the holder of the original water right at the time the water right permit was issued; and

(D) A description of the general industrial use to be made of the water after the change. [Amended by 1983 c.807 §1; 1985 c.673 §94; 1987 c.339 §3; 1989 c.1000 §7; 1995 c.274 §7; 1995 c.490 §2; 1997 c.42 §3; 1999 c.555 §4; 1999 c.664 §2; 2011 c.52 §6]

**540.523 Temporary transfer of water right or permit; terms; revocation; status of supplemental water right or permit.** (1) In accordance with the provisions of this section, any person who holds a water use subject to transfer may request that the Water Resources Department approve the temporary transfer of place of use and, if necessary to convey water to the new temporary place of use, temporarily change the point of diversion or point of appropriation for a period not to exceed five years. An application for a temporary transfer shall:

(a) Be submitted in writing to the Water Resources Department;

(b) Be accompanied by the appropriate fee for a change in the place of use as set forth in ORS 536.050;

(c) Include the information required under ORS 540.520 (2); and

(d) Include any other information the Water Resources Commission by rule may require.

(2) Notwithstanding the notice and waiting requirements under ORS 540.520, the department shall approve by order a request for a temporary transfer under this section if the department determines that the temporary transfer will not injure any existing water right.

(3) All uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the water use subject to transfer upon expiration of the temporary transfer period.

(4) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(5) The department may revoke a prior approval of the temporary transfer at any time if the department finds that the transfer is causing injury to any existing water right.

(6) Any map that may be required under subsection (1) of this section need not be prepared by a certified water right examiner.

(7) The lands from which the water right is removed during the period of a temporary transfer shall receive no water under the transferred water right.

(8) When an application for a temporary change of the place of use for a primary water right is submitted in accordance with this section, the applicant also shall indicate whether the land described in the application has an appurtenant supplemental water right or permit. If the applicant also intends to temporarily transfer the supplemental water right or permit, the applicant also shall include the information required under ORS

540.520 (2) for the supplemental water right or permit. If the applicant does not include the supplemental water right or permit in the temporary transfer application, the Water Resources Department shall notify the applicant that the supplemental water right or permit will be canceled before the department issues the order approving the temporary transfer of the primary water right, unless within 30 days the applicant modifies the application to include the supplemental water right or permit or withdraws the application. The department may approve the temporary transfer of the supplemental water right or permit in accordance with the provisions of this section. The department may not approve the temporary transfer of a supplemental water right or permit if the temporary transfer would result in enlargement of the original water right or injury to an existing water right. If the department approves the temporary transfer of the primary water right but does not approve the temporary transfer of the supplemental water right or permit, the department shall notify the applicant of the department's intent not to allow the temporary transfer of the supplemental water right or permit before the department issues the order for the temporary transfer of the primary water right. If the department does not allow the temporary transfer of the supplemental right, the supplemental right shall remain appurtenant to the land described in the application, but may not be exercised until the primary right reverts to the original water use. If the primary water right does not revert soon enough to allow use of water under the supplemental right within five years, the supplemental right shall become subject to cancellation for nonuse under ORS 540.610.

(9) In issuing an order under subsection (2) of this section, the department shall include any condition necessary to protect other water rights. [1995 c.274 §6; 1997 c.42 §4; 1997 c.587 §12; 2001 c.788 §§3,9]

**540.524 Substitution of supplemental water right from ground water source for primary water right from surface water source; application; fee.** (1) Notwithstanding ORS 540.510 or 540.670, upon approval of an application submitted to the Water Resources Department, the holder of both a primary water right originating from a surface water source and a supplemental water right permit or certificate originating from a ground water source may substitute the use of the supplemental water right for the primary water right. A substitution may not be made under this subsection if the use of the supplemental water right results in an enlargement or expansion of the primary water right. This subsection does not authorize a change in place of use, type of use, point of diversion or point of appropriation.

(2) An application required under subsection (1) of this section shall be submitted on forms provided by the department. The department may request additional information if necessary to assist with the injury evaluation. Each application shall be submitted with the fee described in ORS 536.050 (1)(s).

(3) Upon receiving an application under subsection (1) of this section, the department shall provide notice, accept protests and conduct hearings on protests in the manner described in ORS 540.520 (5), (6) and (7).

(4) The Water Resources Director shall issue an order approving or denying the substitution. If the proposed substitution will result in injury to other water rights, the director shall prohibit or condition the use to avoid or mitigate the injury. The director shall issue an order approving or denying the substitution within 90 days after the department receives an application under subsection (1) of this section.

(5) For the purpose of ORS 540.610, a substituted primary surface water right shall be treated as a supplemental water right, and a substituted supplemental ground water right shall be treated as a primary water right.

(6) A completed and approved substitution of a supplemental ground water right for a primary surface water right under this section may be terminated upon a request by the water right holder or by an order of the director if the director determines that the use of the ground water as the primary water right causes injury to other water rights. Upon termination, the substituted primary and supplemental water rights shall revert back to their original status. [1999 c.555 §2]

**Note:** 540.524 was added to and made a part of 540.505 to 540.585 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**540.525 Installation of fish screening or by-pass device as prerequisite for transfer of point of diversion.** (1) Upon receipt of an application for a change in the point of diversion under ORS 540.520, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the diversion is:

(a) Equipped with an appropriate fish screening or by-pass device; or

(b) Included on the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989.

(2) If the original point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the depart-

ment, after consulting with the State Department of Fish and Wildlife, may require the installation of an appropriate fish screening or by-pass device at the new point of diversion.

(3) When consulting with the State Department of Fish and Wildlife, the department shall determine whether the installation of an appropriate fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(4) Any individual who is required to install a fish screening or by-pass device under this section at a point of diversion may participate in the State Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass devices. [1995 c.274 §6a; 2007 c.625 §11]

**540.530 Order authorizing change of use, place of use or point of diversion; consent to injury; new or modified certificate.** (1)(a) If, after hearing or examination, the Water Resources Commission finds that a proposed change can be effected without injury to existing water rights, the commission shall make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(b) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to existing water rights, upon receipt by the commission of an affidavit consenting to the change from every holder of an affected water right, the commission may make an order approving the transfer and fixing a time limit within which the approved changes may be completed.

(c) If, after hearing or examination, the commission finds that a proposed change in point of diversion cannot be effected without injury to an in-stream water right granted pursuant to a request under ORS 537.336 or an in-stream water right created pursuant to ORS 537.346 (1), the Water Resources Department may consent to the change only upon a recommendation that the department do so from the agency that requested the in-stream water right. The agency that requested the in-stream water right may recommend that the department consent to the change only if the change will result in a net benefit to the resource consistent with the purposes of the in-stream water right.

(d)(A) If an in-stream water right would be injured by a proposed change under paragraph (c) of this subsection, the department shall obtain a recommendation from the agency that requested the in-stream water right. If the recommendation of the agency is to consent to the change, the department shall provide public notice of the recommendation and, consistent with state laws regarding cooperation with Indian tribes in the development and implementation of state agency programs that affect tribes or rights and privileges of tribes, the department shall consult with affected Indian tribes.

(B) The recommendation of an agency under this paragraph must be in writing and, if the recommendation is to consent to the change, must describe the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the proposed change. The recommendation may include any proposed conditions that are necessary to ensure that the proposed change will be consistent with the recommendation.

(C) In determining whether a net benefit will result from the proposed change, the recommendation of an agency must include an analysis of the cumulative impact of any previous changes under paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

(D) A person may comment on the recommendation of an agency. The comment must be in writing and must be received by the department within 30 days after publication of notice under this paragraph. If a written comment received by the department requests a meeting on the proposed change, the department and the agency that requested the in-stream water right shall hold a joint public meeting within 90 days of the receipt of the comment requesting a meeting.

(e)(A) If, after review of public comments and consultation with the agency that requested the in-stream water right, the agency that requested the in-stream water right does not withdraw its recommendation to consent to the change, the department may approve the change consistent with the requirements of paragraphs (b) and (c) of this subsection.

(B) An order approving a change under paragraph (c) of this subsection shall include written findings on the extent of the injury to the in-stream water right, the effect on the resource and the net benefit that will occur as a result of the change. The order shall include any conditions necessary to ensure that the change will be consistent with the findings and ensure that the change will result in a continued net benefit to the resource consistent with the purposes of the in-stream water right.

(C) In determining whether a net benefit will result from the change, the order of the department must include an analysis of the cumulative impact of any previous changes approved under paragraphs (b) and (c) of this subsection that allow injury to the affected in-stream water right.

(f) The time allowed by the commission for completion of an authorized change under paragraphs (a) to (e) of this subsection may not be used when computing a five-year period of nonuse under the provisions of ORS 540.610 (1).

(2)(a) If a certificate covering the water right has been previously issued, the commission shall cancel the previous certificate or, if for an irrigation district, the commission may modify the previous certificate and, when proper proof of completion of the authorized changes has been filed with the commission, issue a new certificate or, if for an irrigation district, modify the previous certificate, preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right.

(b) If the change authorized under subsection (1) of this section is necessary to allow a change in a water right pursuant to ORS 537.348, is necessary to complete a project funded under ORS 541.932, or is approved by the State Department of Fish and Wildlife as a change that will result in a net benefit to fish and wildlife habitat, the Water Resources Department, at the discretion of the Water Resources Director, may waive or assist the applicant in satisfying any of the proof of completion requirements of paragraph (a) of this subsection. The assistance provided by the department may include, but need not be limited to, development of a final proof survey map and claim of beneficial use.

(3) Upon receiving notification of the merger or consolidation of municipal water supply entities, or the formation of a water authority under ORS chapter 450, the commission shall cancel the previous certificates of the entities replaced by the merger, consolidation or formation and issue a new certificate to the newly formed municipality or water authority. The new certificate shall preserve the previously established priority of rights of the replaced entities and shall allow beneficial use of the water on any lands acquired in the merger, consolidation or formation. [Amended by 1975 c.581 §26b; 1983 c.807 §2; 1985 c.673 §95; 1989 c.707 §4; 1993 c.577 §37; 1999 c.664 §3; 1999 c.804 §1; 2001 c.299 §§1,2; 2005 c.614 §4]

**540.531 Transfer of surface water point of diversion to ground water; requirements; priority; mitigation measures; return to surface water diversion; rules.** (1) Notwithstanding ORS 537.515 and 537.535, an owner of a surface water use subject to transfer may apply for a transfer of the point of diversion to allow the appropriation of ground water if the proposed transfer complies with the requirements of subsection (2) or (3) of this section and with the requirements for a transfer in point of diversion specified in ORS 540.520 and 540.530.

(2) The Water Resources Department may allow a transfer of the point of diversion under subsection (1) of this section if:

(a)(A) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source;

(B) The proposed change in point of diversion will not result in enlargement of the original water right or in injury to other water right holders;

(C) The use of the new point of diversion will affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer; and

(D) The withdrawal of ground water at the new point of diversion is located within 500 feet of the surface water source and, when the surface water source is a stream, is also located within 1,000 feet upstream or downstream of the original point of diversion as specified in the water use subject to transfer; or

(b) The new point of diversion is not located within the distance requirements set forth in paragraph (a)(D) of this subsection, the holder of the water use subject to transfer submits to the department evidence prepared by a licensed geologist that demonstrates that the use of the ground water at the new point of diversion will meet the criteria set forth in paragraph (a)(A) to (C) of this subsection.

(3) Notwithstanding subsection (2) of this section, the department shall allow a transfer of the point of diversion under subsection (1) of this section in the Deschutes Basin ground water study area if:

(a) The new point of diversion appropriates ground water from an aquifer that is hydraulically connected to the authorized surface water source;

(b) The proposed change in the point of diversion will not result in enlargement of the original water right or in injury to other water right holders; and

(c) The use of the new point of diversion will affect the surface water source hydraulically connected to the authorized point of diversion specified in the water use subject to transfer. The department may not require that the use of the new point of diversion affect the surface water source similarly to the authorized point of diversion specified in the water use subject to transfer under this subsection.

(4) All applicable restrictions that existed at the original point of diversion shall apply at the new point of diversion allowed under this section.

(5) The new point of diversion shall retain the original date of priority. However, if within five years after approving the transfer, the department finds that the transfer results in substantial interference with existing ground water rights that would not have occurred in the absence of the transfer, the new point of diversion shall be subordinate to any existing right injured by the transferred water right or permit.

(6)(a) The department shall approve an application to return to the last authorized surface water point of diversion if a holder of a water use subject to transfer submits an application to the department within five years after the department approves a transfer under this section.

(b) The department shall approve an application to return to the last authorized surface water point of diversion after five years of the date the department allows a transfer under subsection (3) of this section if a holder of a water use subject to transfer submits an application to the department, and the return will not result in injury to an existing water right.

(7) For transfers allowed under this section, the department shall require mitigation measures to prevent depletion from any surface water source not specified in the permit or certificated or decreed water right, except that the department may not require mitigation measures if the transfer complies with subsection (3) of this section.

(8) The Water Resources Commission shall adopt rules that prescribe:

(a) The process for reviewing applications submitted under this section;

(b) The persons to whom the department shall provide notice of the receipt of an application submitted under this section; and

(c) The persons who may participate in the process of reviewing applications submitted under this section.

(9) As used in this section:

(a) "Deschutes Basin ground water study area" means the part of the Deschutes River Basin that is designated by the Water Resources Commission by rule.

(b) "Similarly" means that the use of ground water at the new point of diversion affects the surface water source specified in the permit or certificated or decreed water right and would result in stream depletion of at least 50 percent of the rate of appropriation within 10 days of continuous pumping. [1995 c.274 §4; 1999 c.555 §5; 2003 c.705 §1; subsection (9) of 2003 Edition enacted as 2003 c.705 §3; 2005 c.614 §2]

**540.532 Request for change in point of diversion to reflect historical use; requirements.** (1) Notwithstanding ORS 537.797, 540.510, 540.520 and 540.530, an individual may request a change in the point of diversion to reflect the historical use of water at a point of diversion other than that described in the water right certificate or decree if the individual complies with the provisions of subsection (2) of this section.

(2) An individual may request a change in the point of diversion under subsection (1) of this section if:

(a) The actual, current point of diversion has been in use for more than 10 years;

(b) The Water Resources Department has received no claim of injury as a result of the use of water from the current point of diversion prior to the request for the change of diversion;

(c) The individual requesting the change provides written notice to any other affected water right holder, as identified by the Water Resources Department, and the Water Resources Department provides notice of the request in the department's public notice of water right applications; and

(d) The individual provides a map of sufficient detail and clarity to identify the true point of diversion including but not limited to:

(A) The county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system; and

(B) The locations of the point of diversion as specified in the water right certificate or decree and the actual, current point of diversion.

(3) Upon receipt of a request for a change in the point of diversion under subsection (1) of this section, the Water Resources Department shall consult with the State Department of Fish and Wildlife to determine whether the historical point of diversion is:

(a) Equipped with an appropriate fish screening or by-pass device; or

(b) Included on the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989.

(4) If the historical point of diversion is included in the priority list of screening projects established pursuant to section 8, chapter 933, Oregon Laws 1989, the Water Resources Department, after consulting with the State Department of Fish and Wildlife, may require the installation of an appropri-

ate fish screening or by-pass device at the point of diversion.

(5) When consulting with the State Department of Fish and Wildlife, the Water Resources Department shall determine whether the installation of an appropriate fish screening or by-pass device is necessary to prevent fish from leaving the body of water and entering the diversion.

(6) Any individual who is required to install a fish screening or by-pass device under this section at a point of diversion may participate in the State Department of Fish and Wildlife's cost-sharing program for the installation of screening or by-pass devices. [1995 c.359 §3; 2007 c.625 §12]

**Note:** 540.532 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**540.533 Application for exchange of water.** (1) As used in this section, "person holding a water right, certificate or permit" means a person that:

(a) Holds a water right established by court decree;

(b) Holds a water right certificate or a water right for which proof of beneficial use has been approved by the Water Resources Director or the Water Resources Commission;

(c) Is applying for or holds a permit issued under ORS 537.211 for use of water for an in-stream purpose; or

(d) Holds a permit issued under ORS 537.135 for recharging ground water within the Umatilla Basin.

(2) A person holding a water right, certificate or permit may apply to the commission for permission to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount to satisfy prior appropriations from the other source, if:

(a) The source of the person's appropriation is at times insufficient to fully satisfy the appropriation;

(b) Better conservation and use of the waters of the state can be accomplished; or

(c) The person can develop water for appropriation under the permit for use of water for an in-stream purpose or the permit for recharging ground water, but cannot economically convey the water to its point of use.

(3) A person may apply for an exchange under this section among any combination of surface, storage or ground water rights.

(4) An application for exchange shall be accompanied by:

(a) Any map, plan or other information required by the commission;

(b) The fee required under ORS 536.050; and

(c) If the application for exchange is by a person that holds a permit issued under ORS 537.135 for recharging ground water within the Umatilla Basin, evidence satisfactory to the director that the exchange will result in no net loss of flow in the Umatilla River. [1987 c.815 §2; 2011 c.281 §1]

**540.535 Notice of application for exchange.** After receipt of an exchange application, the Water Resources Commission shall give notice of the application by publishing notice of the application in a newspaper having general circulation in the area in which the water uses are located at least once each week for at least two successive weeks. The cost of providing the notice by publication shall be paid in advance by the applicant to the commission. [1987 c.815 §3; 2011 c.52 §7]

**540.537 Order allowing exchange; order terminating exchange.** (1) The Water Resources Commission shall issue an order allowing an exchange unless the commission finds any of the following:

(a) The proposed exchange would adversely affect other appropriators.

(b) The proposed exchanges would be too difficult to administer.

(c) The proposed exchange would adversely affect the public interest as determined under ORS 537.170 (8).

(d) A sufficient quantity of water would not be available to replace the water to be used under the exchange. In determining whether replacement water will be equal to the water exchanged, the commission may consider relative consumptive uses and transmission losses.

(2) The commission may include any condition the commission considers necessary in an order allowing an exchange.

(3) The commission shall issue an order terminating the exchange:

(a) If water is not applied under the exchange within the time fixed by the commission in the order approving the exchange;

(b) Upon written request signed by all parties to the exchange;

(c) Upon finding that any other termination condition specified in the original order has occurred; or

(d) Upon attainment of a termination date specified in the original exchange order.

(4) For purposes of subsection (3) of this section, the time fixed for implementing the exchange shall include any extension granted

by the commission for good cause shown. [1987 c.815 §4; 1995 c.416 §38]

**540.539 Exchange subject to beneficial use requirements.** An exchange of water under ORS 540.533 to 540.537 is subject to the requirements of beneficial use under ORS 540.610. [1987 c.815 §5]

**540.540** [Renumbered 540.545 in 1987]

**540.541 Delivery and use of water under exchange.** (1) Any water made available to a person under an exchange shall be delivered in accordance with the order allowing the exchange. The use of water under an exchange is without prejudice to, but shall be considered use and enjoyment of, the permitted, certificated or decreed right held by that water user at the time the exchange was approved.

(2) The use of water under a permit may be perfected by application of exchange water to the use specified in that permit. Upon receipt of proof satisfactory to the Water Resources Commission that water has been used under the exchange for the purposes of and within the limitations of the permit, the commission shall issue a certificate of the same character as that described in ORS 539.140. The certificate shall incorporate the source, conditions and priority of the permit existing at the time the exchange was approved.

(3) If regulation by the watermaster is required, after implementation of the exchange, water shall be delivered in accordance with the terms and conditions of the order allowing the exchange. [1987 c.815 §6]

**540.543 Regulation of headgates when water provided by exchange.** If water for an in-stream use is provided by exchange, the watermaster shall regulate headgates and other diversion points as necessary to assure that the exchange water is not diverted from the channel at any point above the most downstream point of use specified in the permit or certificate that establishes the right to use of water for an in-stream purpose. [1987 c.815 §7]

**540.545 Transfer of water rights following county acquisition of land.** Whenever the title to lands within a district has been or is acquired by the county within which the land is located, by foreclosure of tax liens or otherwise, the county court or board of county commissioners, upon request of the district, may make application under the provisions of ORS 540.505 to 540.585 to have the water rights appurtenant to such lands transferred to other lands within the district which are owned by the county or privately owned. [Formerly 540.540; 1991 c.957 §8]

**540.550 Ratification of prior transfer of water rights to irrigation district.** All attempted transfers or sales, prior to March 6, 1931, to an irrigation district, of water rights which theretofore had been appurtenant to lands located in the district and which lands at the time of the attempted transfer or sale were owned by the county, shall be considered to be legal and binding, and the water rights which were appurtenant to such lands shall be considered to have become the property of the district to which attempted to be conveyed, but appurtenant only to lands within the boundaries of the district as they existed on March 6, 1931, if the irrigation district applied to the Water Resources Director, within five years after March 6, 1931, under the provisions of section 47-712, Oregon Code 1930, as amended by chapter 102, Oregon Laws 1931, to have the water rights made appurtenant to other lands within the irrigation district. In that event, the county shall sell the lands without any water rights being appurtenant thereto. If the irrigation district failed within five years after March 6, 1931, to make such application, then title to the water rights shall be considered to have been forfeited.

**Note:** 540.550 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**540.560 Order changing description of land to which water right is appurtenant; limitation; purpose; hearing; effect of final order.** (1) If the Water Resources Commission considers that a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery or transfer of that right, the commission may issue an order clarifying and refining the description of the land to which the water right is appurtenant.

(2) An order issued under this section may not reduce the rate, duty or number of acres stated in the certificate of water right. The sole purpose of an addendum to a water right certificate is to better define the location of acreage to which the water right is appurtenant, where the certificate states only that the use is limited to a number of acres within a larger tract.

(3) Any order issued under this section shall be served on the legal owner of the land to which the water right is appurtenant and on the occupant of the land, by certified mail, return receipt requested. If the owner or occupant files a written request for a hearing within 30 days after service of the order, the commission shall conduct a hearing of the matter under ORS 183.413 to 183.484.

(4) A final order under this section shall become an addendum to and shall be filed with the certificate of water right that the order clarifies. For all purposes, the final order shall constitute the description of the land to which the water right is appurtenant. [1987 c.649 §9]

**540.570 Temporary transfers within districts; procedure; fee.** (1) Provided that the proposed transfer complies with all of the provisions of this subsection and will not result in injury to any existing water right, a district with a manager may, for one irrigation season, temporarily transfer the place of use of water appurtenant to any land within the legal boundaries of the district to an equal acreage elsewhere within the legal boundaries of that district or temporarily transfer the type of use identified in a right to store water. A temporary transfer of the place of use may occur if:

(a) The rate and duty, and the total number of acres to which water will be applied under the transfer, do not exceed existing limits on the water use subject to transfer;

(b) The type of use authorized under the water use subject to transfer remains the same; and

(c) The land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made.

(2) Provided that the proposed transfer complies with all the provisions of this subsection and will not result in injury to or enlargement of an existing water right, a district with a manager may, for one irrigation season, temporarily change the point of diversion or appropriation combined with a change in place of use, change the point of diversion in the event that an emergency prevents the district from diverting water from its authorized point of diversion, change the point of diversion to allow for the appropriation of ground water or change a primary right to a supplemental right if:

(a) The land on which the water is to be used is within the district's legal boundaries established pursuant to ORS chapter 545, 547, 552, 553 or 554;

(b) The other terms of the permit or certificate remain the same, including the beneficial use for which the water is used and the number of acres to which water is applied;

(c) The diversion is provided with a proper fish screen, if required by the Water Resources Department; and

(d) For a proposal to transfer the point of diversion to allow for the appropriation of ground water, the proposed change meets the standards set forth in ORS 540.531 (2).

(3) When a district or an owner or an owner's agent within a district who is subject to the charges or assessments of the district wishes to use water on alternate acreage within the district, if the district has approved the owner's request, the district shall submit to the department a petition seeking a temporary transfer under this section. The district shall submit the petition prior to making the proposed change. The petition may contain changes to one or more tax lots within the district and shall:

(a) Include the information required under ORS 540.574 (3);

(b) Be accompanied by a map in a form satisfactory to the department and certified by the district. If the water right is on a tract of land of five acres or less, the assessor's tax map with a notation of the acres of water right shall be sufficient for identification of the tract and place of use;

(c) Include a statement that a written authorization for the transfer from each landowner affected by the particular temporary transfer is on file with the district;

(d) Include any other information required by rules of the Water Resources Commission; and

(e) Include a fee in the amount required under ORS 536.050 (1)(i).

(4) The district shall notify each affected landowner that the department may reject the transfer or may require mitigation to avoid injury to other water rights. Upon receipt of a completed petition under subsection (3) of this section, the department shall place a summary of the petition in the weekly notice published by the department. The department shall accept written public comments on the petition for 30 days following publication of the weekly notice. The department shall consider comments that pertain to the potential for injury to an existing water right or to the enlargement of the water use subject to transfer in determining whether to condition, reject or revoke a temporary transfer.

(5) Use of water on lands from which the right is transferred and in the new temporary location during the same irrigation season or calendar year is prohibited and may subject the district and the landowner to civil penalties.

(6) The department may condition, reject or revoke a temporary transfer at any time to the extent necessary to avoid injury if the department finds the transfer is causing injury to an existing water right.

(7) Upon expiration of the temporary transfer period, all uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a court decree.

(8) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610. [1987 c.649 §10; 1991 c.957 §9; 1995 c.554 §4; 2001 c.788 §§4,10; 2003 c.705 §§15,16; 2005 c.401 §1]

**Note:** Sections 22, 23 and 25, chapter 705, Oregon Laws 2003, provide:

**Sec. 22.** Section 23 of this 2003 Act is added to and made a part of ORS 540.505 to 540.580. [2003 c.705 §22]

**Sec. 23.** (1) In order to increase district water management flexibility, the Water Resources Department shall establish a pilot project in which districts may temporarily allow, for water uses subject to transfer, the use of water on any land within the legal boundaries of the district established pursuant to ORS chapter 545, 547, 552, 553 or 554.

(2) The use of water on any land within the legal boundaries of the district may be allowed if:

(a) The rate and duty, and the total number of acres to which water will be applied under the transfer, do not exceed existing limits on the water use subject to transfer;

(b) The type of use authorized under the water use subject to transfer is for irrigation and remains the same; and

(c) The land from which the water use is being transferred does not receive any water under the right being transferred during the irrigation season in which the change is made.

(3) The department shall allow the pilot project to be implemented in the Talent Irrigation District, the Owyhee Irrigation District, the Tualatin Valley Irrigation District, the Central Oregon Irrigation District, the Swalley Irrigation District, the Westland Irrigation District, the North Unit Irrigation District, the Arnold Irrigation District, the Stanfield Irrigation District, the West Extension Irrigation District, the Hermiston Irrigation District, the Medford Irrigation District, the Sutherlin Water Control District, the Santiam Water Control District and the Ochoco Irrigation District or their successor districts. However, any district participating in the project must:

(a) Have defined state district boundaries;

(b) Have a management structure that can ensure that water is applied only where the water use is authorized;

(c) Not irrigate an area in any one irrigation season that exceeds the maximum number of acres allowed to be irrigated under the original water right;

(d) Have a full and accurate measurement of the water appropriated;

(e) Have an accurate map identifying the location of authorized use, by priority date, for review upon request and provide a copy of the map to the watermaster; and

(f) Have on file statements by any landowner affected by the water use change indicating that the landowner agrees to the change.

(4) If any of the specified districts are unable to participate in the project, the department may identify another district for the project. Before allowing another district to participate in the project for the first time, the department shall publish notice of the planned participation by publication in the weekly notice published by the department and shall allow the public at least 20 days to provide information to assist the department in determining whether the district meets the qualifications required under subsection (3) of this section.

(5) The department may require that use of water under the pilot project cease and that the use revert to the use allowed under the water right of record if the department determines that:

(a) The district does not meet the qualifications established in subsection (3) of this section;

(b) The water is being used in a manner that violates the requirements in subsection (2) of this section; or

(c) The changes made to the use of water would result in injury to existing water rights or an enlargement of the original water right.

(6) The department shall annually, prior to commencement of the irrigation season, publish notice of the districts that might intend to make use of the pilot program during the year. The notice shall identify the districts by name and provide the contact information for the watermasters for the districts. The department shall publish the notice by publication in the weekly notice published by the department.

(7) Use of water under the pilot project constitutes a beneficial use of water and does not constitute nonuse for purposes of forfeiture under ORS 540.610. [2003 c.705 §23; 2009 c.283 §1; 2015 c.384 §2]

**Sec. 25.** Sections 22 and 23, chapter 705, Oregon Laws 2003, are repealed on January 2, 2022. [2003 c.705 §25; 2007 c.10 §2; 2009 c.283 §3; 2015 c.384 §3]

**Note:** Section 1, chapter 384, Oregon Laws 2015, provides:

**Sec. 1.** The Water Resources Department shall report to the Eighty-first Legislative Assembly, no later than January 31, 2021, on the operation of the pilot project established under section 23, chapter 705, Oregon Laws 2003. [2015 c.384 §1]

**540.572 Application of certificated water elsewhere within district; notice.** (1) Upon compliance with this section and ORS 540.574 and 540.576, whenever land within the legal boundaries of a district is no longer irrigated or susceptible of irrigation, the district may apply the certificated water to which such land is entitled to other irrigable lands within the legal boundaries of the district if the district:

(a) Is managed by a full-time manager; and

(b) Is implementing a conservation plan approved by the Water Resources Commission, and meets all other management responsibility criteria for districts and conservation and efficiency criteria required by the Water Resources Commission.

(2) If a water user of a district has not made beneficial use of the water to which the user is entitled for a period of four successive years, the district shall advise the user and any security interest holder of record that if the user does not use the water for a fifth successive year, the district may petition the Water Resources Commission for

a transfer of the water right under ORS 540.574.

(3) When a district wishes to transfer the use of water under this section, the district shall provide notice of its intent to petition for a transfer to the user and any security interest holder of record of the land whose right of record would be transferred. The notice shall be sent to the last-known address for the user with a return receipt requested.

(4) The notice required under subsection (3) of this section shall:

(a) Include:

(A) The number of acres for which the user is being charged or assessed;

(B) A general description or tax lot of the land to which the water is assigned;

(C) A description of the use; and

(D) A request for confirmation that the information in the notice is correct.

(b) Advise the user that:

(A) The district has determined that the user's land is no longer irrigated or susceptible of irrigation and that the district intends to petition the Water Resources Commission for approval to transfer the user's water right to other lands in the district.

(B) If the user disagrees with the determination of the district that the user's land is no longer irrigated or susceptible of irrigation or if the user has some other objection to the proposed action of the district, the user shall so advise the district in writing within 30 days after the notice is mailed.

(C) The user shall advise the district in writing within the foregoing time period if the user believes the presumption of forfeiture under ORS 540.610 is rebuttable for a reason provided under ORS 540.610.

(5) If the district receives a written objection within 30 days after the mailing of the notice under subsection (3) of this section, the district manager shall attempt to resolve the matter with the user. If the user's objections cannot be resolved by the manager, a hearing shall be held before the board of directors who shall make a determination whether to proceed with the petition to the Water Resources Commission.

(6) If no written objections are received by the district within 30 days after the mailing of the notice under subsection (3) of this section, or following resolution or hearing under subsection (5) of this section, the district may petition the Water Resources Commission for approval of the transfer under ORS 540.574.

(7) As used in this section:

(a) "Irrigable land" means land that is currently under irrigation or susceptible of irrigation for agricultural, horticultural, viticultural or grazing purposes.

(b) "No longer irrigated or susceptible of irrigation" means:

(A) Land on which water for irrigation has not been applied for a period of five successive irrigation seasons; or

(B) Land that does not have reasonable access to the system of irrigation works of the district, or that cannot be irrigated from or that is not susceptible to or would not, by reason of being permanently devoted to uses other than agricultural, horticultural, viticultural or grazing, be directly benefited by actual irrigation from the district.

(c) "Owned" or "controlled" means ownership in fee, purchase on a land sale contract, option to purchase or lease.

(d) "User" means an owner of land with an appurtenant water right who is subject to the charges or assessments of a district and from whose land the water right would be transferred by the petition and map filed under ORS 540.574 and an owner of land to which the water right would be transferred. [1991 c.957 §3]

**540.574 Petition for approval of transfer.** (1) In accordance with the requirements of subsection (3) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the transfer of the location and use of the water rights within the district or any part of the district. The map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. In no event shall the petition and map expand a water right of the district or its users beyond the total right of record for the district. If the district complies with the requirements of ORS 540.572 to 540.580, and after the opportunity for hearing under ORS 540.578, the commission shall issue an order approving the transfer and proceed as provided in ORS 540.530 (1) and (2).

(2) If the commission denies the petition under subsection (1) of this section, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be according to the provisions of ORS chapter 183 applicable to a contested case proceeding. The hearing shall be conducted in the area of the state where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(3) The petition required under subsection (1) of this section shall include:

(a) The name of the district and the certificate number of each water right contained in the petition.

(b) The names of all users within the district from whose lands water rights are to be transferred.

(c) The names of all users within the district to whose lands water rights are to be transferred.

(d) A general description of the district boundaries.

(e) A general description of the users' land and the water right for each parcel from which and to which water rights are to be transferred. If the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for identification of the place of use and the extent of use.

(f) A description of the use that is proposed to be made of the water on each parcel.

(g) An affirmation by the petitioner that the map and petition are accurate to the best of the petitioner's knowledge.

(h) A statement by the petitioner that notice has been given as required under ORS 540.572 (2), and that the water right has not previously been forfeited under ORS 540.610 due to an earlier or longer period of nonuse. [1991 c.957 §4]

**540.576 Notice of petition; protest; user rights.** After filing a petition under ORS 540.572, the district shall send a copy of the petition and map and a notice to the users of the district whose right of record is to be transferred and who are to receive the transferred right. The copy of the petition and the notice shall be sent to the last-known address of the user with a return receipt requested. The notice accompanying the petition shall advise the user that:

(1) Sixty days after the date of mailing of the notice, the Water Resources Commission shall accept the petition and the water right shall be transferred unless a protest is filed or the petition does not meet the requirements of ORS 540.572 to 540.580; and

(2) The user has the right to protest the petition and transfer in the manner described in ORS 540.578. [1991 c.957 §5]

**540.578 Filing of protest; hearing on proposed transfer.** (1) Any user may file with the Water Resources Commission, within 60 days after the date of mailing the notice under ORS 540.576, a protest against approval of the petition, map and transfer. Whenever a timely protest is filed, or in the opinion of the commission a hearing is necessary to determine whether the district has complied with the requirements of ORS 540.572 to 540.580, or the proposed transfers described in the petition would result in injury to existing water rights, the commission shall hold a hearing on the matter. The hearing shall be conducted according to the provisions of ORS chapter 183 applicable to contested case proceedings. The hearing shall be held in the area of the state where the rights are located unless the parties and the persons who filed the protest under this section stipulate otherwise.

(2) If, after examination or hearing, the commission finds that the petition complies with the requirements of ORS 540.572 to 540.580, and that the proposed changes described in the petition would not result in injury to existing water rights, the commission shall issue an order approving the transfer and proceed as provided in ORS 540.530 (1) and (2).

(3) A certificate issued under this section for the transferred water right shall have the evidentiary effect provided for in ORS 537.270 unless the right to appropriate water described in the certificate is forfeited after the certificate is issued. [1991 c.957 §6]

**540.580 Permanent transfer of place of use of water within district; requirements; procedure.** (1) In accordance with this section, a district may by petition request that the Water Resources Department approve the permanent transfer of the place of use of water within a district as long as the proposed transfer complies with all of the following:

(a) The rate, duty and total number of acres to which water is to be applied under the water use subject to transfer are not exceeded;

(b) The use authorized under the water use subject to transfer remains the same;

(c) The change in place of use will not result in injury to any existing water right; and

(d) The land from which the water right is removed by the transfer shall receive no water under the transferred right.

(2) A district may submit a petition for a permanent transfer prior to or subsequent to the change in place of use, but no later than the end of the calendar year in which the change occurs. The petition submitted by the district may include an unlimited number of transfers within the same petition. A petition under this section shall:

(a) Include the information required under ORS 540.574 (3), except for the statement that a notice under ORS 540.572 (2) has been given;

(b) Be accompanied by a map in a form satisfactory to the department and certified

by the district. If the water right is on a tract of land of five acres or less, the assessor's tax map with a notation of the acres of water right shall be sufficient for identification of the tract and place of use;

(c) Include a statement that each landowner affected by a permanent transfer has authorized the transfer in a writing that is on file with the district;

(d) Include any other information required by rules of the Water Resources Commission; and

(e) Include the fee required under ORS 536.050 (1)(h) for a change in the place of use.

(3) If a district allows a change in the place of use of water before obtaining the approval of the department, the district shall:

(a) Notify each affected landowner that the change is subject to the approval of the department and that the department may reject the transfer or may require mitigation to avoid injury to other water right holders; and

(b) Notify the department in advance of the change. The notice shall include:

(A) The name of the district and the certificate number of each water right that is the subject of the change;

(B) The names of the users within the district from whose lands and to whose lands water rights are to be transferred;

(C) A general description of the users' lands by township, range, quarter quarter section and tax lot number, and of the water right, for each parcel from which and to which water rights are to be transferred; and

(D) A description of the use that is proposed to be made of the water on each parcel.

(4) Upon receipt of the notice required under subsection (3)(b) of this section, the department shall provide public notice in the weekly notice published by the department.

(5) If a district allows a change in the place of use of water before obtaining approval of the department under this section, the department may direct the district to cease delivery of water or mitigate injury where the change in place of use is causing injury to an existing water right.

(6) Within 15 days after the filing of a petition under subsection (2) of this section, the department shall include notice of the petition in the weekly notice published by the department. Within 30 days after the mailing of the department's weekly notice, any potentially affected holder of an existing water right may file, jointly or severally, with the department, a protest against approval of the petition.

(7) Subject to the provisions of subsection (8) of this section, whenever a timely protest is filed, or in the opinion of the Water Resources Director a hearing is necessary to determine whether the proposed changes as described in the petition would result in injury to existing water rights, the department may hold a hearing on the petition. Notice and conduct of the hearing shall be according to the provisions of ORS chapter 183 pertaining to contested cases, shall be scheduled within 45 days after the filing of the petition, and shall be held in the area where the rights are located unless all parties and persons who filed a protest under this subsection stipulate otherwise.

(8) If a water user within the district files a protest claiming injury to a water right delivery by the district, no contested case hearing shall be required, but the district shall resolve the matter directly with the water user.

(9) After examination or hearing, the department shall issue an order approving the transfer if the proposed change can be effected without injury to existing water rights. If no hearing is scheduled under subsection (7) of this section, the order of the department shall be issued within 90 days after the date of the filing of the petition. If the proposed change cannot be effected without injury to existing water rights, the department may condition approval, including requiring mitigation of the effects on other water rights, to the extent necessary to avoid injury. If a hearing is scheduled, the department shall issue a final order within 120 days after scheduling the hearing.

(10) Within 20 days after the director issues a final order under this section, the district or any protestant may file with the commission exceptions to the final order. The commission shall issue an order granting or denying the exceptions within 30 days after receiving the exceptions.

(11) If a certificate covering the water right has been previously issued, the department may amend the certificate or may cancel the certificate and issue a new certificate preserving the previously established priority of rights and covering the authorized changes. If only a portion of the water right covered by the previous certificate is affected by the changes, a separate new certificate may be issued to cover the unaffected portion of the water right. A certificate as amended or issued under this section has the evidentiary effect provided for in ORS 537.270 as to the new lands except when the right to appropriate water described in the certificate

is abandoned after the certificate is amended or issued.

(12) Notwithstanding the provisions of subsection (2) of this section, a petition filed on or before December 31, 1996, may include all changes in place of use allowed by a district after July 1, 1992, and before November 30, 1996. [1995 c.554 §2; 1997 c.587 §13; 1999 c.804 §2; 2001 c.788 §§5,11]

**540.585 Temporary transfers within Deschutes River Basin; procedure; fee.** (1) In accordance with the provisions of this section, a person may request that the Water Resources Department approve the temporary transfer of the place of use and type of use and temporarily change the point of diversion if necessary to convey water to the new temporary place of use, of all or a portion of a water right, for a period not to exceed 25 years if:

(a) The person holds a water use subject to transfer;

(b) The type of use specified in the original water use subject to transfer is irrigation;

(c) The person to whom the right is transferred is:

(A) Located within the Deschutes River Basin; and

(B) A city, a quasi-municipal corporation, a domestic water supply district formed under ORS chapter 264, a water supplier as defined in ORS 448.115 or a water authority formed under ORS chapter 450;

(d) The proposed use is municipal use; and

(e) The proposed temporary transfer will not result in injury to any existing water right.

(2) An application for a temporary transfer under this section shall:

(a) Be submitted in writing to the Water Resources Department;

(b) Be accompanied by the appropriate fee for a change in the place of use and type of use as set forth in ORS 536.050;

(c) Include the information required under ORS 540.520 (2); and

(d) Include any other information the Water Resources Commission by rule may require.

(3)(a) Any portion of the use of a water right that is not temporarily transferred under this section may be used on the designated part of the lands described in the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a court decree, if the use does not encompass more than the remaining portion of the lands, enlarge the water right or increase the rate, duty, total acreage benefited or season of use.

(b) The Water Resources Department shall designate the lands on which water may be applied under this subsection and shall prescribe mapping, measurement and recording requirements under this subsection.

(4) Upon expiration of a temporary transfer period, all uses of water for which a temporary transfer is allowed under this section shall revert automatically to the terms and conditions of the original water right permit, certificate or adjudication under ORS chapter 539 as evidenced by a court decree.

(5) The time during which water is used under an approved temporary transfer order does not apply toward a finding of forfeiture under ORS 540.610.

(6) The department may revoke a prior approval of a temporary transfer at any time if:

(a) The department finds that the transfer is causing injury to any existing water right; or

(b) The person fails to comply with the requirements prescribed by the department pursuant to subsection (3) of this section.

(7) The department shall provide notice, in the manner provided in ORS 540.520 (5), that the department received an application for a temporary transfer under this section.

(8) The department may:

(a) Prescribe the duration of the temporary transfer period allowed under this section, up to 25 years;

(b) Impose conditions in the terms of the temporary transfer, including revocation of the transfer for noncompliance with applicable state, local or federal laws; and

(c) Determine the parties that may participate in the review of applications submitted under this section. [2003 c.705 §6]

**540.587 Report on implementation of temporary transfer provisions.** The Water Resources Department shall submit a report, in the manner provided in ORS 192.245, that shall include a summary of the features of the process employed by the Water Resources Commission to implement ORS 540.585. The report shall be submitted no later than January 31 of each year to the Legislative Assembly or to an interim committee related to natural resources, as appropriate. [2003 c.705 §10]

**Note:** 540.587 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 540 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## FORFEITURE OF WATER RIGHTS

**540.610 Use as measure of water right; forfeiture for nonuse; confirmation of rights of municipalities.** (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use all or part of the water appropriated for a period of five successive years, the failure to use shall establish a rebuttable presumption of forfeiture of all or part of the water right.

(2) Upon a showing of failure to use beneficially for five successive years, the appropriator has the burden of rebutting the presumption of forfeiture by showing one or more of the following:

(a) The water right is for use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes.

(b) A finding of forfeiture would impair the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by act of the legislature, or which may hereafter be acquired.

(c) The use of water, or rights of use, are appurtenant to property obtained by the Department of Veterans' Affairs under ORS 407.135 or 407.145 for three years after the expiration of the period of redemption provided for in ORS 18.964 while the land is held by the Department of Veterans' Affairs, even if during such time the water is not used for a period of more than five successive years.

(d) The use of water, or rights of use, under a water right, if the owner of the property to which the right is appurtenant is unable to use the water due to economic hardship as defined by rule by the Water Resources Commission.

(e) The period of nonuse occurred during a period of time within which land was withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), or the Federal Conservation Reserve Program, Act of Congress of December 23, 1985, chapter 198 (16 U.S.C. 3831-3836, 3841-3845). If necessary, in a cancellation proceeding under this section, the water right holder rebutting the presumption under this paragraph shall provide documentation that the water right holder's land was withdrawn from use under a federal reserve program.

(f) The end of the alleged period of nonuse occurred more than 15 years before the date upon which evidence of nonuse was submitted to the commission or the commission initiated cancellation proceedings under ORS 540.631, whichever occurs first.

(g) The owner of the property to which the water right was appurtenant is unable to use the water because the use of water under the right is discontinued under an order of the commission under ORS 537.775.

(h) The nonuse occurred during a period of time within which the water right holder was using reclaimed water in lieu of using water under an existing water right.

(i) The nonuse occurred during a period of time within which the water right holder was reusing water through land application as authorized by ORS 537.141 (1)(i) or 537.545 (1)(g) in lieu of using water under an existing water right.

(j) The owner or occupant of the property to which the water right is appurtenant was unable to make full beneficial use of the water because water was not available. A water right holder rebutting the presumption under this paragraph shall provide evidence that the water right holder was ready, willing and able to use the water had it been available.

(k) The holder of a water right is prohibited by law from using the water. If the prohibition is subject to remedial action that would allow the use of the water, the water right holder shall provide evidence that the water right holder is conducting the remedial action with reasonable diligence.

(L) The nonuse occurred during a period of time within which the exercise of all or part of the water right was not necessary due to climatic conditions, so long as the water right holder had a facility capable of handling the full allowed rate and duty, and was otherwise ready, willing and able to use the entire amount of water allowed under the water right.

(m) The nonuse occurred during a period of time within which the water was included in a transfer application pending before the Water Resources Department.

(n) The nonuse of a supplemental water right occurred during a period of time when the primary water right used in conjunction with that supplemental water right was leased as an in-stream water right pursuant to ORS 537.348.

(3) Notwithstanding subsection (1) of this section, if the owner of a perfected and developed water right uses less water to accomplish the beneficial use allowed by the right, the right is not subject to forfeiture so long as:

(a) The user has a facility capable of handling the entire rate and duty authorized under the right; and

(b) The user is otherwise ready, willing and able to make full use of the right.

(4) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

(5) After a water right is forfeited under subsection (1) of this section, the water that was the subject of use shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [Amended by 1985 c.689 §5; 1987 c.339 §4; 1989 c.699 §1; 1989 c.833 §61a; 1991 c.370 §6; 1995 c.356 §2; 1995 c.366 §1; 1997 c.42 §5; 1997 c.244 §5; 1997 c.283 §1; 1999 c.335 §3; 1999 c.804 §§3,4; 2005 c.222 §1; 2005 c.542 §70; 2005 c.625 §70]

**540.612 Exemption from forfeiture.** If a district, as defined in ORS 540.505, petitions for a transfer as provided in ORS 540.574 no later than the end of the calendar year of the fifth year of nonuse under ORS 540.610 (1), the forfeiture provisions of ORS 540.610 shall not apply to the lands from which the water right is sought to be transferred pending approval of the district's petition. The time required for the processing of the petition, including any time required for hearings, appeals and completion of an authorized change, shall not be included when computing a five-year period of nonuse under the provisions of ORS 540.610 (1). [1991 c.957 §11]

**540.615** [1961 c.140 §1; 1987 c.339 §5; repealed by 1989 c.699 §4]

**540.620** [Repealed by 1955 c.671 §1]

**540.621 Cancellation of abandoned water right upon request of owner.** Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right. Effective upon the date of the entering of such order, the water which was the subject of use under the water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. [1955 c.670 §1; 1979 c.67 §5; 1985 c.673 §96]

**540.630** [Repealed by 1955 c.671 §1]

**540.631 Cancellation of forfeited water right; notice.** Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted to the commission by any person that a perfected and developed water right has been forfeited as provided in ORS 540.610 (1), and would not be rebutted under ORS 540.610 (2), the commission shall initiate proceedings for the cancellation of such water right by causing written notice of such initiation of proceedings to be given by registered or certified mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. The notice to the legal owner shall be addressed to the legal owner at the owner's last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain a complete description of the water right and of the lands to which the water right is appurtenant. The notice shall state that the legal owner or the occupant has a period of 60 days from the date of the mailing of the notice within which to protest the proposed cancellation of the water right. [1955 c.670 §2; 1985 c.673 §97; 1989 c.699 §2; 1991 c.249 §53]

**540.640** [Repealed by 1955 c.671 §1]

**540.641 Protest of cancellation; procedure.** (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the Water Resources Commission may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right with the commission within the 60-day period prescribed in the notice, the commission shall fix a time and place for a hearing on the protest. The commission shall cause written notice of the hearing to be given at least 10 days prior to the hearing to the person protesting the cancellation of the water right and to any other person who in the opinion of the commission is an interested party to the proceeding. The hearing shall be held by the commission and shall be conducted under the provisions of ORS chapter 183 pertaining to contested cases. After the hearing the commission shall enter an order canceling the water right, canceling in part or modifying the water right, or declaring that the water right shall not be canceled or modified. [1955 c.670 §3; 1975 c.581 §26c; 1983 c.807 §3; 1985 c.673 §98]

**540.650 Issuance of new water right certificate for water rights not canceled.** If the order of the Water Resources Commission or the final decree on the appeal therefrom under ORS 540.641 cancels in part or modifies the water right, that portion of the water right not canceled or continued as modified shall be reaffirmed by a new water right certificate issued by the commission.

Such certificate shall be of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the owner of the water right as provided in ORS 539.140. [1955 c.670 §4; 1979 c.67 §6; 1985 c.673 §99]

**540.660 Affidavit of watermaster that circumstances prevent use of water right in accordance with terms of certificate; procedures for cancellation of right.** (1) If a watermaster has reason to believe that circumstances exist that prevent a water right from being exercised according to the terms and conditions of the water right certificate issued under ORS 537.250 or 539.140, such as the land to which the water right is appurtenant is covered by an impermeable surface, or the diversion mechanism used to appropriate water under a water right is no longer operable, the watermaster shall file an affidavit with the Water Resources Director. The affidavit shall state that to the best of the watermaster's knowledge, there is no physical way the water may be applied to a beneficial use in accordance with the terms and conditions of the water right certificate.

(2) If the watermaster files an affidavit under subsection (1) of this section each year for five consecutive years, the affidavits shall constitute prima facie evidence that the water has not been applied to a beneficial use for five years and the Water Resources Commission shall initiate proceedings under ORS 540.631 to cancel the water right.

(3) The Water Resources Department shall provide notice of the affidavit filed with the Water Resources Director under subsection (1) of this section. The department shall provide such notice in the following manner:

(a) If there are 25 or fewer record owners of the land, the department shall mail a copy of the affidavit to each record owner.

(b) If there are more than 25 record owners, the department shall provide general notice by publication according to the procedures established in ORS 193.010 to 193.100.

(c) If the land is within the boundaries of an irrigation district, the department shall mail a copy of the affidavit to the irrigation district.

(4) As used in this section, "record owner" means the person shown as the owner of the land in the county deed records established under ORS chapter 93. [1987 c.339 §1]

**540.670 Effect of cancellation of primary water right on supplemental right; change from supplemental to primary right; priority date.** (1) The cancellation of a primary water right for nonuse under ORS 540.641 shall not also cancel a supplemental water right unless the supplemental water right also has not been used beneficially for five or more years.

(2) If the Water Resources Commission cancels a primary water right under ORS 540.641 the commission may issue a new water right certificate changing the supplemental water right to a primary right if the commission finds that the change would not result in injury to existing water rights.

(3) A supplemental right changed to a primary right under subsection (2) of this section shall retain the priority date of the supplemental right. [1987 c.339 §2]

## PROHIBITED ACTS; INJUNCTIONS

**540.710 Interference with headgate, or use of water denied by watermaster or other authority; evidence of guilt.** No person shall willfully open, close, change or interfere with any lawfully established headgate or water box without authority, or willfully use water or conduct water into or through the ditch of the person which has been lawfully denied the person by the watermaster or other competent authority. The possession or use of water when the same shall have been lawfully denied by the watermaster or other competent authority shall be prima facie evidence of the guilt of the person using it.

**540.720 Unauthorized use or waste of water; evidence of guilt of user.** No person shall use without authorization water to which another person is entitled, or willfully waste water to the detriment of another. The possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using it.

**540.730 Obstruction interfering with access to or use of works.** Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, no person shall place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto.

**540.740 Injunctive relief against action of watermaster.** Any person who may be injured by the action of any watermaster may appeal to the circuit court for an injunction. The injunction shall only be issued in case it can be shown at the hearing that the watermaster has failed to carry into effect the order of the Water Resources Commission or decrees of the court determining the existing rights to the use of water. [Amended by 1985 c.673 §100]

**540.750 Injunction suits; notice; hearing.** In suits for injunction affecting the use of water from streams upon which the rights to water have been determined, no restraining order shall be granted before hearing had

after at least three days' notice thereof, served upon all parties defendant. All suits for injunction involving the use of water shall be heard, either in term time or during vacation, not later than 15 days after issues joined, unless for good cause shown further time be allowed.

## PENALTIES

**540.990 Penalties.** (1) Violation of any provision of ORS 540.440 is a Class C misdemeanor.

(2) Violation of any provision of ORS 540.370 (2), 540.570 (5), 540.710, 540.720 or 540.730 is a Class B misdemeanor. [Amended by 2001 c.788 §§7,13; 2003 c.14 §§344,345; 2003 c.705 §§19,21; 2011 c.597 §226]

# Chapter 541

## 2015 EDITION

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## WATER COMPANIES ORGANIZED UNDER 1891 ACT

**541.010 Furnishing of water for certain purposes declared to be a public use; rates; amendment of law.** (1) The use of the water of the lakes and running streams of Oregon, for general rental, sale or distribution, for purposes of irrigation, and supplying water for household and domestic consumption, and watering livestock upon dry lands of the state, is a public use, and the right to collect rates or compensation for such use of water is a franchise. A use shall be deemed general within the purview of this section when the water appropriated is supplied to all persons whose lands lie adjacent to or within reach of the line of the ditch, canal or flume in which the water is conveyed, without discrimination other than priority of contract, upon payment of charges therefor, as long as there may be water to supply.

(2) Rates for the uses of water mentioned in this section may be fixed by the Legislative Assembly or by such officer as may be given that authority by the Legislative Assembly, but rates shall not be fixed lower than will allow the net profits of any ditch, canal, flume or system thereof to equal the prevailing legal rate of interest on the amount of money actually paid in and employed in the construction and operation of the ditch, canal, flume or system.

(3) This section and ORS 541.020 to 541.080 may at any time be amended by the Legislative Assembly, and commissioners for the management of water rights and the use of water may be appointed.

**541.020 Construction of ditches and canals by corporation; route across lands.** Whenever any corporation organized under the Act of 1891, pages 52 to 60, Oregon Laws 1891, finds it necessary to construct its ditch, canal, flume, distributing ditches, or feeders across the improved or occupied lands of another, it shall select the shortest and most direct route practicable, having reference to cost of construction upon which the ditch, canal, flume, distributing ditches, or feeders can be constructed with uniform or nearly uniform grade.

**541.030 Ditches and canals across state lands; grant of right of way.** The right of way, to the extent specified in the Act of 1891, pages 52 to 60, Oregon Laws 1891, for the ditches, canals, flumes, distributing ditches, and feeders of any corporation appropriating water under the provisions of the Act of 1891, across all lands belonging to the State of Oregon and not under contract of sale, is granted.

**541.040 Headgate; mode of construction.** Every corporation having constructed a ditch, canal or flume under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, shall erect and keep in good repair a headgate at the head of its ditch, canal or flume, which, together with the necessary embankments, shall be of sufficient height and strength to control the water at all ordinary stages. The framework of the headgate shall be of timber not less than four inches square, and the bottom, sides and gate shall be of plank not less than two inches in thickness.

**541.050 Leakage or overflow; liability; exception.** Every corporation having constructed a ditch, canal, flume or reservoir under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, shall be liable for all damages done to the persons or property of others, arising from leakage or overflow of water therefrom growing out of want of strength in the banks or walls, or negligence or want of care in the management of the ditch, canal, flume or reservoir. However, damage resulting from extraordinary and unforeseen action of the elements, or attributable in whole or in part to the wrongful interference of another with the ditch, canal, flume or reservoir, which may not be known to the corporation for such length of time as would enable it by the exercise of reasonable efforts to remedy the same, shall not be recovered against the corporation.

**541.055 District liability for seepage and leakage from water or flood control works; limitation on commencement of action.** (1) Any person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 that owns, operates or maintains any irrigation, drainage, water supply, water control or flood control works shall be liable for damage caused by seepage and leakage from such works only to the extent that such damage is directly and proximately caused by the negligence of the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 and not otherwise. Damage resulting from extraordinary and unforeseen action of the elements, or attributable in whole or in part to the wrongful interference of another person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 with the irrigation, drainage, water supply, water control or flood control works, which may not be known to the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553

or 554 for such length of time as would enable the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 by the exercise of reasonable efforts to remedy the same, shall not be recovered against the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554.

(2) An action or suit under subsection (1) of this section must be commenced within two years from the date when the damage is first discovered or in the exercise of reasonable care should have been discovered. However, in no event shall any such action or suit be commenced more than four years from the date the damage actually occurred. [1979 c.882 §1]

**541.060 Waste of water; flooding premises; unnecessary diversion.** Every corporation having constructed a ditch, canal or flume under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, shall carefully keep and maintain the embankments and walls thereof, and of any reservoir constructed to be used in conjunction therewith, so as to prevent the water from wasting and from flooding or damaging the premises of others. The corporation shall not divert at any time any water for which it has no actual use or demand.

**541.070 Ditches, canals and flumes as real estate.** All ditches, canals and flumes permanently affixed to the soil, constructed under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, are declared to be real estate, and the same or any interest therein shall be transferred by deed only, duly witnessed and acknowledged. The vendee of the same, or any interest therein, at any stage shall succeed to all the rights of the vendor, and shall be subject to the same liabilities during ownership.

**541.080 Suits involving water rights; parties; decree as to priorities.** In any suit commenced for the protection of rights to water acquired under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to the suit, and the court may in one decree determine the relative priorities and rights of all parties to the suit. Any person claiming a right on the stream or source, not made a party to the suit, may become such on application to the court, when it is made to appear that the person is interested in the result, and may have the right of the person determined. The court may at any stage, on its own motion, require any persons having or claiming rights to water on the stream or source, to be brought in and made parties, when it appears that a complete determination of the issue involved cannot be made without their presence.

## APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER UNDER 1899 ACT

**541.110 Use of water to develop mineral resources and furnish power.** The use of the water of the lakes and running streams of Oregon for the purpose of developing the mineral resources of the state and to furnish electric power for all purposes, is declared to be a public and beneficial use and a public necessity. Subject to the provisions of the Water Rights Act (as defined in ORS 537.010), the right to divert unappropriated waters of any such lakes or streams for such public and beneficial use is granted.

**541.120 Ditches and canals through lands; use of existing ditch by others than owner; joint liability.** No tract or parcel of improved or occupied land in this state shall, without the written consent of the owner, be subjected to the burden of two or more ditches, canals, flumes or pipelines constructed under the Act of 1899, pages 172 to 180, Oregon Laws 1899, for the purpose of conveying water through the property, when the same object can be feasibly and practically attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch, canal, flume or pipeline. Any person having constructed a ditch, canal, flume or pipeline for the purpose provided in the Act of 1899 shall allow any other person to enlarge such ditch, canal, flume or pipeline, so as not to interfere with the operations of the person owning the same, and to use such ditch, canal, flume or pipeline in common with the person owning the same, upon payment to such person of a reasonable proportion of the cost of constructing and maintaining the ditch, canal, flume or pipeline. Such persons shall be jointly liable to any person damaged.

**541.130 Right of way for ditches across state lands.** The right of way to the extent specified in the Act of 1899, pages 172 to 180, Oregon Laws 1899, for the ditches, canals, flumes, pipelines, distributing ditches, and feeders of any person appropriating water under the provisions of that Act, across any and all lands belonging to the State of Oregon and not under contract of sale, is granted.

**541.210** [Repealed by 1953 c.328 §2]

## APPROPRIATION OF WATER BY THE UNITED STATES

**541.220 Survey of stream system; delivery of data to Attorney General; suits for determination of water rights.** In any stream system where construction is contemplated by the United States under the Act of Congress approved June 17, 1902, 32 Stat. 388 to 390, and known as the Reclamation Act, the Water Resources Commission shall make a hydrographic survey of the stream system, and shall deliver an abstract thereof together with an abstract of all data necessary for the determination of all rights for the use of the waters of such system, to the Attorney General. The Attorney General, together with the district attorneys of the districts affected by the stream system shall, at the request of the Secretary of the Interior, enter suit on behalf of the State of Oregon, in the name of the state, for the determination of all rights for the use of the water, and shall diligently prosecute the same to a final adjudication. [Amended by 1985 c.673 §101]

**541.230 State lands within irrigated area; restrictions on sale; conveyance of lands needed by United States.** No lands belonging to the state, within the areas to be irrigated from work constructed or controlled by the United States or its authorized agents, shall be sold except in conformity with the classification of farm units by the United States. The title of such land shall not pass from the state until the applicant therefor has fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except under the conditions prescribed in this section. Any state lands needed by the United States for irrigation works may, in the discretion of the Department of State Lands, be conveyed to it without charge. [Amended by 1967 c.79 §1]

**541.240 Right of way for ditches and canals; reservation in conveyances.** There is granted over all the unimproved lands now or hereafter belonging to the state the necessary right of way for ditches, canals, and reservoir sites for irrigation purposes constructed by authority of the United States or otherwise. All conveyances of state land made after May 18, 1905, shall contain a reservation of such right of way and reservoir sites.

**541.250 Cession to United States not rescinded.** Nothing in ORS 541.220 to 541.240 shall be construed as rescinding the cession by the state to the United States of lands, as provided in chapter 5, Oregon Laws 1905.

## SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

**541.310 Suits for determination of rights; parties; survey of stream; disbursements.** In any suit wherein the state is a party, for determination of a right to the use of the waters of any stream system, all who claim the right to use the waters shall be made parties. When any such suit has been filed the court shall call upon the Water Resources Commission to make or furnish a complete hydrographic survey of the stream system as provided in ORS 541.220, in order to obtain all data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in the suit shall be taxed by the court as in other equity suits. [Amended by 1985 c.673 §102]

**541.320 Decrees adjudicating rights; filing; statement as to matters adjudicated.** Upon the adjudication of the rights to the use of the water of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the Water Resources Department. The decree shall declare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority. [Amended by 1985 c.673 §103]

## DISTRICT WATER RIGHTS MAPPING

**541.325 Definitions for ORS 541.327 to 541.333.** As used in ORS 541.327 to 541.333:

(1) "District" means any district or corporation organized under ORS chapter 545, 547, 552, 553 or 554 or any corporation, cooperative, company or other association formed before 1917 for the purpose of distributing water for irrigation purposes.

(2) "Owned" or "controlled" means ownership in fee, purchase on a land sale contract, option to purchase or lease.

(3) "User" means an owner of land with an appurtenant water right that is subject to assessment by a district and that would be altered by the petition and map filed under ORS 541.329. [1989 c.1000 §1; 1993 c.818 §1]

**Note:** 541.325 to 541.333 were enacted into law by the Legislative Assembly but were not added to or made

a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**541.327 Failure or refusal of district to act; joint applications; eligible participants.** (1) If a district fails or refuses to act under ORS 541.329 and 541.331, the owner of land with an appurtenant water right within a district and subject to assessment by the district may transfer the use or place of use of the water right on or before July 1, 1994, pursuant to ORS 541.333. An owner transferring the use or place of use under this subsection shall comply with ORS 536.050.

(2) If the owners of land within a quarter quarter of a section in a district agree as to the use and place of use of all water rights in the quarter quarter of the section subject to assessment by the district, the owners may jointly submit an application, without the fees required under ORS 536.050, to the Water Resources Department to conform the department's records to the present usage within the quarter quarter of a section. The application must be filed in accordance with ORS 541.333 on or before July 1, 1994.

(3) The district or users within a district authorized to participate in the process described under ORS 541.325 to 541.333 shall be limited to those districts or users who have notified the department on or before July 1, 1993, of their intention to submit a petition.

(4) Notwithstanding subsection (3) of this section, the Walla Walla River Irrigation District, or its successor district formed under ORS chapter 545 and created after July 1, 1994, may participate in the process described under ORS 541.325 to 541.333 if the district notifies the department on or before June 30, 2004. [1989 c.1000 §2; 1991 c.957 §12; 1993 c.818 §2; 1995 c.554 §5; 2003 c.691 §1]

**Note:** See note under 541.325.

**541.329 Petition for approval of district map; contents; notice to users; corrections.** (1) Pursuant to the requirements of subsection (2) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the location and use of the water rights within the district or any part thereof. The petition and map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. For a district that notifies the Water Resources Department under ORS 541.327 (4), the map must be submitted in an electronic format meeting the standards set by the department. The petition and map may not expand a water right of the district or its users beyond the total right of record of the district. If the district has met the requirements of ORS 541.325 to 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct the director to issue a new certificate to the district listing the requested locations and uses and retaining the original priority date. If the commission denies the petition, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183 pertaining to contested cases. The hearing shall be conducted in the area where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(2) The petition required under subsection (1) of this section shall be submitted on or before July 1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and shall include:

(a) The name of the district and the certificate number of each water right contained in the petition.

(b) The names of all users within the district whose lands are included in the petition.

(c) A general description of the district boundaries.

(d) A general description of the users' land and all water rights per each parcel affected by the petition and the map. If the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for identification of the place of use and the extent of use.

(e) A description of the use that is proposed to be made of the water on each parcel.

(f) An affirmation by the petitioner that the map and petition are accurate to the best of the petitioner's knowledge.

(3) A petition submitted under this section shall contain no more acres of land than the least of the following:

(a) The number of acres assessed by the district as of July 1, 1989;

(b) The number of acres assessed by the district as of July 1, 1993; or

(c) If a district notifies the department under ORS 541.327 (4), the number of acres assessed by the district as of December 31, 2003.

(4) Before submitting a petition under subsection (2) of this section, the district shall send a notice to the user of every parcel whose right of record is to be altered, as evidenced by the district's records. This notice shall be sent to the last-known address for the user with a return receipt requested. The notice shall include the number of acre-feet of water or its equivalent, for which the

user is being assessed, a general description or tax lot of the land to which the water is assigned, a description of the use and a request for confirmation that the information in the notice is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as described in subsections (1) and (2) of this section. Payment for water by the user or the user's predecessor for a period of five years before the petition shall create a rebuttable presumption that the number of acres billed and paid by the user or the user's predecessor is equal to the user's water right.

(5) Within 30 days after the commission issues a proposed order regarding the petition, the district shall send notice to the users of the district whose right of record is to be altered by the proposed order. This notice shall be sent to the last-known address of the user with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the user is being assessed, a general description or tax lot number of the land to which the water is assigned and a description of the use. In addition to the notice of the proposed order that the district sends to the users, the district shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least two weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive and the associated priority dates;

(b) That the proposed map and order are available for inspection at the office of the district during normal business hours for a period of 60 days from the date of first publication;

(c) That not less than 60 days after the date of first publication, the commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of subsections (1) and (2) of this section; and

(d) That the user has the right to protest the proposed order and map as described in ORS 541.331.

(6) If the commission returns a petition or map to a district for correction, the commission may prescribe a deadline for the petitioner to provide additional information or correct the petition or map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may deny the petition. [1989 c.1000 §3; 1991 c.957 §13; 1993 c.818 §3; 2003 c.691 §2; 2011 c.52 §8]

**Note:** See note under 541.325.

**541.331 Protest against approval of petition; hearing; issuance of water right certificate; land subject to inclusion.** (1) Any user may file with the Water Resources Department, within 60 days after the date of first publication, under ORS 541.329, a protest against a proposed order approving the petition. Whenever a timely protest is filed or in the opinion of the Water Resources Director a hearing is necessary to determine whether the district has met the requirements of ORS 541.325 to 541.333 or the proposed changes described in the proposed order would result in injury to existing water rights, the department shall hold a hearing on the matter. The hearing shall be conducted according to the provisions of ORS chapter 183 applicable to contested cases. The hearing shall be held in the area where the rights are located unless the parties and the persons who filed the protest under this section stipulate otherwise.

(2) If after examination or hearing, the department finds that the district has met the requirements of ORS 541.325 to 541.331 and that the changes described in the proposed order would not result in injury to existing water rights, the department shall issue a final order approving the petition and map as described in the proposed order. If a water right certificate for the water right has been issued previously, the department shall cancel the previous certificate and issue a new certificate that conforms to the final order and map and retains the original priority date.

(3) A certificate issued under this section shall have the evidentiary effect provided for in ORS 537.270 except when the right to appropriate water described in the certificate is abandoned after the certificate is amended or issued.

(4) The department may approve for inclusion in a new certificate under ORS 541.329 and this section only land which, on July 1, 1993, or, if a district notifies the department under ORS 541.327 (4), on December 31, 2003, is:

(a) Land within the legal boundaries of the district as those boundaries were originally described or as they may have been changed by legally prescribed inclusion or exclusion proceedings.

(b) Land for which inclusion in the district has been requested previously as prescribed by law.

(c) Land on which a previously perfected water right has been applied beneficially and for which the user has been charged or assessed by the district in at least one of the last five years and for which the user is currently being charged or assessed. [1989

c.1000 §4; 1993 c.818 §4; 1995 c.554 §7; 1999 c.590 §1; 2003 c.691 §3]

**Note:** See note under 541.325.

**541.333 Application for change of place of use, point of diversion or use; contents; form of map.** (1) Whenever the owner of a water right for irrigation, domestic use, stock water storage or other use, for any reason desires to change the place of use, the point of diversion or the use made of the water under ORS 541.327, an application shall be filed with the Water Resources Department.

(2) The application required under subsection (1) of this section shall include:

(a) The name of the owner;

(b) The previous use of the water;

(c) A description of the premises upon which the water is used;

(d) A description of the premises upon which it is proposed to use the water;

(e) The use which is proposed to be made of the water;

(f) The reasons for making the proposed change;

(g) If the application is made under ORS 541.327 (1), evidence that the water has been used within the past five years upon lands owned or controlled by the owner of the water right;

(h) In the event the application is made pursuant to ORS 541.327 (2), evidence that the water has been used within the past five years in the quarter quarter of a section; and

(i) The approval of the district in which the water right is located.

(3) The description of the premises or mapping required under ORS 541.329 (2) shall not require a map prepared by a certified water right examiner, but shall be in a form satisfactory to the Water Resources Commission. If the water right is on a tract of land of five acres or less, the assessor's tax map with a notation of the acres of water right shall be sufficient for identification of the tract and place of use.

(4) A certificate issued under this section has the evidentiary effect provided for in ORS 537.270 except when the right to appropriate water described in the certificate is abandoned after the certificate is amended or issued. [1989 c.1000 §5; 1995 c.554 §8]

**Note:** See note under 541.325.

**541.345** [Formerly 536.600; repealed by 1999 c.1026 §29]

**541.347** [1993 c.601 §1; repealed by 1999 c.1026 §3 (541.353 enacted in lieu of 541.347)]

**541.350** [1987 c.734 §1; 1995 c.187 §1; repealed by 1999 c.1026 §1 (541.351 enacted in lieu of 541.350)]

**541.351** [1999 c.1026 §2 (enacted in lieu of 541.350); 2011 c.643 §7; renumbered 541.890 in 2011]

**541.353** [1999 c.1026 §4 (enacted in lieu of 541.347); renumbered 541.895 in 2011]

**541.355** [1987 c.734 §2; 1995 c.187 §2; 1999 c.1026 §20; repealed by 2001 c.841 §5]

**541.360** [1987 c.734 §3; 1995 c.187 §3; 1999 c.1026 §8; 2011 c.643 §20; renumbered 541.900 in 2011]

**541.362** [1999 c.1026 §9; renumbered 541.902 in 2011]

**541.363** [1999 c.1026 §10; renumbered 541.904 in 2011]

**541.365** [1987 c.734 §5; 2001 c.841 §3a; 2001 c.842 §1; renumbered 541.920 in 2011]

**541.368** [1999 c.1026 §6; renumbered 541.918 in 2011]

**541.370** [1987 c.734 §6; 1995 c.187 §4; 1997 c.8 §8; 1999 c.59 §174; 1999 c.1026 §11; 2001 c.708 §15; 2011 c.643 §21; renumbered 541.926 in 2011]

**541.371** [1999 c.1026 §12; 2011 c.643 §18; renumbered 541.929 in 2011]

**541.372** [1991 c.657 §2; renumbered 541.949 in 2011]

**541.373** [2003 c.452 §3; 2011 c.643 §17; renumbered 541.950 in 2011]

**541.375** [1987 c.734 §7; 1989 c.171 §71; 1995 c.187 §5; 1997 c.7 §8; 1999 c.1026 §13; 2011 c.643 §§22,30a; renumbered 541.932 in 2011]

**541.376** [2001 c.645 §2; 2011 c.643 §23; renumbered 541.960 in 2011]

**541.377** [1999 c.1026 §7; 2003 c.14 §346; 2011 c.643 §1; renumbered 541.940 in 2011]

**541.378** [1999 c.1026 §7a; 2007 c.217 §6; repealed by 2011 c.643 §25]

**541.379** [1999 c.1026 §7b; 2011 c.643 §26; renumbered 541.953 in 2011]

**541.380** [1987 c.734 §8; 1997 c.7 §9; 1999 c.270 §5; 1999 c.1026 §14; 2001 c.708 §16; renumbered 541.396 in 2001]

**541.381** [2001 c.708 §13; 2007 c.608 §3; renumbered 541.937 in 2011]

**541.382** [Formerly 541.385; repealed by 1999 c.1026 §29]

**541.384** [1993 c.601 §2; 1995 c.187 §6; renumbered 541.923 in 2011]

**541.385** [1987 c.734 §4; renumbered 541.382 in 1995]

**541.388** [1993 c.601 §3; 1995 c.187 §7; 1999 c.300 §1; renumbered 541.910 in 2011]

**541.390** [1987 c.734 §9; 2001 c.104 §228; renumbered 541.912 in 2011]

**541.392** [Formerly 541.400; 1999 c.1026 §15; 2011 c.643 §24; renumbered 541.963 in 2011]

**541.395** [1987 c.734 §10; renumbered 541.965 in 2011]

**541.396** [Formerly 541.380; 2007 c.354 §19; renumbered 541.906 in 2011]

**541.397** [1997 c.8 §4; 1999 c.1026 §15b; 2011 c.643 §28; renumbered 541.954 in 2011]

**541.399** [1997 c.8 §5; 1999 c.1026 §16; repealed by 2011 c.643 §15]

**541.400** [1993 c.601 §4; 1995 c.187 §8; renumbered 541.392 in 1997]

**541.401** [1997 c.8 §6; 2011 c.643 §14; renumbered 541.958 in 2011]

**541.403** [1997 c.8 §7; repealed by 1999 c.1026 §29]

**541.405** [1997 c.7 §1; 1999 c.270 §3; 1999 c.1026 §5; 2001 c.841 §4; 2003 c.452 §1; 2007 c.354 §20; renumbered 541.898 in 2011]

**541.407** [1997 c.7 §4; 1999 c.244 §1; 1999 c.270 §6; 1999 c.1026 §21; 2007 c.354 §21; repealed by 2011 c.272 §25]

**541.409** [1997 c.7 §5; 1999 c.270 §7; 1999 c.1026 §22; 2007 c.354 §22; renumbered 541.914 in 2011]

**541.410** [Renumbered 541.430 in 1997]

**541.411** [1997 c.7 §10; 1999 c.270 §8; 2007 c.354 §23; renumbered 541.916 in 2011]

**541.413** [1997 c.7 §13; 1999 c.270 §9; 1999 c.1026 §23; 2007 c.354 §24; renumbered 541.967 in 2011]

**541.415** [1999 c.1026 §17; renumbered 541.935 in 2011]

**541.420** [2001 c.841 §1; 2007 c.354 §25; renumbered 541.972 in 2011]

## HABITAT STEWARDSHIP AGREEMENTS

**541.423 Stewardship agreements; contents; procedures for adoption; rules.** (1) As used in this section, "stewardship agreement" means an agreement voluntarily entered into and signed by a landowner, or representative of the landowner, and the State Department of Agriculture or the State Board of Forestry that sets forth the terms under which the landowner will self-regulate to meet and exceed applicable regulatory requirements and achieve conservation, restoration and improvement of fish and wildlife habitat or water quality.

(2) The State Department of Agriculture and the State Board of Forestry may, individually or jointly, enter into stewardship agreements with landowners.

(3) The purposes of a stewardship agreement are to provide:

(a) An incentive for landowners to provide for conservation, restoration and improvement of fish and wildlife habitat or water quality;

(b) A mechanism to coordinate, facilitate and memorialize a landowner's compliance with the requirements of state and federal regulatory schemes; and

(c) A mechanism to combine or coordinate multiple incentive programs among agencies and levels of government to:

(A) Improve the delivery of financial and technical assistance to landowners engaged in conservation activities;

(B) Reduce redundancy among programs;

(C) Simplify application procedures;

(D) Leverage the investment of federal funds;

(E) Make more efficient use of technical assistance funds;

(F) Provide greater incentives for landowners;

(G) Foster partnerships and improve cooperation with nongovernmental organizations;

(H) Provide greater environmental benefits;

(I) Tailor and more effectively target conservation programs administered by federal, state and local governments to the unique conservation needs of, and opportunities presented by, individual parcels of eligible land; and

(J) Give landowners an increased level of regulatory certainty.

(4) The State Board of Forestry and the State Department of Agriculture, in consultation with the State Department of Fish and Wildlife, shall adopt by rule procedures and criteria for stewardship agreements. The procedures and criteria shall include, but need not be limited to:

(a) The certification of a land management plan which shall, at a minimum, include:

(A) A comprehensive description and inventory of the subject property, its features and uses; and

(B) A prescription for the protection of resources that exceeds land management practices, standards and activities otherwise required by law and that is designed to achieve conservation, restoration and improvement of fish and wildlife habitat or water quality.

(b) A requirement that each landowner subject to a stewardship agreement demonstrate a clear capability to carry out the provisions of the land management plan and have a past record of good compliance with applicable laws and regulations regarding land use and management.

(5) Each government agency that is a party to a stewardship agreement shall conduct periodic audits on lands subject to the stewardship agreement to determine whether the land management plan is being implemented and whether the agreement should be continued, revised or discontinued.

(6) Stewardship agreements may provide benefits to landowners that include, but are not limited to:

(a) Expedited permit processing;

(b) Regulatory certainty;

(c) Priority consideration for cost-share assistance or other financial incentives and technical assistance; and

(d) Government certification that certain land management practices have been implemented.

(7) Within a stewardship agreement and on a case-by-case basis, the State Department of Agriculture or the State Board of Forestry may provide a landowner with an increased level of regulatory certainty regarding state rules. The stewardship agreement may identify specific voluntary landowner actions that exceed regulatory requirements. In return, the State Department of Agriculture or the State Board of Forestry may agree to exempt

the landowner from future changes to a specific rule.

(8) The State Department of Agriculture and the State Board of Forestry may, individually or jointly, make a binding determination that activities undertaken by a particular landowner, or a representative of the landowner, as part of a stewardship agreement are consistent with the purposes and policies of any relevant Safe Harbor Agreements or Candidate Conservation Agreements entered into between the State of Oregon and agencies of the United States Government, pursuant to the federal Endangered Species Act of 1973 (P.L. 93-205, 16 U.S.C. 1531 et seq.) and federal regulations. [2003 c.539 §31; 2007 c.608 §4]

**Note:** 541.423 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**541.425 Stewardship Agreement Grant Fund.** (1) The Stewardship Agreement Grant Fund is established separate and distinct from the General Fund. The Stewardship Agreement Grant Fund shall consist of all moneys placed in the fund as provided by law. All moneys in the Stewardship Agreement Grant Fund are continuously appropriated to the State Board of Forestry to provide grants to carry out the purposes of stewardship agreements described in ORS 541.423. Interest accruing to the Stewardship Agreement Grant Fund shall be credited to the fund. Funds appropriated and not expended by the completion of a biennium shall remain in the Stewardship Agreement Grant Fund.

(2) The State Board of Forestry shall administer the Stewardship Agreement Grant Fund and provide grants from the fund to landowners who have entered into stewardship agreements for the purposes described in ORS 541.423.

(3) In addition to the funds made available for the purposes of ORS 541.423, the board also may accept gifts and grants from any public or private source for the purpose of providing the grants described in subsection (2) of this section. [2007 c.608 §1]

**Note:** 541.425 and 541.426 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**541.426 Criteria for funding projects from Stewardship Agreement Grant Fund.** The State Board of Forestry may award funds from the Stewardship Agreement Grant Fund only for the purposes described in ORS 541.425. Any projects that the board approves for funding must comply with the following criteria:

(1) There must be matching contribution from other program funds, in-kind services or other investment in the project; and

(2) The project must provide a public benefit through improved water quality or improved fish or wildlife habitat. [2007 c.608 §2]

**Note:** See note under 541.425.

## USE OF WATER TO OPERATE WATER-RAISING MACHINERY

**541.430 Use of machinery by riparian owner to raise water; prior rights of others.** Any person who owns or has the possessory right to any land bordering on any lake or natural stream of water shall have the right to employ wheels, pumps, hydraulic engines, or other machinery for the purpose of raising water to the level required for use of the water in irrigating any land belonging to the person; provided, that the use of the water shall not conflict with the better or prior right of any other person. [Formerly 541.410]

## SPLASH DAMS

**541.450 Definitions for ORS 541.450 to 541.460.** As used in ORS 541.450 to 541.460 and 541.990:

(1) "Splash dam" means a dam constructed and used in the floating and driving of logs and other lumber products whereby water behind the dam is released for the purpose of causing or aiding the floating of logs or other lumber products on a navigable or nonnavigable river in the waters thereof below the location of the dam.

(2) "Splash dam" does not mean any device used on the waters of this state for the assembly or storage of logs or other lumber products, or for any other purpose incidental thereto. [1957 c.163 §1]

**541.455 Splash dams unlawful.** It is unlawful to operate a splash dam on any of the navigable or nonnavigable waters of this state. An officer or agency of this state may not issue any permit for the construction or maintenance of any dam to be used for splash dam purposes. [1957 c.163 §2; 2005 c.22 §380]

**541.460 Abatement proceedings by Attorney General.** The Attorney General, upon being informed that any violation of ORS 541.450 to 541.460 or 541.990 (1) has occurred, is hereby empowered to proceed immediately in the circuit court of the county in which said splash dam is located, to petition the court for the removal of said splash dam by abatement proceedings; and all costs in connection therewith incurred by the Attorney General shall be assessed against the offending person, firm or corporation. [1957 c.163 §3]

## RELEASE OF WATER FROM IMPOUNDMENT OR DIVERSION STRUCTURE

**541.510 Authority of Water Resources Commission to require signs warning public of stream level fluctuation.** (1) Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted by any person that the release of water from an impoundment or diversion structure constructed before or after May 26, 1959, endangers or may endanger the public safety, the commission shall send a written notice to the owner or operator of the structure.

(2) The notice provided for in subsection (1) of this section shall state:

(a) That the release of water from the impoundment or diversion structure endangers or may endanger the public safety.

(b) That the owner or operator of the structure shall within a time to be set by the commission post notices downstream from the structure at places of public access to the stream to be designated by the commission warning the public that the stream level below the structure is subject to fluctuation. [1959 c.624 §1; 1961 c.379 §9a; 1985 c.673 §104]

**541.515 Notice by commission when hazard created by release of stored water.** (1) Whenever it appears to the satisfaction of the Water Resources Commission, upon the commission's own determination or upon evidence submitted by any person that the present or proposed release of stored water from an impoundment or diversion structure, including any water power project, constructed before or after May 1, 1961, results in rapid increase in the stream level below the structure which creates or will create a hazard to human life or property, the commission shall cause written notice of such determination to be mailed to the owner or operator of the structure.

(2) The notice provided for in subsection (1) of this section shall state:

(a) That the present or proposed release of stored water from the impoundment or diversion structure creates or may create an unreasonable hazard to human life or property.

(b) The manner in which such unreasonable hazard to human life or property is or may be created.

(c) The action which is required, in the opinion of the commission, to minimize such unreasonable hazard to human life or property.

(d) That the owner or operator of the impoundment or diversion structure, within 15 days after the mailing of the notice, may request in writing that the commission hold a hearing on such unreasonable hazard or action required to minimize such unreasonable hazard, and that upon failure to request a hearing the commission shall make an order stating the terms, limitations and conditions of the action required to minimize such unreasonable hazard. [1961 c.379 §1; 1985 c.673 §105]

**541.520 Procedure when owner or operator of structure fails to request hearing; order regulating release of water.** If, within 15 days after the mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure fails to request in writing that the Water Resources Commission hold a hearing, the commission shall make and file in the Water Resources Department an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize unreasonable hazard to human life or property as set forth in the notice. The order shall become effective upon filing a copy in the Water Resources Department. The commission shall cause a copy of the order to be mailed to the owner or operator of the structure. The order is not subject to appeal. [1961 c.379 §2; 1985 c.673 §106]

**541.525 Hearing upon request of owner or operator of structure; notice and conduct of hearing.** (1) If, within 15 days after mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure requests in writing that the Water Resources Commission hold a hearing, the commission shall hold a hearing in accordance with ORS chapter 183 on the hazard to human life or property which is or will be created by the rapid increase in the stream level below the structure resulting from the release of water from the structure and the terms, limitations and conditions relating to such release of water necessary to minimize such unreasonable hazard.

(2) At least 10 days prior to the hearing the commission, in addition to the notice requirements of ORS chapter 183, shall cause a copy of the notice to be published in a newspaper of general circulation in each county in which the structure is located and in which unreasonable hazard to human life or property is or may be created. [1961 c.379 §3; 1971 c.734 §83; 1985 c.673 §107]

**541.530 Order of commission regulating release of water.** After the hearing provided for in ORS 541.525, if the Water Resources Commission determines that the release of stored water from the impoundment or diversion structure results or will

result in rapid increase in the stream level below the structure and the increase creates or will create an unreasonable hazard to human life or property, the commission shall make and file in the offices of the Water Resources Department an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize the unreasonable hazard. In determining what constitutes unreasonable hazard and what terms, limitations and conditions are necessary to minimize it, the commission shall consider the likelihood of harm to the public, recreation benefits, power benefits, agriculture benefits, purpose of the structure, water flows, extent, nature and time of use by the public and all other material factors. [1961 c.379 §4; 1971 c.734 §84; 1985 c.673 §108]

**541.535 Installation of automatic stream level recording devices.** An order of the Water Resources Commission under ORS 541.520 or 541.530 may require the owner or operator of an impoundment or diversion structure to install one or more automatic stream level recording devices satisfactory to the commission at one or more locations satisfactory to the commission. The cost of each such device and the installation and maintenance thereof shall be paid by the owner or operator of the structure. [1961 c.379 §5; 1985 c.673 §109]

**541.540 Procedure in emergency when release of water essential.** When conditions beyond the control of the owner or operator of an impoundment or diversion structure, to which an order of the Water Resources Commission, made as provided in ORS 541.520 or 541.530 relates, threaten the safety of the structure, and the release of water from the structure contrary to the terms, limitations and conditions stated in the order is or may be necessary to remove such threat:

(1) The terms, limitations and conditions of the order shall not apply to such release of water.

(2) The owner, operator or person in immediate charge of the structure shall immediately notify the commission or the Water Resources Department of the situation.

(3) The owner, operator or person in immediate charge of the structure shall immediately notify, to the best of the person's ability, those persons whose life or property may be threatened by such release of water. [1961 c.379 §6; 1985 c.673 §110]

**541.545 Compliance with orders of commission; enforcement.** (1) No person shall fail to comply with an order of the Water Resources Commission made as provided in ORS 541.520 or 541.530.

(2) The commission may enforce any order made as provided in ORS 541.520 or 541.530, and may prosecute proceedings to enjoin violations of subsection (1) of this section. [1961 c.379 §§7,8; 1985 c.673 §111]

**541.550** [1987 c.855 §3; 1989 c.904 §69; renumbered 196.600 in 1989]

**541.555** [1987 c.855 §2; renumbered 196.605 in 1989]

**541.557** [1987 c.855 §7; renumbered 196.610 in 1989]

**541.560** [1987 c.855 §8; renumbered 196.615 in 1989]

## WATER CONSERVATION, REUSE AND STORAGE GRANTS

**541.561 Establishment of grant program; direct service cost payment; limitations; project evaluation.** (1) The Water Resources Department shall establish a grant program to pay the qualifying costs of planning studies performed to evaluate the feasibility of developing a water conservation, reuse or storage project, as described in ORS 541.566. A grant under this section may be made to a local government as defined in ORS 174.116, to an Indian tribe as defined in ORS 391.802 or to a person.

(2) In lieu of grants, the department may pay the cost of providing direct services, including but not limited to technical planning services, for a planning study that is eligible for a grant under this section.

(3) A grant or the cost of direct services provided under this section may not exceed $500,000 per project. A grant or payment for direct services may be provided only if the amount of the grant or the cost of the direct services is matched by funding from another source that is not less than a dollar-for-dollar match of the amount or cost.

(4) Grants and the cost of direct services provided under this section must be paid for from moneys available in the Water Conservation, Reuse and Storage Investment Fund.

(5)(a) In evaluating above ground storage projects for awards of grants or payments for direct services under this section, the department shall give priority to projects that include provisions for using stored water to augment in-stream flows to conserve, maintain and enhance aquatic life, fish life or other ecological values.

(b) In evaluating all other eligible projects, the department shall give priority to projects identified by the department in a statewide water assessment and inventory for the award of grants or provision of payment for direct services under this section. [2008 c.13 §1]

**Note:** 541.561 to 541.581 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**541.565** [1987 c.855 §9; renumbered 196.620 in 1989]

**541.566 Planning studies eligible for grants or direct service cost payments.** (1) A planning study receiving a grant or payment for direct services under ORS 541.561 may include, but is not limited to:

(a) Analyses of hydrological refill capacity;

(b) Water needs analyses;

(c) Refined hydrological analyses;

(d) Engineering and financial feasibility studies;

(e) Geologic analyses;

(f) Water exchange studies;

(g) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of a proposed water conservation, reuse or storage project on those flows;

(h) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(i) Analyses of environmental harm or impacts from a proposed water conservation, reuse or storage project;

(j) Analyses of public benefits accruing from a proposed water conservation, reuse or storage project;

(k) Fiscal analyses of a proposed water conservation, reuse or storage project, including estimated project costs, financing for the project and projected financial returns from the project;

(L) Hydrological analyses of a proposed water conservation, reuse or storage project, including the anticipated effects of climate change on hydrological refill capacity; and

(m) Analyses of potential water quality impacts of the project.

(2) If a planning study concerns a proposed storage project that would impound surface water on a perennial stream, divert water from a stream that supports sensitive, threatened or endangered fish or divert more than 500 acre-feet of surface water annually, a grant or direct services payment may be provided only if the study contains:

(a) Analyses of by-pass, optimum peak, flushing and other ecological flows of the affected stream and the impact of the storage project on those flows;

(b) Comparative analyses of alternative means of supplying water, including but not limited to the costs and benefits of conservation and efficiency alternatives and the extent to which long-term water supply needs may be met using those alternatives;

(c) Analyses of environmental harm or impacts from the proposed storage project;

(d) Evaluation of the need for and feasibility of using stored water to augment instream flows to conserve, maintain and enhance aquatic life, fish life and any other ecological values; and

(e) For a proposed storage project that is for municipal use, analysis of local and regional water demand and the proposed storage project's relationship to existing and planned water supply projects. [2008 c.13 §2]

**Note:** See note under 541.561.

**541.567** [1987 c.855 §10; renumbered 196.625 in 1989]

**541.570** [1987 c.855 §12; renumbered 196.630 in 1989]

**541.575** [1987 c.855 §13; renumbered 196.635 in 1989]

**541.576 Water Conservation, Reuse and Storage Investment Fund.** (1) The Water Conservation, Reuse and Storage Investment Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Conservation, Reuse and Storage Investment Fund shall be credited to the General Fund. Moneys in the Water Conservation, Reuse and Storage Investment Fund are continuously appropriated to the Water Resources Department to award grants and to pay the cost of direct services provided under ORS 541.561.

(2) The Water Conservation, Reuse and Storage Investment Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Any moneys that may be transferred to the fund by the federal government, a state agency or a local government; and

(c) Grant repayments, if any. [2008 c.13 §3]

**Note:** See note under 541.561.

**Note:** Section 12, chapter 812, Oregon Laws 2015, provides:

**Sec. 12.** (1) For the biennium beginning July 1, 2015, at the request of the Oregon Department of Administrative Services, after the department consults with the Water Resources Department, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286A.560 to 286A.585 in an amount that produces $2 million in net proceeds and interest earnings for the purposes described in subsection (2) of this section, plus an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs.

(2) Net proceeds of lottery bonds issued under this section in an amount sufficient to provide $2 million in net proceeds and interest earnings must be transferred to the Water Resources Department for deposit in the Water Conservation, Reuse and Storage Investment Fund, established in ORS 541.576, to be used to pay the qualifying costs of planning studies performed to evaluate the feasibility of developing water conservation, reuse or storage projects.

(3) The Legislative Assembly finds that the use of lottery bond proceeds will create jobs, further economic development, finance public education or restore and protect parks, beaches, watersheds and native fish and

wildlife, and is authorized based on the following findings:

(a) Having adequate drinking water systems, irrigation, drainage and healthy ecosystems enhances community development and supports Oregon's economic growth.

(b) Assisting local governments to mitigate losses resulting from reduced water supply for irrigation and retirement of water rights will enhance community efforts to facilitate and promote economic growth. [2015 c.812 §12]

**541.577** [1987 c.855 §4; 1989 c.966 §60; renumbered 196.640 in 1989]

**541.580** [1987 c.855 §6; renumbered 196.645 in 1989]

**541.581 Rules for grant and direct service cost payment program.** The Water Resources Commission shall adopt rules necessary to administer ORS 541.561 to 541.581, including rules that:

(1) Establish reporting requirements for grants awarded under ORS 541.561;

(2) Provide for public comment before the award of grants and payment for direct services under ORS 541.561; and

(3) Implement the priorities required by ORS 541.561. [2008 c.13 §4]

**Note:** See note under 541.561.

**541.585** [1987 c.855 §5; renumbered 196.650 in 1989]

**541.587** [1987 c.855 §11; renumbered 196.655 in 1989]

**541.590** [1987 c.855 §19; renumbered 196.660 in 1989]

**541.595** [1987 c.855 §1a; renumbered 196.665 in 1989]

**541.600** [2009 c.907 §18; repealed by 2013 c.784 §40]

**541.605** [1967 c.567 §2; 1971 c.509 §4; 1971 c.754 §1; 1973 c.330 §1; 1973 c.674 §1; 1977 c.417 §2; 1977 c.418 §1; 1979 c.564 §1; 1989 c.837 §4; renumbered 196.670 and then 196.800 in 1989]

**541.606** [2009 c.907 §16; repealed by 2013 c.784 §40]

**541.610** [1967 c.567 §1; 1971 c.754 §2; 1973 c.330 §2; 1973 c.674 §2; 1977 c.418 §2; 1979 c.564 §2; renumbered 196.675 and then 196.805 in 1989]

**541.611** [2009 c.907 §19; repealed by 2013 c.784 §40]

**541.615** [1967 c.567 §3; 1971 c.754 §3; 1989 c.837 §15; renumbered 196.680 and then 196.810 in 1989]

**541.616** [2009 c.907 §21; 2009 c.907 §42; repealed by 2013 c.784 §40]

**541.620** [1967 c.567 §4; 1969 c.338 §4; 1971 c.754 §4; 1973 c.674 §3, 1977 c.418 §3; 1977 c.564 §6; 1989 c.1039 §1; renumbered 196.685 and then 196.815 in 1989]

**541.621** [2009 c.907 §22; repealed by 2013 c.784 §40]

**541.622** [1977 c.120 §2; 1987 c.160 §1; renumbered 196.690 and then 196.820 in 1989]

**541.625** [1967 c.567 §5; 1969 c.593 §49; 1971 c.754 §5; 1973 c.330 §3; 1973 c.674 §6; 1977 c.417 §1; 1979 c.200 §1; 1979 c.564 §3a; 1981 c.796 §1; 1987 c.70 §1; 1989 c.837 §16; 1989 c.904 §70; renumbered 196.695 and then 196.825 in 1989]

**541.626** [1979 c.564 §5; 1981 c.796 §2; 1983 c.827 §56; 1989 c.837 §5; renumbered 196.700 and then 196.830 in 1989]

**541.627** [1973 c.674 §5; 1979 c.564 §6; renumbered 196.705 and then 196.835 in 1989]

**541.630** [1967 c.567 §6; 1971 c.754 §6; 1973 c.330 §4; 1973 c.674 §7; 1981 c.796 §3; renumbered 196.710 and then 196.840 in 1989]

**541.631** [2009 c.907 §23; 2009 c.907 §30; repealed by 2013 c.784 §40]

**541.635** [1967 c.567 §7; 1971 c.754 §7; renumbered 196.715 and then 196.845 in 1989]

**541.636** [2009 c.907 §24; repealed by 2013 c.784 §40]

**541.640** [1967 c.567 §8; 1971 c.754 §8; 1973 c.330 §5; 1973 c.674 §8; 1981 c.796 §4; repealed by 1989 c.837 §8 (196.718 enacted in lieu of 541.640)]

**541.641** [2009 c.907 §27; 2009 c.907 §43; repealed by 2013 c.784 §40]

**541.645** [1967 c.567 §9; 1971 c.754 §9; 1989 c.837 §17; renumbered 196.720 and then 196.855 in 1989]

**541.646** [2009 c.907 §28; repealed by 2013 c.784 §40]

**541.650** [1967 c.567 §10; 1971 c.754 §10; 1973 c.330 §6; 1973 c.674 §9; 1985 c.414 §1; 1989 c.837 §18; renumbered 196.725 and then 196.860 in 1989]

## WATER SUPPLY DEVELOPMENT PROJECTS

**541.651 Definitions for ORS 541.651 to 541.696.** As used in ORS 541.651 to 541.696:

(1) "Newly developed water" means the new increment of water:

(a) Stored for a project providing new or expanded storage;

(b) Allocated to a use under a secondary water right for a project involving the allocation of previously uncontracted water stored by the United States Army Corps of Engineers under an existing water right; or

(c) Conserved for a project to allocate conserved water under the program described in ORS 537.455 to 537.500.

(2) "Seasonally varying flows" means the duration, timing, frequency and volume of flows, identified for the purpose of determining conditions for a new or expanded storage project, that must remain in-stream outside of the official irrigation season in order to protect and maintain the biological, ecological and physical functions of the watershed downstream of the point of diversion, with due regard given to the need for balancing the functions against the need to store water for multiple purposes. [2013 c.784 §1]

**Note:** 541.651 to 541.696 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**541.653 Purpose and application of ORS 541.651 to 541.696.** (1) The purpose of ORS 541.651 to 541.696 is to establish a means for state government to support the development of water resource projects having economic, environmental and community benefits.

(2) The Legislative Assembly intends that any conditions or requirements described in ORS 541.651 to 541.696 apply only to projects that receive loans or grants from the Water Supply Development Account established in ORS 541.656. [2013 c.784 §2]

**Note:** See note under 541.651.

**541.655** [1967 c.567 §11; 1971 c.754 §11; 1973 c.330 §7; 1973 c.674 §10; 1985 c.414 §2; renumbered 196.730 and then 196.865 in 1989]

**541.656 Water Supply Development Account.** (1) The Water Supply Development Account is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Water Supply Development Account shall be credited to the account. Moneys in the account are continuously appropriated to the Water Resources Department for use in carrying out ORS 541.651 to 541.696.

(2) The department may expend moneys from the account for:

(a) Subject to subsection (4) of this section, making loans and grants to evaluate, plan and develop in-stream and out-of-stream water development projects approved by the Water Resources Commission, including but not limited to projects that:

(A) Repair or replace infrastructure to increase the efficiency of water use;

(B) Provide new or expanded water storage;

(C) Improve or alter operations of existing water storage facilities in connection with newly developed water;

(D) Create new, expanded, improved or altered water distribution, conveyance or delivery systems in connection with newly developed water;

(E) Allocate federally stored water;

(F) Promote water reuse;

(G) Promote water conservation;

(H) Provide streamflow protection or restoration;

(I) Provide for water management or measurement in connection with newly developed water; and

(J) Determine seasonally varying flows in connection with newly developed water.

(b) Paying the necessary administrative and technical costs of the department in carrying out ORS 541.651 to 541.696.

(3)(a) In addition to any other permissible uses of moneys in the account, the department may expend moneys from the account to support:

(A) Ongoing studies conducted by the United States Army Corps of Engineers to allocate stored water; and

(B) Comprehensive basin studies conducted by the United States Bureau of Reclamation.

(b) Expenditures described in this subsection are not subject to any grant or loan procedures, public benefit scoring or ranking or other requirements or restrictions for grants or loans established under ORS 541.651 to 541.696.

(4) The department may expend account moneys under subsection (2) of this section for loans and grants to develop in-stream and out-of-stream water development projects only if the department determines under ORS 540.530 that any transfer of water rights for the project will not injure existing water rights. [2013 c.784 §3]

**Note:** See note under 541.651.

**Note:** Section 11, chapter 812, Oregon Laws 2015, provides:

**Sec. 11.** (1) For the biennium beginning July 1, 2015, at the request of the Oregon Department of Administrative Services, after the department consults with the Water Resources Department, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286A.560 to 286A.585 in an amount that produces $6,250,000 in net proceeds and interest earnings for the purposes described in subsection (2) of this section, plus an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs.

(2) Net proceeds of lottery bonds issued under this section in an amount sufficient to provide $6,250,000 in net proceeds and interest earnings must be transferred to the Water Resources Department for deposit in the Water Supply Development Account, established in ORS 541.656, to provide grants or loans to evaluate, plan and develop in-stream and out-of-stream statewide water development projects.

(3) The Legislative Assembly finds that the use of lottery bond proceeds will create jobs, further economic development, finance public education or restore and protect parks, beaches, watersheds and native fish and wildlife, and is authorized based on the following findings:

(a) Having adequate drinking water systems, irrigation, drainage and healthy ecosystems enhances community development and supports Oregon's economic growth.

(b) Assisting local governments to mitigate losses resulting from reduced water supply for irrigation and retirement of water rights will enhance community efforts to facilitate and promote economic growth. [2015 c.812 §11]

**541.659 Loan and grant applicants.** Loans and grants may be made from the Water Supply Development Account to persons as defined in ORS 536.007, Indian tribes as defined in ORS 391.802 and nonprofit organizations. If an applicant is required to have a water management and conservation plan, the plan must be submitted to the Water Resources Department and receive approval prior to department acceptance of an application for a loan or grant from the account. [2013 c.784 §4]

**Note:** See note under 541.651.

**541.660** [1967 c.567 §12; 1973 c.330 §8; 1973 c.674 §11; 1979 c.284 §166; 1985 c.414 §3; renumbered 196.735 and then 196.870 in 1989]

**541.662** [Enacted by 1973 c.330 §10 and 1973 c.674 §13; 1985 c.545 §7; renumbered 196.740 and then 196.875 in 1989]

**541.663 Preapplication conferences.** (1) A prospective applicant for a loan or grant from the Water Supply Development Account

may participate in a preapplication conference with the Water Resources Department.

(2) At the preapplication conference, the department shall inform the prospective applicant of the procedural and substantive requirements of a loan or grant application and of the scoring system used to evaluate loan and grant requests. The department shall assist the prospective applicant by identifying known issues that may affect project eligibility for a loan or grant from the account.

(3) Not less than 14 days before the preapplication conference, the prospective applicant must provide the department with adequate project information to prepare for the preapplication conference.

(4) The prospective applicant may request additional preapplication consultation with the department. [2013 c.784 §5]

**Note:** See note under 541.651.

**541.665** [1971 c.754 §14; renumbered 196.745 and then 196.880 in 1989]

**541.666 Form and contents of loan or grant applications.** Applications for a loan or grant from the Water Supply Development Account must be in a form prescribed by the Water Resources Department and must include the following:

(1) A description of the need, purpose and nature of the project, including what the applicant intends to complete and how the applicant intends to proceed.

(2) Sufficient information to allow evaluation of the application based upon the public benefit scoring and ranking of the project.

(3) Current contact information for the principal contact, fiscal officer and involved landowners.

(4) For applications involving physical changes or monitoring on private land, evidence that landowners are aware of and agree to the proposal and are aware that monitoring information is a public record.

(5) The location of the proposed project, using public land survey reference points, latitude and longitude, county, watershed, river and stream mile, if appropriate.

(6) An itemized budget for the project, including fiscal and administrative costs.

(7) A description of funds, services or materials available to the project.

(8) A project schedule, including beginning and completion dates.

(9) Any conditions that may affect the completion of the project.

(10) A completed feasibility analysis if appropriate.

(11) Suggestions for interim and long-term project performance benchmarks.

(12) If the application is for a grant, demonstrated in-kind and cash cost match of not less than 25 percent of the amount of the grant sought from the account.

(13) If the application is for a loan, evidence demonstrating ability to repay the loan and provide collateral.

(14) Letters of support for the proposed project.

(15) If required by the department, a description of consultations with affected Indian tribes regarding the project.

(16) Any other information required by the department. [2013 c.784 §6]

**Note:** See note under 541.651.

**541.669 Scoring and ranking of projects; funding decisions; rules.** (1) The Water Resources Commission shall adopt rules establishing a system for scoring and ranking projects to determine which projects are to be awarded loans and grants from the Water Supply Development Account, including but not limited to the application of minimum criteria designed to achieve the outcomes described in ORS 541.677. The criteria shall be based on the public benefit categories described in ORS 541.673. The commission shall make the loan and grant funding decisions once each year. Applications must be filed with the Water Resources Department. The department shall accept an application for a loan or grant at any time, but shall establish a yearly deadline for the consideration of a pool of applications.

(2) The department shall conduct a preliminary review of applications to check for completeness, eligibility and minimum requirements upon receipt of each application. The department shall return incomplete applications to the applicant. The department shall provide public notice by posting new funding applications on the department's website for a 60-day period prior to reviewing the applications. The department shall provide for the receipt of public comment on the applications during the 60-day period that applications are posted on the department's website.

(3) The department shall forward applications that have passed preliminary review, along with any comments received from applicants or the public, to a technical review team consisting of representatives of the Water Resources Department, the Department of Environmental Quality, the State Department of Fish and Wildlife, the State Department of Agriculture, the Oregon Business Development Department, affected Indian tribes, any collaborative body established by the Governor to address challenges, opportunities and priorities for the region affected by the project and additional

experts as determined by the Water Resources Department. The technical review team shall conduct the initial scoring and ranking for the projects described in the applications, consider comments from applicants and the public and make loan and grant funding recommendations to the commission. The commission shall determine the final scoring and ranking of projects and make the final decision regarding which projects are awarded loans or grants from the account. Before the commission makes a final decision on an application, the commission shall offer one additional opportunity for public comment.

(4) The commission is not required to obligate all available account moneys during a funding cycle. Any available account moneys that are not obligated during a funding cycle shall be carried forward and be made available for projects in future funding cycles.

(5) The department shall document the ranking of all applications and make the application ranking publicly available after the funding decisions by the commission have been published. [2013 c.784 §7]

**Note:** See note under 541.651.

**541.670** [1985 c.545 §6; 1987 c.855 §16; 1989 c.837 §22; renumbered 196.750 and then 196.885 in 1989]

**541.673 Evaluation for public benefits of project.** (1) Projects applying under ORS 541.669 for funding from the Water Supply Development Account shall be evaluated based upon the public benefits of the project. The evaluation must consider both positive and negative effects of a project. The three categories of public benefit to be considered in the project evaluation are economic benefits, environmental benefits and social or cultural benefits. Each category of benefits shall be given equal importance in the evaluation of a project. The technical review team described in ORS 541.669 shall use the evaluation system to assign initial scores and rankings to projects. The Water Resources Commission shall use the evaluation system to assign final scorings and rankings to the projects. The commission shall award loan and grant funding from the account to the projects that have the greatest public benefit and will best achieve the outcomes described in ORS 541.677.

(2) The evaluation of economic benefits for a project shall be based on the changes in economic conditions expected to result from the project, including but not limited to conditions related to:

(a) Job creation or retention;

(b) Increases in economic activity;

(c) Increases in efficiency or innovation;

(d) Enhancement of infrastructure, farmland, public resource lands, industrial lands, commercial lands or lands having other key uses;

(e) Enhanced economic value associated with tourism or recreational or commercial fishing, with fisheries involving native fish of cultural significance to Indian tribes or with other economic values resulting from restoring or protecting water in-stream; and

(f) Increases in irrigated land for agriculture.

(3) The evaluation of environmental benefits for a project shall be based on the changes in environmental conditions expected to result from the project, including but not limited to conditions related to:

(a) A measurable improvement in protected streamflows that:

(A) Supports the natural hydrograph;

(B) Improves floodplain function;

(C) Supports state or federally listed sensitive, threatened or endangered fish species;

(D) Supports native fish species of cultural importance to Indian tribes; or

(E) Supports riparian habitat important for wildlife;

(b) A measurable improvement in ground water levels that enhances environmental conditions in ground water restricted areas or other areas;

(c) A measurable improvement in the quality of surface water or ground water;

(d) Water conservation;

(e) Increased ecosystem resiliency to climate change impacts; and

(f) Improvements that address one or more limiting ecological factors in the project watershed.

(4) The evaluation of the social or cultural benefits for a project shall be based on the changes in social or cultural conditions expected to result from the project, including but not limited to conditions related to:

(a) The promotion of public health and safety and of local food systems;

(b) A measurable improvement in conditions for members of minority or low-income communities, economically distressed rural communities, tribal communities or other communities traditionally underrepresented in public processes;

(c) The promotion of recreation and scenic values;

(d) Contribution to the body of scientific data publicly available in this state;

(e) The promotion of state or local priorities, including but not limited to the resto-

ration and protection of native fish species of cultural significance to Indian tribes; and

(f) The promotion of collaborative basin planning efforts, including but not limited to efforts under the state integrated water resources strategy. [2013 c.784 §8]

**Note:** See note under 541.651.

**541.675** [1985 c.545 §3; renumbered 196.755 and then 196.890 in 1989]

**541.677 Target outcomes for scoring and ranking criteria.** (1) The Water Resources Commission shall design the minimum criteria for the project scoring and ranking system described in ORS 541.669 to achieve the following outcomes:

(a) The issuance of grants or loans only to projects that provide benefits in each of the three categories of public benefit described in ORS 541.673.

(b) Preference for partnerships and collaborative projects.

(c) The funding of projects of diverse sizes, types and geographic locations.

(d) If a project proposes to divert water, preference for projects that provide a measurable improvement in protected streamflows.

(e) If a project proposes to increase efficiency, preference for projects that provide a measurable increased efficiency of water use.

(2) The Water Resources Department shall review the loan and grant program on a biennial basis to assess to what extent the outcomes described in subsection (1) of this section are being achieved, and shall report the review findings to the Water Resources Commission. The commission shall modify the project selection process as necessary to better achieve the outcomes described in subsection (1) of this section. [2013 c.784 §9]

**Note:** See note under 541.651.

**541.680** [1985 c.545 §4; renumbered 196.760 and then 196.895 in 1989]

**541.681 Conditions of grants for developing certain types of above-ground storage facilities.** (1) The recipient of a grant from the Water Supply Development Account must agree to the condition set forth in subsection (2) of this section if the grant is for the development of a new or expanded above-ground storage facility that:

(a) Impounds surface water on a perennial stream;

(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

(c) Diverts more than 500 acre-feet of water annually.

(2) Twenty-five percent of the newly developed water from a project described in subsection (1) of this section must be dedicated to in-stream use.

(3) To establish that a project complies with subsection (2) of this section, the grant recipient may include water dedicated to in-stream use as a result of the conditions of federal, state or local permits for the project. [2013 c.784 §10]

**Note:** See note under 541.651.

**541.683 Demonstration of public benefits of project.** (1) A project that receives a loan or grant from the Water Supply Development Account must:

(a) Demonstrate social or cultural benefits and economic benefits sufficient to qualify the project under the scoring and ranking system described in ORS 541.669; and

(b) Except as otherwise provided in ORS 541.681, demonstrate environmental benefits:

(A) By dedicating 25 percent of conserved water or newly developed water to in-stream use; or

(B) By demonstrating environmental benefits that are sufficient to qualify the project under the scoring and ranking system described in ORS 541.669.

(2) The description of public benefit requirements in subsection (1) of this section does not exempt any project from meeting the minimum criteria designed by the Water Resources Commission under ORS 541.677.

(3) To establish that a project complies with subsection (1)(b) of this section, the loan or grant recipient may include water dedicated to in-stream use as a result of the conditions of federal, state or local permits for the project. [2013 c.784 §11]

**Note:** See note under 541.651.

**541.685** [1985 c.545 §5; renumbered 196.765 and then 196.900 in 1989]

**541.686 Protection of project water dedicated to in-stream use.** If a project dedicates water to in-stream use under the requirements described in ORS 541.681 or as allowed under ORS 541.683, the Water Resources Department shall protect the dedicated water in-stream consistent with the priority of the dedicated water source. Dedicated water from projects may come from newly developed water or from other sources and may be put in-stream at other locations in the tributary if the department determines as provided under ORS 540.530 that the alternate location would not injure existing water rights and, in consultation with the State Department of Fish and Wildlife, determines that the alternate location would provide greater or equal environmental benefit. The Water Resources Department, in

consultation with the State Department of Fish and Wildlife, shall determine the timing of the flows to maximize in-stream benefits in a manner consistent with public health and safety. [2013 c.784 §12]

**Note:** See note under 541.651.

**541.689 Projects requiring determination of seasonally varying flows; methodology.** (1) The Water Resources Department shall make a determination as provided under subsection (2) of this section if an application for a loan or grant from the Water Supply Development Account is for a project that requires a water storage or aquifer recharge permit or limited license for the storage of water outside of the official irrigation season and:

(a) Impounds surface water on a perennial stream;

(b) Diverts water from a stream that supports state or federally listed sensitive, threatened or endangered fish species; or

(c) Diverts more than 500 acre-feet of surface water annually.

(2) The department shall review a completed application for a project described in subsection (1) of this section to determine whether the applicable seasonally varying flows have been established under this section for the stream of interest. If the department determines that the applicable seasonally varying flows have not previously been established, the department shall establish the seasonally varying flows before issuing a loan or grant from the account. The department may use account moneys to pay the cost of establishing a seasonally varying flow and to pay other costs directly related to project development.

(3) The Water Resources Department shall establish any seasonally varying flows under subsection (2) of this section in consultation with the State Department of Fish and Wildlife and any affected Indian tribes. The Water Resources Department may rely upon existing scientific data and analysis or may fund new data and analysis. The Water Resources Department shall establish seasonally varying flows using a methodology established by Water Resources Commission rules.

(4) If the department establishes applicable seasonally varying flows for the stream of interest, the department shall make the seasonally varying flows a condition of:

(a) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any project described in subsection (1) of this section that receives a loan or grant from the account; and

(b) The new or existing water storage or aquifer recharge permit or limited license for the storage of water issued for any subsequent project that:

(A) Receives a loan or grant from the account;

(B) Is for the storage of water outside of the official irrigation season; and

(C) Has a diversion point that is subject to seasonally varying flows.

(5) The applicant for or holder of a permit or license described in subsection (4)(b) of this section may request that the applicable seasonally varying flows established under subsection (2) of this section for the stream of interest be altered based upon new information. There is, however, a rebuttable presumption that existing applicable seasonally varying flows protect and maintain the biological, ecological and physical functions of the stream to the extent required by commission rules.

(6) The department shall condition a water storage permit and resulting certificate, aquifer recharge permit and resulting certificate or limited license for a project that receives a grant or loan from the account and meets the other conditions described in subsection (4) of this section to protect the seasonally varying flow in effect at the time the loan or grant is issued for the project.

(7) For purposes of any project that receives a loan or grant from the account and meets the other conditions described in subsection (4) of this section, the department shall use a seasonally varying flow methodology provided by commission rules in lieu of any other methodologies for determining seasonally varying flows or any methodologies for determining peak and ecological flows outside of the official irrigation season.

(8) Subsections (1) to (7) of this section do not eliminate or alter any applicable standard for department review of an application to determine whether water is available for purposes of reviewing an application for a new water storage or aquifer recharge permit or a limited license for the storage of water. [2013 c.784 §13; 2015 c.156 §6]

**Note:** See note under 541.651.

**541.692 Permits; requirements for project operation.** (1) Before loan or grant moneys are expended from the Water Supply Development Account for the construction of a project, the recipient must obtain all applicable local, state and federal permits. Project materials must include a notation indicating that Water Resources Department funding was used for the project.

(2) The loans or grants may be conditioned to require that the recipient complete

and operate the funded project as described in the loan or grant application. The department may require that before commencing the operation of a project funded with account moneys, the funding recipient demonstrate that the public benefits identified for the project, including any environmental benefits proposed at a location other than the project site, will be realized in a timely fashion.

(3) At regular intervals, and upon completion of the project, the loan or grant recipient must submit updates to the department that describe the completed work, the public benefits achieved and project expenditures. The recipient must regularly measure and report the water diverted and used from the project. The recipient must monitor, evaluate and maintain the project for the life of the loan, or for a specified number of years for a grant, and provide annual progress reports to the department. The department may impose other project-specific conditions by noting the conditions during project evaluation and including the condition in the funding agreement for the project.

(4) The department may terminate, reduce or delay funding for a project if the loan or grant recipient fails to comply with any provision of subsections (1) to (3) of this section. [2013 c.784 §14]

**Note:** See note under 541.651.

**541.695** [1971 c.754 §12; 1977 c.417 §3; 1989 c.837 §19; renumbered 196.770 and then 196.905 in 1989]

**541.696 Standards for security of loans from account; rules.** (1) The Water Resources Commission shall adopt rules establishing standards for borrowers obtaining loans issued from the Water Supply Development Account. The commission shall design the standards to ensure that all loans have a high probability of repayment and that all loans are adequately secured in the event of a default. The commission shall solicit comments from the Oregon Department of Administrative Services and the State Treasurer when designing the standards. The standards may include, but need not be limited to, standards that give preference to entities with ad valorem taxing authority.

(2) If the Water Resources Department approves a loan from the account for the implementation of a water development project, the department may require that the applicant enter into a loan contract, secured by a first lien or by other good and sufficient collateral. [2013 c.784 §15]

**Note:** See note under 541.651.

**Note:** Section 13, chapter 812, Oregon Laws 2015, provides:

**Sec. 13.** (1) For the biennium beginning July 1, 2015, at the request of the Oregon Department of Administrative Services, after the department consults with the Water Resources Department, the State Treasurer is authorized to issue lottery bonds pursuant to ORS 286A.560 to 286A.585 in an amount that produces $12,750,000 in net proceeds and interest earnings for the purposes described in subsection (2) of this section, plus an additional amount estimated by the State Treasurer to be necessary to pay bond-related costs.

(2) Net proceeds of lottery bonds issued under this section and interest earnings must be transferred to the Water Resources Department for deposit in the Water Resources Department Water Supply Fund, established in section 10, chapter 906, Oregon Laws 2009, in an amount sufficient to provide by grant, loan or otherwise:

(a) $11 million in net proceeds and interest earnings to develop and implement water storage systems and delivery infrastructure, implement conservation and reuse projects or provide access to new water supplies.

(b) $750,000 in net proceeds and interest earnings for place-based planning.

(c) $1 million in net proceeds and interest earnings to repair, replace or remediate water wells in the Mosier Creek area.

(3) The Legislative Assembly finds that the use of lottery bond proceeds will create jobs, further economic development, finance public education or restore and protect parks, beaches, watersheds and native fish and wildlife, and is authorized based on the following findings:

(a) Having adequate drinking water systems, irrigation, drainage and healthy ecosystems enhances community development and supports Oregon's economic growth.

(b) Assisting local governments to mitigate losses resulting from reduced water supply for irrigation and retirement of water rights will enhance community efforts to facilitate and promote economic growth. [2015 c.812 §13]

**Note:** Section 10, chapter 906, Oregon Laws 2009, provides:

**Sec. 10.** (1) The Water Resources Department Water Supply Fund is established separate and distinct from the General Fund. Interest earned on moneys deposited in the Water Resources Department Water Supply Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Water Resources Department.

(2) The Water Resources Department Water Supply Fund consists of:

(a) Net proceeds of lottery bonds issued pursuant to sections 8 and 9, chapter 906, Oregon Laws 2009, deposited into the Water Resources Department Water Supply Fund for the following purposes:

(A) $2,500,000 for the purposes of issuing grants to develop Umatilla Basin critical ground water storage projects described in section 17, chapter 907, Oregon Laws 2009, and to provide or pay for services in connection with those projects.

(B) $217,000 to pay for the operation of loan and grant programs under sections 18 to 27, chapter 907, Oregon Laws 2009.

(C) $283,000 for the purpose of developing an integrated state water resources strategy to implement the state water resources policy pursuant to ORS 536.220 and section 45, chapter 907, Oregon Laws 2009.

(D) $500,000 for purposes of the grant program established by section 1, chapter 13, Oregon Laws 2008.

(b) Net proceeds of lottery bonds issued pursuant to section 4, chapter 624, Oregon Laws 2011, in an amount sufficient to provide $1,229,052 in net proceeds and interest earnings for the department to finance

grants for feasibility studies for water conservation, reuse and storage projects.

(c) $11 million in net proceeds and interest earnings pursuant to section 13 of this 2015 Act [section 13, chapter 812, Oregon Laws 2015] to develop and implement water storage systems and delivery infrastructure, implement conservation and reuse projects or provide access to new water supplies.

(d) $750,000 in net proceeds and interest earnings pursuant to section 13 of this 2015 Act to provide grants for place-based planning.

(e) $1 million in net proceeds and interest earnings pursuant to section 13 of this 2015 Act to repair, replace or remediate water wells in the Mosier Creek area.

(f) Any other fees, revenues or income deposited in the fund by the Legislative Assembly. [2009 c.906 §10; 2011 c.624 §5; 2015 c.812 §14]

## WATER DEVELOPMENT PROJECTS

### (Definitions)

**541.700 Definitions for ORS 541.700 to 541.855.** As used in ORS 541.700 to 541.855, unless the context requires otherwise:

(1) "Commission" means the Water Resources Commission appointed under ORS 536.022.

(2) "Construction" means the construction, or improvement or rehabilitation, in whole or in part, of a water development project, including planning and engineering work, purchasing or refinancing directly related to such construction or improvement or rehabilitation, or any combination of such construction or improvement or rehabilitation. As used in this subsection:

(a) "Purchasing" means the purchasing of materials, land or existing facilities necessary to complete a water development project.

(b) "Refinancing" includes refinancing existing debt of a water developer, as defined in subsection (7)(f) to (m) and (o) of this section, in order to complete a water development project or to provide adequate security for a water development loan, but does not include refinancing existing debt only to reduce interest rates or costs to the borrower or to pay off existing debt.

(3) "Director" means the Water Resources Director appointed pursuant to ORS 536.032.

(4) "Federal water development project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.

(5)(a) "Secondary use" means:

(A) Any water-related recreational use.

(B) Any flood control use.

(C) Any power generation use.

(D) Any water supply system utilized as a domestic water system for the benefit of an individual residence related to the operation of the water development project.

(b) "Secondary use" does not include any use that is incompatible with a water development project.

(6) "Water development project" means:

(a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including structures for the application of water for agricultural harvest activities, dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems used for the purpose of agricultural temperature control and any other structure, facility and property necessary or convenient for supplying lands with water for irrigation purposes.

(b) An undertaking, in whole or in part, in this state for the purpose of drainage, including ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved methods of land drainage that will increase soil versatility and productivity.

(c) An undertaking, in whole or in part, in this state for the purpose of providing water for municipal use, which may include safe drinking water for communities with population less than 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facilities, pipelines, canals, ditches, revetments and all other structures and facilities necessary or convenient for supplying water. An undertaking may provide water to two or more communities with a combined population of more than 30,000. An undertaking may be part of a project that provides water to a community with a population of more than 30,000, but loans of moneys from the Water Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served by the project that have a population of less than 30,000.

(d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways and all other structures and facilities necessary or convenient for providing fish protection.

(e) An undertaking, in whole or in part, in this state for the purpose of enhancing watershed health or improving fish habitat, including methods and materials to restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuaries systems and recommended by the Oregon Watershed Enhancement Board established under ORS 541.900.

(f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this subsection.

(7) "Water developer" means:

(a) Any individual resident of this state;

(b) Any partnership for profit subject to the provisions of ORS chapter 67 or 70, whose principal income is from farming in Oregon;

(c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal income is from farming in Oregon;

(d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal income is from farming in Oregon;

(e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from farming in Oregon;

(f) Any irrigation district organized under or subject to ORS chapter 545;

(g) Any water improvement district organized under ORS chapter 552;

(h) Any water control district organized under ORS chapter 553;

(i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;

(j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS chapter 545;

(k) Any corporation, cooperative, company or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;

(L) Any port district organized under ORS 777.005 to 777.725, 777.915 to 777.953 and 777.990;

(m) Any city or county;

(n) Any organization formed for the purpose of distributing water for community water supply; or

(o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933. [1977 c.246 §1; 1981 c.166 §1; 1981 c.592 §1; 1985 c.673 §184; 1985 c.677 §65; 1987 c.94 §103; 1987 c.636 §§1,5; 1989 c.1010 §177; 1991 c.944 §5; 1993 c.765 §89; 1995 c.42 §180; 1997 c.775 §90; 1999 c.212 §1; 1999 c.509 §46; 2009 c.907 §3; 2013 c.784 §32]

## (Loan Applications)

**541.703 Project applications; preference for approval.** Of the applications filed under ORS 541.705 for assistance in constructing a water development project for municipal use, the Water Resources Commission shall give preference for approval to those projects required to be undertaken as a result of a proceeding under ORS 222.840 to 222.915 or 431.705 to 431.760 to alleviate conditions constituting a danger to public health. [1983 c.407 §13; 1985 c.673 §112]

**541.705 Project applications; contents.** (1) Any water developer may file with the Water Resources Commission an application to enable the construction of a water development project as provided in ORS 541.700 to 541.855. The application shall be filed in the manner, be in the form and contain or be accompanied by any information prescribed by the commission. The commission, in considering applications, shall encourage the largest number of users of the Water Development Fund and shall consider the impact on the family farm units of the state.

(2) In addition to other requirements prescribed by the commission, an application filed under subsection (1) of this section shall:

(a) Describe the nature and purposes of the proposed water development project, including the need for the project and reason why the project would be in the public interest.

(b) State whether any purposes other than improvement of a drinking water system, irrigation, drainage, fish protection, watershed enhancement or municipal use, but consistent therewith, will be served by the proposed water development project, and the nature of the other purposes, if any.

(c) Set forth or be accompanied by a feasibility study for the construction, operation and maintenance of the proposed water development project, an estimate of the costs of construction and if the project includes as a primary purpose irrigation or drainage, an evaluation of the agricultural potential of the land from any competent public agency.

(d) State whether any moneys other than those in the Water Development Fund are proposed to be used for the construction of the proposed water development project, and whether any other moneys are available or have been sought for the construction.

(e) Show that the applicant holds or can acquire all lands, other than public lands, and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project.

(3) If the application is for a safe drinking water project, the applicant also shall demonstrate that:

(a) The applicant is a city, county, district, water authority or other political subdivision of the state or an organization operated on a not-for-profit basis that makes drinking water available to members of the general public;

(b) The primary use of the loan will be to improve a drinking water system for the purpose of complying with applicable state or federal drinking water quality regulations; and

(c) The applicant has:

(A) Developed a water system master plan; and

(B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712 or can demonstrate that options to find a coordinated solution to the system's drinking water problems have been fully explored. [1977 c.246 §2; 1981 c.592 §2; 1985 c.673 §113; 1987 c.636 §2; 1991 c.944 §6; 1993 c.577 §38; 2009 c.907 §§4,35]

**541.710 Processing project application; fee.** (1) Upon receipt of an application filed as provided in ORS 541.705, the Water Resources Commission shall determine whether the feasibility study described in ORS 541.705 for the water development project set forth in or accompanying the application is satisfactory and if the commission determines that it is not satisfactory, the commission may:

(a) Reject the application;

(b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or

(c) Make such revisions of the feasibility study as the commission considers necessary to make the plan satisfactory.

(2) Except as provided in subsection (3) of this section, the commission shall charge and collect from the applicant at the time the application is filed a fee of $100. In addition, the commission shall charge the applicant the amount required to reimburse the commission for costs that exceed the application fee incurred in connection with the application. Moneys referred to in this subsection shall be paid into the Water Development Administration and Bond Sinking Fund.

(3) The commission may establish by rule an application fee of less than $100 for a water development project that is for fish protection or for watershed enhancement. [1977 c.246 §3; 1985 c.673 §114; 1987 c.636 §3; 2009 c.907 §§5,36; 2013 c.784 §33]

**541.715 Applicant authorized to obtain private planning, engineering and construction services.** Nothing in ORS 541.700 to 541.855 is intended to prevent an applicant from employing a private planning firm, engineering firm and construction firm to perform the planning work, engineering work and construction on the proposed water development project of the applicant. [1977 c.246 §4]

**541.720 Conditions for project application approval.** The Water Resources Commission may approve the financing for the construction of a water development project described in an application filed as provided in ORS 541.705 using moneys in the Water Development Fund, secured by a first, parity or second lien in the manner provided in ORS 541.740, if, after investigation, the commission finds that:

(1) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

(2) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

(3) The plan for construction and operation will provide multipurpose facilities, to the extent practicable;

(4) The applicant is a qualified, creditworthy and responsible water developer and is willing and able to enter into a contract with the commission for construction and repayment as provided in ORS 541.730;

(5) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

(6) There is a need for the proposed water development project, the proposed project is in the public interest and the applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project; and

(7) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project. [1977 c.246 §5; 1981 c.166 §2; 1981 c.592 §3; 1985 c.673 §115; 1999 c.212 §2; 2009 c.907 §§6,37; 2013 c.784 §34]

**541.725** [2009 c.907 §2; repealed by 2013 c.784 §40]

**(Loan Contracts)**

**541.730 Loan contract; repayment plan.** If the Water Resources Commission approves the financing for the construction of a water development project, the commission, on behalf of the state, and the applicant may enter into a loan contract, secured by a first, parity or second lien in the manner provided in ORS 541.740, that shall set forth, among other matters:

(1) That the commission, on behalf of the state, must approve the arrangements made by the applicant for the construction, operation and maintenance of the water development project, using moneys in the Water Development Fund for the construction.

(2) A plan for repayment by the applicant to the Water Development Administration and Bond Sinking Fund of moneys borrowed from the Water Development Fund used for the construction, operation and maintenance of the water development project and interest on such moneys used at such rate of interest as the commission determines is necessary to provide adequate funds to recover administrative expenses incurred under ORS 541.700 to 541.855. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the commission may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the commission;

(c) Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the commission; and

(d) Shall set forth a schedule of payments and the period of loan, which may not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less, and shall also set forth the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest, which accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of such accrued interest.

(3) Provisions satisfactory to the commission for field engineering and inspection, the commission to be the final judge of completion of the contract.

(4) That the liability of the state under the contract is contingent upon the availability of moneys in the Water Development Fund for use in the construction, operation and maintenance of the water development project.

(5) Such further provisions as the commission considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(6) That the commission may institute an appropriate action or suit to prevent use of the facilities of a water development project financed by the Water Development Fund by any person who is delinquent in the repayment of any moneys due the Water Development Administration and Bond Sinking Fund.

(7) That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission. The commission may approve a loan assignment or transfer only if the commission finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700 (7) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state. [1977 c.246 §6; 1981 c.166 §3; 1985 c.673 §116; 1999 c.212 §3; 2009 c.907 §7; 2013 c.784 §35]

**541.735 Payment of funds by State Treasurer pursuant to loan contract.** If the Water Resources Commission approves a loan for a water development project or federal water development project, the State Treasurer shall pay moneys for such project from the Water Development Fund in accordance with the terms of the loan contract, as prescribed by the commission. [1977 c.246 §7; 1985 c.673 §117]

**541.740 Liens and other loan security; foreclosure; rules.** (1)(a) When a loan is made to a water developer other than a water developer described in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property held in fee simple of the water developer or to the user charges, including interest, owed to or received by the water developer. The lien created by this subsection does not attach to a leasehold. At the discretion of the Water Resources Commission, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project.

(b) Except for tax liens, the lien created by this section is prior and superior to all other liens or encumbrances upon the affected real property or user charges, without regard to the date on which the other liens or encumbrances attached to the real property or user charges. However, the commission may elect to accept a second or parity lien position against the real property or user charges encumbered by this section, if the commission determines the lien position would provide adequate security for the water development loan, as set forth in rules adopted by the commission.

(c) The existence or foreclosure of the lien created by this subsection shall not cause the acceleration of payment of user charges or other payments on affected real

property. Such payments shall continue to be made as they become due.

(2) When a loan is made under ORS 541.700 to 541.855 to a water developer described in ORS 541.700 (7)(a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan. The mortgage or security agreement shall be a first lien, or a parity or second lien if the commission determines it would provide adequate security, upon such real property of the water developer as the commission shall require for adequate security.

(3) When a lien created by subsection (1) of this section is foreclosed, a person whose real property is subject to the lien solely because that real property is irrigated or drained by reason of a water development project or because the real property is served by a water source improved by a water development project for watershed enhancement, shall only have that portion of real property subjected to foreclosure that represents that person's pro rata share of the indebtedness.

(4) When a loan is made to a water developer under ORS 541.700 to 541.855, the commission shall file notice of the loan with the recording officer of each county in which is situated real property of the water developer or real property to which the lien created by subsection (1) or (2) of this section may attach. The notice shall contain a description of the real property of the water developer, a description of any other real property that will be served by the water development project and to which the lien is to attach, the amount of the loan and a statement that the State of Oregon has a lien against such real property as provided in subsection (1) or (2) of this section.

(5) Upon payment of all amounts loaned to a water developer pursuant to ORS 541.700 to 541.855, the commission shall file with each recording officer referred to in subsection (4) of this section a satisfaction notice that indicates repayment of the loan.

(6) The commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses incurred in foreclosing, into the Water Development Administration and Bond Sinking Fund. In a foreclosure proceeding, the commission may bid on property offered for sale in the proceeding and may acquire title to the property on behalf of the state.

(7) The commission may take any action, make any disbursement, hold any funds or institute any action or proceeding necessary to protect the state's interest.

(8) Notwithstanding ORS 293.240, the commission may compromise, release, discharge, waive, cancel or settle a claim against a water developer if such action:

(a) Is consistent with the purposes of ORS 541.700 to 541.855;

(b) Does not impair the ability to pay the administrative expenses of the commission or the obligations of any bonds outstanding; and

(c) Is, under the circumstances, the means most likely to preserve the claim or to recover the greatest part of the amount claimed.

(9) The commission, by rule, may set out procedures to be used when a water developer is unable to make required loan payments because of illness, injury, death, involuntary job loss or economic stress due to factors beyond individual control. The rules shall be effective to the extent permitted by the terms of the contracts associated with affected loans. The rules:

(a) May provide for a temporary reduction of loan payment;

(b) May provide for any other solution jointly agreed to by the water developer and the commission;

(c) Shall provide for repayment of the amount of any loan payments reduced under the rules in accordance with terms and conditions agreed upon by the borrower and the commission; and

(d) Shall require the commission to consider the effect of any payment reduction or delay on the solvency of the program as a whole, on estimates of the most probable financial position of the program in the future and on other borrowers in the program.

(10)(a) Upon application by a water developer, the commission may grant a partial release of security when the commission determines that granting the requested release will not jeopardize the water development loan program's security position.

(b) The remaining property must qualify as security for the loan balance under the applicable law.

(c) Notwithstanding compliance with paragraph (b) of this subsection, the commission may require that the loan balance be reduced as consideration for granting the requested release. [1977 c.246 §8; 1981 c.166 §4; 1985 c.673 §118; 1987 c.636 §4; 1989 c.950 §3; 1999 c.212 §4; 2009 c.907 §8; 2013 c.784 §36]

**541.741 Recovery of certain interest amounts.** The Water Resources Commission shall not attempt to recover interest amounts credited or paid before January 1, 1986, to any water developer who borrowed moneys under ORS 541.700 to 541.855 and shall adjust the borrower's account balance as nec-

essary to reflect those credits as lawful payments on the borrower's contractual obligations to the state. [1989 c.950 §2]

**Note:** 541.741 was added to and made a part of ORS 541.700 to 541.855 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**541.745 Remedies of commission when water developer fails to comply with contract.** If a water developer fails to comply with a contract entered into with the Water Resources Commission for construction and repayment as provided in ORS 541.730, the commission, in addition to remedies provided in ORS 541.740, may seek other appropriate legal remedies to secure the loan and may contract with any other water developer as provided in ORS 541.730 for continuance of construction and for repayment of moneys from the Water Development Fund used to continue construction and interest on the moneys. [1977 c.246 §8; 1981 c.166 §4; 1985 c.673 §119]

**541.750 Repayment of moneys to Water Development Administration and Bond Sinking Fund.** Any water developer that enters into a contract with the Water Resources Commission for construction and repayment as provided in ORS 541.730 or 541.745 may obtain moneys for repayment to the Water Development Administration and Bond Sinking Fund under the contract in the same manner as other moneys are obtained for other authorized purposes. The commission may also provide by contract or otherwise, for the construction, operation and maintenance of a water development project until the project is assumed by such new water developer. Moneys in the Water Development Fund may be used for such construction, operation and maintenance, and if so used, shall be repaid to the Water Development Administration and Bond Sinking Fund by the contracting water developer. [1977 c.246 §10; 1985 c.673 §120]

**541.755** [1977 c.246 §14; 1991 c.944 §7; 1995 c.79 §304; repealed by 2009 c.907 §15]

**541.756 Projects obtaining other funds for construction; repayment of funds loaned by state.** Except as provided in ORS 541.760:

(1) If any water development project investigated under ORS 541.700 to 541.855, other than a safe drinking water project financed in whole or in part from moneys in the Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, is constructed with funds other than those loaned under ORS 541.700 to 541.855, the amount expended by the state shall immediately become due and payable, together with interest at the rate provided in ORS 541.730 (2) from the date of notification of the amount due.

(2) If any water development project is refinanced or financial assistance is obtained from other sources, other than a safe drinking water project financed in whole or in part from moneys in the Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, after the execution of the loan from the state, all such funds shall be first used to repay the state. [2013 c.784 §39]

**Note:** 541.756 was added to and made a part of 541.700 to 541.855 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**541.760 Reduction of loan amount when secondary use funding available.** If a water development project has any secondary use, and if the water developer receives from any source other than the Water Development Fund any funds to assist in the construction, operation or maintenance of such secondary use, the amount of the loan to the water developer from the Water Development Fund shall be limited to that amount necessary for the construction of those portions of the project not funded by other sources. [1977 c.246 §15]

**541.765 Authorization for loans for certain federal projects.** In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855, the Water Resources Commission may authorize loans of such moneys to those persons to whom approval has been granted by the federal government or any agency or instrumentality of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission considers appropriate. [1977 c.246 §16; 1985 c.673 §121; 1991 c.944 §8; 1999 c.212 §5; 2009 c.907 §§9,38]

**541.770 Federal project loan contract terms; foreclosure.** If the Water Resources Commission approves an application for the loan of moneys authorized by ORS 541.765, the commission shall enter into a loan contract with the borrower that provides, among other matters:

(1) That the loan be secured by a first lien or by other good and sufficient collateral in the same manner as provided in ORS 541.740.

(2) That the loan bear interest at the same rate of interest as provided in ORS 541.730.

(3) That the loan becomes due and payable to the Water Development Administration and Bond Sinking Fund not later than 60 days after the date that federal funds for

the acquisition of easements and rights of way for the project are paid to the borrower or 30 years from the date of the loan, whichever is earlier.

(4) Such provisions as the commission considers necessary to ensure expenditure of the moneys loaned for the purposes provided in ORS 541.765.

(5) That the commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in foreclosing, into the Water Development Administration and Bond Sinking Fund. [1977 c.246 §17; 1981 c.166 §5; 1985 c.673 §122; 1999 c.212 §6; 2009 c.907 §10]

**(Bonds)**

**541.780 Bonds to provide project financing.** In order to provide funds for the purposes specified in Article XI-I (1) of the Oregon Constitution, the Water Resources Commission may request the State Treasurer to issue bonds in accordance with the provisions of ORS chapter 286A. [1977 c.246 §19; 1981 c.660 §45; 2007 c.783 §215]

**541.785 Disposition and use of bond proceeds.** Except for the proceeds of refunding bonds, all moneys obtained from the sale of bonds under ORS 541.780 to 541.815 shall be credited by the State Treasurer to the Water Development Fund. Such moneys shall be used only for the purposes stated in Article XI-I (1), Oregon Constitution, and ORS 541.700, 541.705 to 541.770 and 541.835. If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments set forth in ORS 541.830, moneys in the Water Development Fund may be transferred to the Water Development Administration and Bond Sinking Fund. Pending the use of moneys in the Water Development Fund for the proper purposes, such moneys may be invested in the manner provided by law. [1977 c.246 §20; 1981 c.660 §46; 1989 c.950 §4; 2009 c.907 §§11,39]

**541.790** [1977 c.246 §21; repealed by 1981 c.660 §18]

**541.795** [1977 c.246 §22; 1981 c.166 §6; repealed by 1981 c.660 §18]

**541.800 Payment of bond principal and interest from Water Development Administration and Bond Sinking Fund.** (1) The State Treasurer shall make payment of the principal of and the interest on any bond issued under ORS 541.780 to 541.815 from the Water Development Administration and Bond Sinking Fund.

(2) The State Treasurer shall compute and determine in January of each year, after the sale of bonds under ORS 541.780 to 541.815, the amount of principal and interest which will fall due during such year on bonds then outstanding and unpaid and shall maintain or hold in the Water Development Administration and Bond Sinking Fund sufficient moneys to pay such maturing obligations. [1977 c.246 §§23,26]

**541.805** [1977 c.246 §24; repealed by 1981 c.660 §18]

**541.810** [1977 c.246 §25; repealed by 1981 c.660 §18]

**541.815 Limitation on bond issuance amount.** No bonds shall be issued or sold under ORS 541.780 to 541.815 nor indebtedness incurred thereunder, which, singly or in the aggregate with previous debts or liabilities incurred for the construction, operation and maintenance of water development projects and for the acquisition of easements and rights of way for federal water development projects shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under ORS 541.780 to 541.815, exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 541.780 to 541.815, in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1977 c.246 §27]

**(Administration)**

**541.830 Water Development Administration and Bond Sinking Fund; sources; use; Governor's approval.** (1) There hereby is created the Water Development Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the Water Resources Commission and the Water Resources Department in processing applications, investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding loans made under ORS 541.700 to 541.855, if the expense is not paid directly by the applicant, including principal and interest due on bonds outstanding. These administrative expenses also may include all costs associated with the issuance of bonds and the funding of any credit enhancements or reserves determined to be necessary or advantageous in connection with the bonds.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

(c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to 541.815.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees required under ORS 541.710.

(b) Repayments of moneys loaned to water developers from the Water Development Fund, including interest on such moneys.

(c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal water development projects, including interest on such moneys.

(d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including appropriations dedicated to the partial payment for or repayment of projects affording public benefits.

(e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(g) Interest earned on cash balances invested by the State Treasurer.

(h) Any revenues received by the commission under the provisions of ORS 541.745.

(i) Moneys transferred from the Water Development Fund.

(3) The moneys referred to in subsection (2) of this section are continuously appropriated to the commission for the purposes provided in subsection (1) of this section.

(4) The commission, with the approval of the Governor, may identify those projects financed under the provisions of ORS 541.700 to 541.855 that offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

(5) The commission, with the approval of the State Treasurer, may transfer moneys from the fund created under subsection (1) of this section to the Water Development Fund if:

(a) A cash flow projection shows that the transfer will not have any negative impact on the commission's ability to pay bond principal, interest and administration costs;

(b) The transfer will not create the need for issuance of any bonds; and

(c) The transfer, together with loans outstanding from prior transfers and not refinanced by funds derived directly from a bond sale, does not exceed $1.

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board. [1977 c.246 §28; 1981 c.172 §1; 1985 c.673 §123; 1989 c.587 §3; 1989 c.950 §5; 1991 c.944 §9; 2009 c.907 §§12,40; 2013 c.784 §37]

**541.835 Water Development Fund; use.** All moneys in the Water Development Fund created by Article XI-I (1), Oregon Constitution, hereby are appropriated continuously to the Water Resources Commission and shall be used for the purposes provided in ORS 541.700 to 541.855. Moneys expended from the fund may include those expended or to be expended for engineering, legal fees and acquisition of water rights and property required for rights of way or facility locations. Interest earned by the fund shall be credited to the fund. [1977 c.246 §18; 1985 c.673 §124; 1989 c.966 §61]

**541.840 Emergency Board request for funds to pay administrative expenses; repayment of board allocations.** (1) If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments referred to in ORS 541.830 (1), the Water Resources Commission may request the funds necessary for such payments from the Legislative Assembly within the budget authorized by the Legislative Assembly or as that budget may be modified by the Emergency Board.

(2) When the commission determines that moneys in sufficient amount are available in the Water Development Administration and Bond Sinking Fund, the commission shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1977 c.246 §30; 1985 c.673 §125; 1991 c.703 §48]

**541.845 Rules.** (1) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission may adopt rules necessary to carry out ORS 541.700 to 541.855.

(2) In adopting rules establishing guidelines or criteria for awarding loans or grants for drinking water projects, the commission shall coordinate the Water Resources Department's rulemaking process with the Oregon Business Development Department and the Oregon Health Authority in order to ensure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and 431.120. The rules adopted under this subsection shall:

(a) Require the installation of meters on all new active service connections from any municipal drinking water distribution lines funded under ORS 285B.560 to 285B.599, 431.120, 541.700, 541.705, 541.765, 541.830 and 541.845; and

(b) Require a plan, to be adopted by the municipality, for installation of meters on all

service connections throughout the drinking water system.

(3) As used in this section, "service connection" does not include fire hydrants, fire sprinkler system connections, line blow-offs and drains, standby emergency interties, valve controlled drinking fountains and other similar intermittently used connections. [1977 c.246 §13; 1985 c.673 §126; 1991 c.944 §10; 1995 c.212 §2; 2005 c.835 §26; 2009 c.595 §986; 2009 c.907 §13]

**541.850 Commission acceptance of gifts or grants.** The Water Resources Commission may accept gifts of money or other property from any source, given for the purposes of ORS 541.700 and 541.705 to 541.770. Money so received shall be paid into the Water Development Fund. Money or other property so received shall be used for the purposes for which received. [1977 c.246 §12; 1985 c.673 §127; 2009 c.907 §§14,41]

**541.855 Biennial report to Legislative Assembly and Governor.** The Water Resources Commission shall make available to the Legislative Assembly and the Governor a biennial report of the transactions of the Water Development Fund and the Water Development Administration and Bond Sinking Fund in such detail as will accurately indicate the transactions and the condition of the funds. [1977 c.246 §29; 1985 c.673 §128]

## NORTH UMPQUA RIVER DAMS

**541.875 Dams and use of water for hydroelectric generation on North Umpqua prohibited; exceptions.** (1) No person shall construct, operate or maintain, and no officer or agency of this state shall issue any permit for the construction, operation or maintenance of, any dam or hydroelectric facility on:

(a) That portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua River and South Umpqua River; or

(b) The main stem Umpqua River from the confluence of the North Umpqua River and the South Umpqua River to the ocean.

(2) Nothing in this section applies to the repair, structural repair, maintenance or improvement of any dam constructed on the North Umpqua River prior to November 1, 1981, with the approval of the Water Resources Commission and the State Department of Fish and Wildlife. The commission and the State Department of Fish and Wildlife shall not unreasonably withhold or delay such approval, but may withhold approval for reasonable cause, including but not limited to a substantiated finding that the repairs, structural repairs, maintenance or improvements:

(a) Fail to comply with applicable safety rules or regulations;

(b) Raise the height of the dam; or

(c) Diminish the current ability of anadromous fish to travel past the dam.

(3) No person shall appropriate and no officer or agency of this state shall issue or approve any license, permit or certificate for the use of water for hydroelectric generation at a dam at the location referred to in subsection (1) of this section. [1981 c.151 §2; 1983 c.652 §2; 1985 c.673 §129; 1991 c.479 §1]

**541.880 Responsibility of government entity for repair or maintenance costs of dams on North Umpqua.** Nothing contained in ORS 541.875 shall be construed to impose any additional obligation on any governmental entity to pay for the repair, structural repair, maintenance or improvement of any existing dam referred to in ORS 541.875 (2). [1991 c.479 §2]

**Note:** 541.880 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## WATERSHED MANAGEMENT AND ENHANCEMENT

### (Definitions)

**541.890 Definitions for ORS 541.890 to 541.969.** As used in ORS 541.890 to 541.969:

(1) "Adaptive management" means applying management or practices over time and across the landscape to achieve site specific resource goals using an integrated and science based approach that results in changes over time in response to feedback or monitoring.

(2) "Associated uplands" includes those lands of a watershed that are critical to the functioning and protection of a riparian area.

(3) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.

(4) "Independent Multidisciplinary Science Team" means the scientific team of recognized experts in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management created under ORS 541.914.

(5) "Native" means indigenous to Oregon and not introduced.

(6) "Oregon Conservation Strategy" means the comprehensive wildlife conservation strategy for this state adopted by the State Fish and Wildlife Commission.

(7) "Oregon Plan" means the guidance statement and framework described in ORS 541.898.

(8) "Protect" or "protection" means to minimize or mitigate adverse effects on native fish or wildlife habitat to the maximum extent practicable given the anticipated duration, geographic scope and primary purpose of proposed activities.

(9) "Restore" or "restoration" means to take actions likely to achieve sustainable population levels of native fish or wildlife and their habitats.

(10) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

(11) "Soil and water conservation district" means a political subdivision of the state as described in ORS 568.550.

(12) "Stewardship" means the careful and responsible management of the environment.

(13) "Tribe" means a federally recognized Indian tribe in Oregon.

(14) "Watershed" means the entire land area drained by a stream or system of connected streams such that all streamflow originating in the area is discharged through a single outlet.

(15) "Watershed council" means a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed. [Formerly 541.351]

**Note:** The amendments to 541.890 by section 7, chapter 771, Oregon Laws 2015, become operative January 1, 2017. See section 9, chapter 771, Oregon Laws 2015. The text that is operative on and after January 1, 2017, is set forth for the user's convenience.

**541.890.** As used in ORS 541.890 to 541.969:

(1) "Adaptive management" means applying management or practices over time and across the landscape to achieve site specific resource goals using an integrated and science based approach that results in changes over time in response to feedback or monitoring.

(2) "Associated uplands" includes those lands of a watershed that are critical to the functioning and protection of a riparian area.

(3) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.900.

(4) "Native" means indigenous to Oregon and not introduced.

(5) "Oregon Conservation Strategy" means the comprehensive wildlife conservation strategy for this state adopted by the State Fish and Wildlife Commission.

(6) "Oregon Plan" means the guidance statement and framework described in ORS 541.898.

(7) "Protect" or "protection" means to minimize or mitigate adverse effects on native fish or wildlife habitat to the maximum extent practicable given the anticipated duration, geographic scope and primary purpose of proposed activities.

(8) "Restore" or "restoration" means to take actions likely to achieve sustainable population levels of native fish or wildlife and their habitats.

(9) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

(10) "Soil and water conservation district" means a political subdivision of the state as described in ORS 568.550.

(11) "Stewardship" means the careful and responsible management of the environment.

(12) "Tribe" means a federally recognized Indian tribe in Oregon.

(13) "Watershed" means the entire land area drained by a stream or system of connected streams such that all streamflow originating in the area is discharged through a single outlet.

(14) "Watershed council" means a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed.

**Note:** 541.890 to 541.969 were added to and made a part of ORS chapter 541 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## (The Oregon Plan)

**541.895 Legislative findings; principles of Oregon Plan; policy.** (1) The Legislative Assembly finds that:

(a) The long-term protection of the water resources of this state, including sustainable watershed functions, is an essential component of Oregon's environmental and economic stability and growth;

(b) Each watershed in Oregon is unique, requiring different management techniques and programs;

(c) Management techniques and programs for the protection and enhancement of watersheds can be most effective and efficient when voluntarily initiated at the local level;

(d) Cooperative partnerships between affected private individuals, interested citizens, tribes and representatives of local, state and federal agencies may improve opportunities to achieve the protection, enhancement and restoration of the state's watersheds; and

(e) The establishment of such cooperative partnerships should be encouraged by local individuals, local organizations and representatives of state agencies.

(2) The Legislative Assembly declares that the Oregon Plan for integrating regulatory efforts while fostering incentives and voluntary action for environmental stewardship should be founded upon the following principles:

(a) Promoting collaboration and partnerships among local, state, regional, tribal and federal governments and private individuals and organizations;

(b) Establishing clear, technically defensible, practicable and achievable recovery and restoration objectives;

(c) Assessing the conditions in each watershed to determine the quality of the existing environment, to identify the causes for declines in habitat, fish and wildlife populations and water quality, and to assist with the development of locally integrated action plans for watersheds that will achieve agreed-upon protection and restoration objectives;

(d) Coordinating implementation of integrated watershed action plans;

(e) Monitoring and ensuring implementation of the integrated watershed action plans using adaptive management to make appropriate changes in action plans and goals as needed; and

(f) Establishing funding priorities across basins based on the value of programs and projects for watershed and habitat recovery.

(3) It is the policy of the State of Oregon that:

(a) Voluntary programs initiated at the local level to protect and enhance the quality and stability of watersheds are a high priority of the state and should be encouraged;

(b) State agencies are encouraged to respond cooperatively to local watershed protection and enhancement efforts and coordinate their respective activities with other state agencies and affected local, regional, tribal and federal governments and private landowners to the greatest degree practicable; and

(c) State agencies responding to local watershed protection and enhancement efforts are encouraged to foster local watershed planning, protection and enhancement efforts before initiating respective action within a watershed. [Formerly 541.353]

**Note:** See second note under 541.890.

**541.898 Oregon Plan described; goals; elements; Governor to negotiate with federal government.** (1) As used in this section when referring to salmonid recovery:

(a) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) "Population" means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by the Independent Multidisciplinary Science Team, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative Assembly.

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed

conditions and create watershed action plans and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection. [Formerly 541.405]

**Note:** The amendments to 541.898 by section 8, chapter 771, Oregon Laws 2015, become operative January 1, 2017. See section 9, chapter 771, Oregon Laws 2015. The text that is operative on and after January 1, 2017, is set forth for the user's convenience.

**541.898.** (1) As used in this section when referring to salmonid recovery:

(a) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) "Population" means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by independent scientific review panels, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative Assembly.

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed conditions and create watershed action plans and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection.

**Note:** See second note under 541.890.

## (Oregon Plan Administration)

**541.900 Oregon Watershed Enhancement Board; officers; qualifications.** (1) The Oregon Watershed Enhancement Board is created. The board shall consist of 17 members as set forth in subsection (2) of this section. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2)(a) The 11 voting members of the board shall be knowledgeable about natural resource issues, represent all geographic regions of this state and include at least one representative of a tribe. The board shall consist of the following:

(A) Each of the following boards or commissions shall designate one member of their board or commission to serve on the Oregon Watershed Enhancement Board:

(i) The Environmental Quality Commission;

(ii) The State Fish and Wildlife Commission;

(iii) The State Board of Forestry;

(iv) The State Board of Agriculture; and

(v) The Water Resources Commission; and

(B) Six public members appointed by the Governor and confirmed by the Senate in accordance with ORS 171.562 and 171.565. Each public member shall serve for a term of four years. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms.

(b) In addition to the voting members, the director of the Oregon State University Extension Service, or the director's designee, shall serve as a nonvoting member of the board and shall participate as needed in the activities of the board.

(c) In addition to the voting and nonvoting members designated in paragraphs (a) and (b) of this subsection, representatives of the following federal agencies shall be invited to serve as additional nonvoting members of the board:

(A) A representative of the United States Forest Service.

(B) A representative of the United States Bureau of Land Management.

(C) A representative of the Natural Resources Conservation Service of the United States Department of Agriculture.

(D) A representative of the United States Environmental Protection Agency.

(E) A representative of the National Marine Fisheries Service of the United States Department of Commerce.

(3) The voting members of the board shall select a chairperson from among the voting members of the board.

(4) At least eight voting members of the board must be present to take action to award grant funds under ORS 541.926. If three or more voting members object to an award of grant funds, the board shall reject the proposal and direct the applicant to revise the proposal to comply with the requirements of ORS 541.947, 541.956 and 541.958 and resubmit the proposal. [Formerly 541.360]

**Note:** See second note under 541.890.

**541.902 Executive director of Oregon Watershed Enhancement Board; appointment.** (1) Subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, the Governor shall appoint an executive director of the Oregon Watershed Enhancement Board. The executive director shall be an individual qualified by training and experience and shall serve for a term of four years, at the pleasure of the Governor.

(2) The executive director shall receive a salary as provided by law or, if not so provided, as prescribed by the Governor.

(3) In addition to salary, but subject to any applicable law regulating travel and other expenses of state officers and employees, the executive director shall be reimbursed for actual and necessary travel and other expenses incurred by the executive director in the performance of official duties.

(4) Subject to any applicable provisions of the State Personnel Relations Law, the executive director shall appoint all subordinate officers and employees of the board, prescribe their duties and fix their compensation. [Formerly 541.362]

**Note:** See second note under 541.890.

**541.904 Authority of executive director to enter into interagency agreements.** In addition to any other authority granted to the executive director of the Oregon Watershed Enhancement Board, the executive director, on behalf of the board, may enter into interagency agreements necessary to carry out the duties and responsibilities of the board. [Formerly 541.363]

**Note:** See second note under 541.890.

**541.906 Rules.** (1) In accordance with the applicable provisions of ORS chapter 183, the Oregon Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to:

(a) Grant application requirements and review and selection criteria for projects to receive assistance or funding from the board, including funding from the Flexible Incentives Account established under ORS 541.937.

(b) Criteria for distributing to those entities specified in ORS 541.932 those funds appropriated to the board for funding projects. The criteria shall include a process for periodic review of the distribution by the appropriate legislative committee.

(c) Conditions for approval by the board for implementation of a project including but not limited to:

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employees of any cooperating agency providing staff services for the board access to the project area;

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project;

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board; and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project. [Formerly 541.396]

**Note:** See second note under 541.890.

**541.910 Voluntary local watershed councils; protection against liability.** (1) Local government groups are encouraged to form voluntary local watershed councils in accordance with the guidelines set forth in subsection (2) of this section. The Oregon Watershed Enhancement Board may work cooperatively with any local watershed council that may be formed. Requests from local watershed councils for state assistance shall be evaluated on the basis of whether the requesting organization reflects the interests of the affected watershed and the potential to protect and enhance the quality of the watershed in question.

(2) Local watershed councils formed under subsection (1) of this section shall consist of a majority of local residents, including local officials. A watershed council may be a new or existing organization as long as the council represents a balance of interested and affected persons within the watershed and assures a high level of citizen involvement in the development and implementation of a watershed action program. A local watershed council may include representatives of local government, representatives of nongovernment organizations and private citizens, including but not limited to:

(a) Representatives of local and regional boards, commissions, districts and agencies;

(b) Representatives of federally recognized Indian tribes;

(c) Public interest group representatives;

(d) Private landowners;

(e) Industry representatives;

(f) Members of academic, scientific and professional communities; and

(g) Representatives of state and federal agencies.

(3) If more than one watershed council exists in a county, each watershed council shall periodically report the activities of the council to the county governing body.

(4) The Oregon Department of Administrative Services may provide to voluntary local watershed councils and their officers, employees and agents acting within the scope of their employment or duties, protection against liability as part of the insurance provided to the Oregon Watershed Enhancement Board pursuant to ORS 278.120 to 278.215. The Oregon Watershed Enhancement Board, after consulting the Oregon Department of Administrative Services and local watershed councils, shall establish guidelines for liability coverage and limits of coverage. The Oregon Department of Administrative Services shall determine any additional contributions to be apportioned to the Oregon Watershed Enhancement Board for extending insurance to voluntary local watershed councils, and the Oregon Watershed Enhancement Board shall pay the assessments from such moneys as may be available for those assessments. [Formerly 541.388]

**Note:** See second note under 541.890.

**541.912 Duties of Natural Resources Division.** In addition to the duties conferred on the Natural Resources Division of the State Department of Agriculture under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933, the division shall:

(1) In cooperation with the Oregon Watershed Enhancement Board, provide appropriate personnel who, under the direction of the board, shall:

(a) Serve as community advisors to cooperatively develop watershed enhancement projects with volunteers; and

(b) Cooperatively evaluate watershed enhancement projects with those responsible for project implementation.

(2) Provide technical assistance to individuals responsible for implementation of a watershed enhancement project.

(3) Work with the Oregon Watershed Enhancement Board to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning. [Formerly 541.390]

**Note:** See second note under 541.890.

**541.914 Independent Multidisciplinary Science Team; duties; agency response to science team recommendations.** (1) There is created an Independent Multidisciplinary Science Team consisting of up to seven scientists with recognized expertise in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management. The Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint the Independent Multidisciplinary Science Team. The decision to appoint a member of the team shall be a unanimous decision by the appointing authorities. The members of the Independent Multidisciplinary Science Team shall serve for four years and may be reappointed for a subsequent term. The team shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the National Academy of Sciences.

(2) The Independent Multidisciplinary Science Team shall:

(a) Review implementation of the Oregon Plan and other programs for achieving healthy streams as described in ORS 541.898.

(b) Prepare and submit to the Governor, the Legislative Assembly and the public an annual report on the implementation of the Oregon Plan, including any recommendations for changes or adjustments to the initiative.

(c) Serve as an independent scientific peer review panel to the state agencies responsible for developing and implementing the Oregon Plan and other salmon or stream enhancement programs throughout this state.

(d) Report regularly to the appropriate legislative committee concerning the duties described under this subsection and other requests by the committee.

(3) If the Independent Multidisciplinary Science Team submits suggestions to an agency responsible for implementing a portion of the Oregon Plan, the agency shall respond in writing to the team, explaining how the agency intends to implement the suggestion or why the agency does not implement the suggestion. The team shall include any agency responses in its report under subsection (2)(b) of this section.

(4) Members of the Independent Multidisciplinary Science Team shall be compensated for their services and are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

(5) Compensation for members of the Independent Multidisciplinary Science Team shall be determined by the appointing authorities.

(6) The office of the Governor shall provide administrative support and services to the Independent Multidisciplinary Science Team. [Formerly 541.409]

**Note:** 541.914 is repealed January 1, 2017. See sections 6 and 9, chapter 771, Oregon Laws 2015.

**Note:** See second note under 541.890.

**541.916 Responsibilities of state agency participating in Oregon Plan.** Any state agency participating in the programs and activities described in ORS 541.898 shall:

(1) Upon request of any person who believes the person's private property rights may be adversely affected by the Oregon Plan, provide the person with written information about the agency's dispute resolution services available pursuant to ORS 183.502.

(2) Report to the appropriate legislative committee any dispute resolution services requested under this section, and the outcome of such dispute resolution. [Formerly 541.411]

**Note:** See second note under 541.890.

**541.918 Implementation of grant programs.** In cooperation with other state, interstate and federal agencies, tribes, local governments, watershed councils, soil and water conservation districts, not-for-profit organizations and volunteer groups, the Oregon Watershed Enhancement Board shall facilitate the implementation of the grant programs established under ORS 541.890 to 541.969. [Formerly 541.368]

**Note:** See second note under 541.890.

**(Watershed Enhancement Program)**

**541.920 Conduct of watershed enhancement program; integration of geographic information.** (1) The Oregon Watershed Enhancement Board shall conduct a watershed enhancement program to benefit all users of the waters of this state. The board shall conduct the program in a manner that:

(a) Provides the greatest possible opportunity for volunteer participation to achieve the goals of the program; and

(b) Coordinates the information, data and data retrieval needs of the natural resource agencies of the state with the State Service Center for Geographic Information Systems.

(2) In order to effectuate the program described in this section, the board shall establish protocols, policies and procedures necessary to integrate and organize geographic information and make it available to persons and entities involved in implementation of the Oregon Plan.

(3) In working with the State Service Center for Geographic Information Systems, the board shall ensure that:

(a) Information received by the center is formatted in a manner that results in an integrated geographic information system that meets the needs of all local, state, regional, tribal and federal entities involved in implementation of the Oregon Plan; and

(b) The data are available to local, state and federal agencies and to any person implementing activities under the Oregon Plan.

(4) The program developed under this section shall include development and implementation, in coordination with the natural resource agencies of the state, of a statewide monitoring program for activities conducted under the Oregon Plan. [Formerly 541.365]

**Note:** See second note under 541.890.

**541.923 Watershed management program; project funding; high priority watersheds.** (1) The Oregon Watershed Enhancement Board shall initiate a watershed management program that relies on the establishment of voluntary local watershed

councils comprised of residents, state and federal agency staff, members of federally recognized Indian tribes and other citizens interested in the management of watersheds and that provides for the development by these partnerships of local plans that may include but are not limited to the assessment of the watershed condition, the creation of a watershed action plan and a strategy for implementing the action plan. The program shall focus state resources on the achievement of sustainable watershed health, including funding major projects that contribute to the overall health of a watershed. In addition, the board shall fund smaller, voluntary projects for watershed enhancement and for restoration of riparian areas and associated uplands.

(2) In carrying out the program under subsection (1) of this section, the board may designate high priority watersheds. However, the designation of high priority watersheds is intended only as a management tool for state agencies in allocating resources to support coordinated watershed management activities. Such designation is not intended to establish or confer any right, duty or authority, nor to have any legal significance beyond that described in this section, nor to discourage or prohibit the formation and function of voluntary local watershed councils in other watersheds.

(3) The elected officials representing the appropriate local government groups containing or within a proposed watershed council area shall determine whether to participate in the voluntary formation of a local watershed council. When multiple local government groups are involved within an area that would be served by a watershed council, the affected local government groups shall together determine their respective roles and the appropriate method for appointing members to a local watershed council. [Formerly 541.384]

**Note:** See second note under 541.890.

**541.926 Duties of board; grant program; advisory committees.** (1) In carrying out the watershed enhancement program described in ORS 541.920, the Oregon Watershed Enhancement Board shall:

(a) Coordinate the board's funding of enhancement projects with the activities of the Natural Resources Division staff and other agencies, especially those agencies working together through a system of coordinated resource management planning.

(b) Use the expertise of the appropriate state agency according to the type of enhancement project.

(c) Provide educational and informational materials to promote public awareness and involvement in the watershed enhancement program.

(d) Coordinate and provide for or arrange for assistance in the activities of persons, agencies or political subdivisions developing local watershed enhancement projects funded by the board.

(e) Grant funds for the support of watershed councils in assessing watershed conditions, developing action plans, implementing projects and monitoring results and for the implementation of watershed enhancement projects from such moneys as may be available to the board therefor.

(f) Develop and maintain a centralized repository for information about the effects of watershed enhancement and education projects.

(g) Give priority to proposed watershed enhancement projects receiving funding or assistance from other sources.

(h) Identify gaps in research or available information about watershed health and enhancement.

(i) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to watershed enhancement incorporate the state's intent to the fullest extent practicable.

(j) Encourage the use of nonstructural methods to enhance the riparian areas and associated uplands of Oregon's watersheds.

(k) Determine criteria for utilizing the private sector, both not-for-profit and for-profit organizations, to provide landowners with technical assistance to help develop and implement conservation easements and resource improvement projects.

(2) In accordance with ORS 541.890 to 541.969, the Oregon Watershed Enhancement Board shall administer a watershed conservation grant program using funds from the Watershed Conservation Grant Fund established under ORS 541.947, from the Natural Resources Subaccount established under ORS 541.942 and from the Flexible Incentives Account established under ORS 541.937.

(3) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee. [Formerly 541.370]

**Note:** See second note under 541.890.

**541.929 Duties of board; integrated watershed planning framework; expenditures.** (1) In addition to the duties set forth in ORS 541.926, in carrying out the provisions of ORS 541.890 to 541.969, the Oregon Watershed Enhancement Board:

(a) Shall establish a framework for a locally based integrated watershed planning and management process designed to assist watershed councils, soil and water conservation districts and other partners and to support the efforts of watershed councils, soil and water conservation districts and other partners to work within the requirements of state and federal laws without duplication of planning effort. The framework shall include all of the following:

(A) Guidance and protocols for watershed assessments to encourage consistent assessment methods across all watersheds and agencies, including assessment of cumulative effects. At a minimum, such guidance shall address the following plan components:

(i) A description of the watershed;

(ii) An assessment of current watershed conditions and the distribution and condition of habitat; and

(iii) Identification of conditions preventing watershed restoration.

(B) Guidance on how to prepare watershed action plans. At a minimum, such guidance shall address the following plan components:

(i) Applicable water quality standards and native salmonid and habitat recovery objectives;

(ii) Proposed measures needed to restore watershed health;

(iii) Timeline and budget estimates for implementation of action measures in priority order; and

(iv) Monitoring and evaluation systems.

(b) May review plans, actions and rules of state agencies pertaining to restoration and protection grants for the purpose of coordinating the board's grant program with other ongoing grant programs.

(c) Shall establish statewide and regional goals and priorities that shall become the basis for funding decisions by the board. In adopting such goals and priorities, the board shall adopt priorities for grant funding based on the Oregon Plan, the Oregon Conservation Strategy, the watershed health and native fish recovery programs of this state and measurable goals. In carrying out this function, the board shall consider local economic and social impacts among the criteria.

(d) Shall support development and implementation of a system that enables standardized collection, management and reporting of natural resources information in Oregon, including water data, geographic information system data and information on native fish and wildlife and habitat.

(e) Shall promote the availability of information on the effects of watershed enhancement.

(f) May not have regulatory or enforcement authority except for the fiscal responsibilities described in ORS 541.890 to 541.969.

(2) In addition to any other expenditures consistent with ORS 541.945, moneys in the Watershed Conservation Operating Fund may be expended in the form of grants or allocations:

(a) To soil and water conservation districts and watershed councils for costs of employing staff to further the development and implementation of activities, projects and programs for the purposes described in ORS 541.945; or

(b) For a specific project or program application or for implementation of an approved action plan.

(3) To the maximum extent practicable, soil and water conservation districts and watershed councils shall share technical staff. [Formerly 541.371]

**Note:** See second note under 541.890.

**541.932 Watershed enhancement project assistance; criteria for funding approval; acquisition of interest in land or water.** (1)(a) The following entities may submit a request for funding for, or for advice and assistance in developing, a project under ORS 541.890 to 541.969:

(A) A person;

(B) An Indian tribe;

(C) A watershed council;

(D) A soil and water conservation district;

(E) A community college;

(F) A public university listed in ORS 352.002;

(G) An independent not-for-profit institution of higher education; or

(H) A political subdivision of this state that is not a state agency.

(b) A state agency or federal agency may apply for funding under this section only as a coapplicant with an entity described in paragraph (a) of this subsection.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the Oregon Watershed Enhancement Board, regardless of the anticipated funding source for the project.

(3) The board may establish a grant program through soil and water conservation districts organized under ORS 568.210 to 568.808 and 568.900 to 568.933 that provides funds for local implementation of watershed enhancement, education and monitoring efforts.

(4) The board may fund implementation of action plans based on a watershed assessment that addresses water quality and aquatic resources of the watershed.

(5) A project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment, site specific in-stream structures, acquisitions or leases of land or water rights from a willing owner, watershed assessments, landowner incentives and action plan development, implementation and monitoring.

(6) The actions of a soil and water conservation district carried out pursuant to a grant program established by the board under subsection (3) of this section shall not be subject to review and approval by the Natural Resources Division under ORS 561.400.

(7) If a project or a portion of a project is not subject to the funding criteria described in ORS 541.958 and applies to receive funding from the board, the board may approve the project or portion of a project for funding only if the project or portion of a project:

(a) Is based on sound principles of native fish or wildlife habitat conservation or watershed management;

(b) Uses methods most adapted to the project locale;

(c) Meets the criteria established by the board under ORS 541.906; and

(d) Contributes to either:

(A) The improved health of a stream, lake or reservoir and toward the achievement of standards that satisfy the requirements of the Federal Water Pollution Control Act (P.L. 92-500), as amended; or

(B) The conservation or restoration of habitat for, or of watershed or ecosystem function for, native fish or wildlife.

(8) The Oregon Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(9) The Oregon Watershed Enhancement Board may fund projects involving the acquisition of lands and waters, or interests therein from willing sellers, for the purpose of maintaining or restoring watersheds and habitat for native fish or wildlife. Interests in these lands and waters may be held by local, state and federal agencies, tribes, not-for-profit land conservation organizations and trusts, public universities listed in ORS 352.002, independent not-for-profit institutions of higher education or political subdivisions of this state, as long as the entity continues to use the land or water for the purposes specified under section 4b, Article XV of the Oregon Constitution.

(10) If the Oregon Watershed Enhancement Board approves funding for a project under this section, the board may not disburse funds to the applicant for any part of the project that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body until the applicant presents evidence that the agency has granted the permit or license. [Formerly 541.375]

**Note:** See second note under 541.890.

**(Program Funding)**

**541.935 Oregon Plan for Salmon and Watersheds Legal Fund; sources; uses.** There is hereby established in the State Treasury the Oregon Plan for Salmon and Watersheds Legal Fund for the purpose of funding the activities of the Department of Justice in providing legal advice to or appearing on behalf of a state agency that takes, funds or authorizes actions when those actions are challenged under the federal Endangered Species Act (16 U.S.C. 1531 et seq.), as amended, or the Federal Water Pollution Control Act (P.L. 92-500), as amended, to the limits of the fund. The fund created by this section shall consist of all moneys received on behalf of the fund by gift, grant or appropriation, from whatever source. Moneys in the fund are continuously appropriated to the Department of Justice for the uses described in this section. Such uses may include, but need not be limited to, participation in a legal proceeding involving an action taken by a citizen or political subdivision of this state, where that action is authorized or funded by this state, and where:

(1) The state agency that authorizes or funds the action:

(a) Determines that the action is consistent with the Oregon Plan and is in compliance with applicable state laws; and

(b) Recommends to the Attorney General that the state participate in such legal challenge; and

(2) The Attorney General, after consulting with the Governor, the President of the Senate and the Speaker of the House of

Representatives, determines that such participation is in the best strategic interest of the state. [Formerly 541.415]

**Note:** See second note under 541.890.

**541.937 Flexible Incentives Account; sources; uses.** (1) There is created a Flexible Incentives Account in the State Treasury, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The moneys in the account are continuously appropriated to the Oregon Watershed Enhancement Board for the purposes specified in this section.

(2) The Oregon Watershed Enhancement Board shall use the Flexible Incentives Account to assist landowners in the implementation of strategies intended to protect and restore native species of fish, wildlife and plants and to maintain long-term ecological health, diversity and productivity in a manner consistent with statewide, regional or local conservation plans. The board shall seek to fund those strategies that offer the greatest public benefit at the lowest cost. The account may also be used to fund activities to achieve the purposes of stewardship agreements entered into under ORS 541.423 between a landowner, or a representative of the landowner, and the State Department of Agriculture or the State Board of Forestry.

(3) The account shall consist of moneys appropriated to it by the Legislative Assembly and moneys provided to the board by federal, state, regional or local governments for the purposes specified in this section. The board may accept private moneys in the form of gifts, grants and bequests for deposit into the account. [Formerly 541.381]

**Note:** See second note under 541.890.

**541.940 Parks and Natural Resources Fund.** (1) There is established in the State Treasury, separate and distinct from the General Fund, the Parks and Natural Resources Fund to be administered by the Oregon Department of Administrative Services. All moneys transferred from the State Lottery Fund and all other moneys authorized to be transferred to the Parks and Natural Resources Fund from whatever source are appropriated continuously for the public purposes of restoring and protecting Oregon's parks, beaches, watersheds and native fish and wildlife habitats. Fifteen percent of the net proceeds from the Oregon State Lottery shall be deposited in the Parks and Natural Resources Fund created under this subsection.

(2) The Legislative Assembly may not limit expenditures from the Parks and Natural Resources Fund. The Legislative Assembly may appropriate other moneys or revenues to the Parks and Natural Resources Fund. [Formerly 541.377]

**Note:** See second note under 541.890.

**541.942 Natural Resources Subaccount.** (1) Of the moneys deposited into the Parks and Natural Resources Fund created under ORS 541.940 from the Oregon State Lottery, 50 percent shall be deposited into a Natural Resources Subaccount for the public purpose of financing the restoration and protection of native fish and wildlife, watersheds and water quality in Oregon. The State Treasurer may invest and reinvest the moneys in the Natural Resources Subaccount as provided in ORS 293.701 to 293.857.

(2) Moneys in the Natural Resources Subaccount shall be used to accomplish each of the following:

(a) Protecting and improving water quality in the rivers, lakes and streams of this state by restoring natural watershed functions or stream flows;

(b) Securing long-term protection for lands and waters that provide significant habitats for native fish and wildlife;

(c) Restoring and maintaining habitat needed to sustain healthy and resilient populations of native fish and wildlife;

(d) Maintaining the diversity of plants, animals and ecosystems in this state;

(e) Involving people in voluntary actions to protect, restore and maintain the ecological health of lands and waters in this state; and

(f) Remedying the conditions that limit the health of fish and wildlife, fish and wildlife habitats and watershed functions that are in the greatest need of conservation.

(3) Except as provided in subsections (4) and (5) of this section, of the moneys deposited into the Natural Resources Subaccount from the Oregon State Lottery:

(a) Sixty-five percent of the moneys shall be deposited into the Watershed Conservation Grant Fund established under ORS 541.947 to be used by the Oregon Watershed Enhancement Board for the purposes set forth in ORS 541.956; and

(b) Thirty-five percent of the moneys shall be deposited into the Watershed Conservation Operating Fund established under ORS 541.945.

(4) If the amount transferred from the Oregon State Lottery to the Parks and Natural Resources Fund during a biennium is more than 150 percent of the amount that was transferred during the 2009-2011 biennium, except as provided in subsection (5) of this section, the State Treasurer shall, during the next following biennium, deposit

from the Natural Resources Subaccount to the Watershed Conservation Grant Fund the amount described in subsection (3)(a) of this section plus an amount equal to the difference between the amount deposited from the subaccount to the Watershed Conservation Grant Fund during the preceding biennium and 70 percent of the moneys received by the subaccount from the Oregon State Lottery during the preceding biennium.

(5) The requirements in subsections (3) and (4) of this section apply only for biennia in which the Legislative Assembly does not require a greater percentage of the Natural Resources Subaccount moneys to be deposited into the Watershed Conservation Grant Fund. The Legislative Assembly may not authorize the percentage of Natural Resources Subaccount moneys deposited into the Watershed Conservation Grant Fund in a biennium to be less than the percentage required to be deposited under subsections (3) and (4) of this section. [2011 c.643 §9]

**Note:** See second note under 541.890.

**541.945 Watershed Conservation Operating Fund; purposes.** (1) The Watershed Conservation Operating Fund is established in the State Treasury separate and distinct from the General Fund. The Watershed Conservation Operating Fund shall consist of all moneys placed in the fund as provided by law. The purpose of the fund is to carry out activities that support all of the purposes described in ORS 541.942. Moneys in the Watershed Conservation Operating Fund shall be used for each of the following:

(a) To develop, implement or update state conservation strategies or plans to protect or restore native fish or wildlife habitats or to protect or restore natural watershed or ecosystem functions to improve water quality or stream flows;

(b) To develop, implement or update regional or local strategies or plans that are consistent with state strategies or plans described in paragraph (a) of this subsection;

(c) To develop, implement or update state strategies or plans to prevent, detect, control or eradicate invasive species that threaten native fish or wildlife habitats or that impair water quality;

(d) To support local delivery, including but not limited to delivery by watershed councils, soil and water conservation districts and other community-based organizations, of watershed education activities and other programs or projects that protect or restore native fish or wildlife habitats, watersheds or ecosystems;

(e) To pay the Oregon Watershed Enhancement Board costs of administering the Watershed Conservation Grant Fund;

(f) To enforce fish and wildlife laws and regulations and fish and wildlife habitat protection laws and regulations; and

(g) To reimburse the Secretary of State as described in ORS 297.230 for the costs of audits performed by the Secretary of State under section 4c, Article XV of the Oregon Constitution.

(2) Interest accruing to the Watershed Conservation Operating Fund shall be credited to the fund. Watershed Conservation Operating Fund moneys appropriated and not expended by the completion of a biennium shall remain in the Watershed Conservation Operating Fund.

(3) Any public or private source may make gifts or grants to the Watershed Conservation Operating Fund. [2011 c.643 §16]

**Note:** 541.945 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**541.947 Watershed Conservation Grant Fund.** (1) The Watershed Conservation Grant Fund is established separate and distinct from the General Fund. The Watershed Conservation Grant Fund shall consist of all moneys placed in the fund as provided by law. All moneys in the Watershed Conservation Grant Fund are continuously appropriated to the Oregon Watershed Enhancement Board for grants to fund projects described in ORS 541.958 that use grant moneys as provided under ORS 541.956. Interest accruing to the Watershed Conservation Grant Fund shall be credited to the fund. Watershed Conservation Grant Fund moneys appropriated and not expended by the completion of a biennium shall remain in the Watershed Conservation Grant Fund.

(2) The board also may accept gifts and grants from any public or private source for the purpose of providing the grants described in this section. [2011 c.643 §12]

**Note:** See second note under 541.890.

**541.949 Authority of board to accept moneys; disposition.** (1) The Oregon Watershed Enhancement Board may accept moneys from any public or private source, including the federal government, made available for the purpose of encouraging, promoting and securing watershed enhancement or to facilitate and assist in carrying out the functions of the board, including administrative expenses, as provided by law.

(2) All moneys received by the board under this section shall be deposited in the State Treasury and kept in separate accounts in the General Fund designated according to the purposes for which moneys were made available.

(3) Notwithstanding the provisions of ORS 291.238, all moneys received under this section are continuously appropriated to the board for the purpose for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [Formerly 541.372]

**Note:** See second note under 541.890.

**541.950 Authority of Governor to accept moneys; disposition.** (1) The Governor may receive gifts, grants, bequests, endowments and donations of moneys from public and private sources, including the federal government, for the purpose of implementing the Oregon Plan, as described in ORS 541.898, and the Oregon Conservation Strategy.

(2) If requested by the source, the Governor shall deposit moneys received under this section into the Watershed Conservation Grant Fund for use as provided under ORS 541.956. The Governor shall deposit all other moneys received under this section in the State Treasury to the credit of the Watershed Conservation Operating Fund established under ORS 541.945. [Formerly 541.373]

**Note:** See second note under 541.890.

**541.953** [Formerly 541.379; repealed by 2011 c.643 §27]

**541.954** [Formerly 541.397; repealed by 2011 c.643 §29]

## (Program Projects)

**541.956 Watershed Conservation Grant Fund purposes.** The purpose of the Watershed Conservation Grant Fund is to provide funding for grants to achieve the purposes and uses described in ORS 541.942 and to implement the mission of the Oregon Plan, including but not limited to grants to further the Oregon Conservation Strategy and the watershed health and native fish recovery programs of this state. Moneys appropriated to the fund shall be used only for the following activities:

(1) Acquiring from willing owners interests in land or water that will protect or restore native fish or wildlife habitats. The interests may include, but need not be limited to, fee interests, conservation easements or leases.

(2) Projects to protect or restore native fish habitat or wildlife habitat.

(3) Projects to protect or restore natural watershed or ecosystem functions in order to improve water quality or stream flows.

(4) Resource assessment, planning, design and engineering, technical assistance, monitoring and outreach activities necessary for carrying out subsections (1) to (3) of this section. [2011 c.643 §13]

**Note:** See second note under 541.890.

**541.958 Criteria for project receiving moneys from Watershed Conservation Grant Fund.** The Oregon Watershed Enhancement Board may award funds from the Watershed Conservation Grant Fund only for activities described in ORS 541.956. Any project that the board approves for funding shall comply with the following criteria:

(1) There is a matching contribution from other program funds, in-kind services or other investment in the project;

(2) The project to be funded is reviewed and approved by a technical committee established in accordance with ORS 541.926; and

(3) The project provides a public benefit by supporting improved:

(a) Water quality;

(b) Native fish or wildlife habitat; or

(c) Watershed or ecosystem function. [Formerly 541.401]

**Note:** See second note under 541.890.

**541.960 Title restrictions on land purchased through grant agreement; rules.** (1) Land purchased through a grant agreement with the Oregon Watershed Enhancement Board shall be subject to title restrictions that are consistent with the conservation purposes of the grant and give the board the authority to approve, approve with conditions or deny the sale or transfer of the land. The board may require conditions on the sale or transfer to:

(a) Ensure consistency with the intent of the original grant;

(b) Ensure the ability of the party receiving the land through the sale or transfer to carry out the obligations under the grant agreement; and

(c) Address the disposition of proceeds from the sale or transfer, including any provisions for repayment, with interest, of any grant funds.

(2) The board may not allow a sale or transfer that results in any profit to any person.

(3) The board shall, by rule, define "profit" for the purpose of not allowing sales or transfers and shall specify the process and criteria that the board will use in considering whether to approve, approve with conditions or deny a sale or transfer. [Formerly 541.376]

**Note:** See second note under 541.890.

## (Reports)

**541.963 Oregon Watershed Enhancement Board report to Legislative Assembly.** The Oregon Watershed Enhancement

Board shall report biennially to the Legislative Assembly on the implementation of the management program under ORS 541.923 and grants awarded under ORS 541.956. The report shall include but need not be limited to:

(1) An explanation of the effectiveness and workability of the partnership process described in ORS 541.923;

(2) A description of any modifications to the process that have been instituted; and

(3) Recommendations concerning the need for future legislative action. [Formerly 541.392]

**Note:** See second note under 541.890.

**541.965 State agency reports to be provided to board.** In order to assist the Oregon Watershed Enhancement Board in developing and maintaining a centralized repository under ORS 541.926, the following agencies shall provide the board with a copy of any report produced by the agency that is related to enhancement or restoration of riparian areas or associated uplands:

(1) The Department of Environmental Quality.

(2) The State Department of Fish and Wildlife.

(3) The Water Resources Department.

(4) The State Forestry Department.

(5) The State Department of Agriculture.

(6) The agricultural extension service of Oregon State University. [Formerly 541.395]

**Note:** See second note under 541.890.

**541.967 Agency report to legislative committee prior to adjustment of expenditure limitation or additional funding related to Oregon Plan.** Notwithstanding any other provision of law, if during the interim between legislative sessions any agency responsible for implementing a portion of the Oregon Plan or a program for the enhancement or restoration of streams throughout the state requires additional funding or an adjustment to the agency's expenditure limitations as approved by the Legislative Assembly to complete implementation of the Oregon Plan, the agency shall first submit a report to the appropriate legislative committee. The committee shall review the request and present a recommendation to the Emergency Board at the time the agency submits its request to the Emergency Board. [Formerly 541.413]

**Note:** See second note under 541.890.

**541.969 Report to Legislative Assembly by state agencies receiving subaccount moneys.** Each state agency that receives moneys from the Natural Resources Subaccount created under ORS 541.942 shall submit a report to the Legislative Assembly each biennium regarding the use of the moneys by the agency. The report shall include, but need not be limited to, a description of the measurable biennial and cumulative results of the activities and programs for which the agency expended the moneys. Reports required by this section are in addition to any audit report supplied by the Secretary of State under ORS chapter 297. [2011 c.643 §10]

**Note:** See second note under 541.890.

**541.972 Oregon Watershed Enhancement Board reports to Governor and Legislative Assembly on Oregon Plan.** (1) The Oregon Watershed Enhancement Board shall, by January 15 of each odd-numbered year, submit a report to the Governor and to the appropriate committee or committees of the Legislative Assembly that assesses the implementation and effectiveness of the Oregon Plan in the state. The report shall address each drainage basin in the state and shall include, but need not be limited to:

(a) A status report on watershed and key habitat conditions in the drainage basin based on available information;

(b) An assessment of data and information needs deemed critical to monitoring and evaluating watershed and habitat enhancement programs and efforts;

(c) An overview of state agency programs addressing watershed conditions;

(d) An overview of voluntary restoration activities addressing watershed conditions;

(e) A summary of investments made by the board from funds received under section 4b, Article XV of the Oregon Constitution, and all other sources; and

(f) The recommendations of the board for enhancing the effectiveness of Oregon Plan implementation in each drainage basin.

(2) In order to provide the board with the information necessary to complete the report described in subsection (1) of this section, each natural resources agency shall provide information requested by the board in the format and at the times determined by the board.

(3) For purposes of this section, "natural resources agency" includes:

(a) Department of Environmental Quality;

(b) State Department of Agriculture;

(c) State Department of Fish and Wildlife;

(d) State Forestry Department;

(e) Department of State Lands;

(f) Water Resources Department;

(g) Department of Land Conservation and Development;

(h) State Department of Geology and Mineral Industries;

(i) Oregon Watershed Enhancement Board;

(j) Fish and Wildlife Division of the Department of State Police;

(k) Department of Transportation;

(L) State Parks and Recreation Department;

(m) Oregon Business Development Department;

(n) State Marine Board; and

(o) Any other state agency that is required to manage, allocate or protect natural resources, either as the primary responsibility of the agency or in conjunction with the primary responsibilities of the agency.

(4) In addition to the report specified under subsection (1) of this section, the Oregon Watershed Enhancement Board shall report regularly during the interim on the implementation of the Oregon Plan to the appropriate legislative committee. [Formerly 541.420]

**Note:** 541.972 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## PENALTIES

**541.990 Penalties.** (1) Any person, or any officer of any firm or corporation who is found guilty of constructing any splash dam for the floating of logs or other lumber products on any stream or other body of water in the State of Oregon commits a Class A misdemeanor.

(2) Violation of ORS 541.510 is a Class A misdemeanor.

(3) Violation of ORS 541.545 (1) is a Class A misdemeanor. [1957 c.163 §4; subsection (2) enacted as 1959 c.624 §2; subsection (3) enacted as 1961 c.379 §9; subsection (4) enacted as 1967 c.567 §13; subsection (4) renumbered 196.990 in 1989; 2011 c.597 §227]

# Chapter 542

## 2015 EDITION

# Water Resource Surveys and Projects; Compacts


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## SURVEY OF WATER RESOURCES

**542.010 Contract by Water Resources Commission with federal agencies for investigating and developing water resources; expenses.** In order that the natural resources of Oregon in land, water and power may be utilized to the highest advantage of the people, complete cooperation between the state and federal authorities in controlling, investigating and developing these resources in the interest of the people of the state is essential. Therefore, the Water Resources Commission may, on behalf of this state, enter into a contract or agreement with any federal department or bureau having jurisdiction in such matters for the execution of such surveys and investigations and the preparation of such plans, specifications and estimates or other data by cooperation between the state and the federal department or bureau as will, in the judgment of the Water Resources Commission, approved by the Governor, be best suited to accomplish the purposes of ORS 542.010 to 542.050. However, in no case shall the proportion of expense to be borne by this state exceed the proportion to be borne by the other party to the contract or agreement. [Amended by 1985 c.673 §130]

**542.020 Purpose of law.** The intent of ORS 542.010 to 542.050, as outlined in ORS 542.010, is to have on file ready and available, such detailed surveys and information as will not only permit, but will tend to induce, the beneficial use of water by private persons, irrigation districts, corporations, or possibly by the state or national government.

**542.030 Report by commission; contents; copies for public inspection.** As soon as practicable after the completion of the surveys and investigations, the Water Resources Commission shall prepare or have prepared a report setting forth the plans, specifications and estimated cost of construction, maintenance and operation of the projects, together with any other information tending to show their feasibility, and may in the discretion of the commission have the report printed in pamphlet form and distributed to those interested. Copies of completed maps, plans, specifications, estimates and reports secured or prepared in connection with any such investigation shall be kept on file in the Water Resources Department at all times, and open for public inspection during business hours. [Amended by 1985 c.673 §131]

**542.040 Withholding water from appropriation pending investigation; restrictions on permit to appropriate; repayment of cost of project.** (1) The Water Resources Commission, on behalf of the state, shall withdraw and withhold from appropriation any unappropriated water which may be required for any project under investigation or to be investigated under the provisions of ORS 542.010 to 542.050. If the project is found to be feasible, the commission shall withhold the same from appropriation until the money expended in the investigation of the project is repaid to the cooperating parties in proportion to the amount contributed by each unless funds for construction are provided by one or both of the cooperating parties, in which case the commission shall issue a permit without requiring such repayment. No permit to appropriate water which may be in conflict with any such project under investigation shall be approved by the commission, nor shall any assignment of plans and information or any part thereof be made except upon consideration and order by the commission after full hearing of all interested parties.

(2) Any moneys returned to the commission under the provisions of this section shall promptly be turned over to the State Treasurer and credited to the General Fund in the State Treasury. [Amended by 1985 c.673 §132]

**542.050 Construction work; minor portions of project.** As the purposes of ORS 542.010 to 542.050 are to secure the most immediate, as well as the most beneficial, ultimate use of the available waters for any certain project, the Water Resources Commission, as occasion may require, may grant permits and arrange the details so that minor portions of the project may be segregated and constructed at any time. However, the segregation and development of such minor parts shall not interfere to any serious extent with the handling or completion of the balance of the project. [Amended by 1985 c.673 §133]

**542.060 Information on availability of water for beneficial uses; duties of Water Resources Commission; gauging stations; publication of information.** The Water Resources Commission shall establish gauging stations at suitable points on the various streams of the state to determine the daily and seasonal fluctuations in the flow of the water; shall make surveys and profiles to determine the fall of stream suitable for power development; and shall prepare topographic maps of the territory adjacent to the private streams of the state, so that the availability of water for power, irrigation or other beneficial uses may be determined and made known to the public. All such maps and information shall be made a matter of record in the Water Resources Department and the commission shall publish a summary of all such information in the most practical and economical manner for presentation to the public. The commission shall enter into such agreements and contracts as will insure that

the surveys and investigations are carried on in the most economical manner, and that the maps and data are made available to the use of the public as quickly as possible. [Amended by 1985 c.673 §134]

**542.070 Entry on lands.** In order to carry out the purpose of ORS 542.060 all persons employed under that section may enter and cross all lands within the state; provided, that in so doing, no unnecessary damage is done to private property.

**542.075 Identification and funding of water projects offering significant public benefit; limitation.** (1) The Water Resources Commission, with the approval of the Governor, may identify proposed or existing water projects which offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered by an existing project, or expected to be obtained from a proposed project.

(2) In order to be eligible for funding under subsection (1) of this section, the Water Resources Commission must identify an existing project within five years after the project first becomes operable. [1981 c.172 §3; 1985 c.673 §135; 1989 c.587 §4]

**542.080 Cooperation with federal agencies; contracts.** On behalf of this state, the Water Resources Commission may cooperate with the Federal Energy Regulatory Commission, the United States Geological Survey, the United States Reclamation Service, or any other federal agency or commission engaged in similar work, and may enter into contracts or agreements whenever it appears desirable or advantageous to the state. [Amended by 1985 c.673 §136]

**542.090 Moneys from licenses under Federal Waterpower Act; disposal.** Any moneys arising from power licenses under the Federal Waterpower Act, approved June 10, 1920, and paid over to the state, shall be credited by the State Treasurer to the General Fund.

**542.100 Acceptance and expenditure of gifts and grants for hydrologic investigations; accounting.** The Water Resources Commission may accept and expend moneys from any public or private source, including the federal government, made available for the purpose of conducting hydrologic investigations of Oregon water resources and to assist in carrying out the commission's functions as provided by law. All moneys received by the commission under this section shall be kept in separate accounts designated according to the purposes for which such moneys were received. The commission shall keep a true and full account of receipts and disbursements under this section. [1965 c.77 §2; 1985 c.673 §137]

## WILLAMETTE RIVER BASIN PROJECT

**542.110 Public interest requiring construction of system of works.** (1) It hereby is declared that public interest, welfare, convenience and necessity require the construction of a system of works in accordance with the general comprehensive plan for flood control, navigation and other purposes in the Willamette River Basin, as set forth in House Document 544, Seventy-fifth Congress, third session, and the Act of the Seventy-fifth Congress approved June 28, 1938, 52 Stat. 1222, authorizing the construction of certain public works, including the Willamette River Basin Project.

(2) The Water Resources Commission may act for the state in all matters necessary or advisable in the promotion, construction and maintenance of the Willamette River Basin Project. [Amended by 1955 c.707 §57]

**542.120** [Repealed by 1955 c.707 §75]

**542.130** [Repealed by 1955 c.707 §75]

**542.140** [Repealed by 1955 c.707 §75]

**542.150** [Repealed by 1955 c.707 §75]

**542.160** [Repealed by 1955 c.707 §75]

## ROGUE RIVER WATERSHED PROJECT

**542.210 Construction of federal dams and structures in Rogue River; limitations.** In order to further necessary investigations and studies for the maximum development of the Rogue River basin and watershed and to conserve established and potential uses thereof, and to facilitate full consideration of various projects to accomplish a coordinated and comprehensive development of the basin and watershed, the United States and its authorized agencies may construct in the Rogue River and on its bed dams and such other structures as the government deems necessary, upon compliance with the laws of Oregon. However, no dam or structure hereby authorized shall be placed in the Rogue River between the intersection of the river with the south line of section 10, township 34 south, range 1 west of the Willamette Meridian in Jackson County, and the confluence of that river with the Pacific Ocean, which would interfere with the free passage of fish up or down stream. No dam or other structure shall be constructed by any person in or on the bed of the Rogue River below its intersection with the south line of section 27, township 33 south, range 1 east of the Willamette Meridian, in Jackson County, except as authorized by this section.

**542.310** [Amended by 1953 c.622 §5; repealed by 1955 c.707 §75]

**542.320** [Amended by 1953 c.622 §5; repealed by 1955 c.707 §75]

**542.330** [Amended by 1953 c.622 §5; repealed by 1955 c.707 §75]

**542.340** [1953 c.622 §4; repealed by 1955 c.707 §75]
**542.410** [1953 c.431 §1; repealed by 1957 c.142 §5]
**542.420** [1953 c.431 §2; repealed by 1957 c.142 §5]
**542.430** [1953 c.431 §3; repealed by 1957 c.142 §5]
**542.440** [1953 c.431 §4; repealed by 1957 c.142 §5]
**542.450** [1953 c.431 §5; repealed by 1957 c.142 §5]
**542.460** [1953 c.431 §8; repealed by 1957 c.142 §5]
**542.470** [1953 c.431 §7; repealed by 1957 c.142 §5]
**542.480** [1953 c.431 §9; repealed by 1957 c.142 §5]
**542.490** [1953 c.431 §6; repealed by 1957 c.142 §5]

## OREGON-CALIFORNIA GOOSE LAKE INTERSTATE COMPACT

**542.510 Oregon-California Goose Lake Interstate Compact ratified; when effective.** (1) The Legislative Assembly of the State of Oregon hereby ratifies the Oregon-California Goose Lake Interstate Compact as set out in ORS 542.520. The provisions of the compact are declared to be the laws of this state at such time as the compact becomes effective as provided in subsection (2) of this section.

(2) The compact becomes effective when it has been ratified by the legislatures of the States of Oregon and California and has been consented to by the Congress of the United States as provided in Article VII of the compact. [1963 c.473 §1]

**Note:** The Oregon-California Goose Lake Interstate Compact became effective on July 2, 1984. The compact was ratified by the State of Oregon by chapter 473, Oregon Laws 1963 (signed by Governor on June 6, 1963). The compact was ratified by the State of California by chapter 1059, California Statutes 1963 (signed by Governor on June 28, 1963). The Congress of the United States consented to the compact by Public Law 98-334, 98th Congress (signed by President on July 2, 1984).

**542.520 Oregon-California Goose Lake Interstate Compact.** The provisions of the Oregon-California Goose Lake Interstate Compact are as follows:

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### ARTICLE I
### PURPOSES

The major purposes of this compact are:

A. To facilitate and promote the orderly, integrated and comprehensive development, use, conservation and control of the water resources of Goose Lake Basin.

B. To further intergovernmental cooperation and comity and to remove the causes of present and future controversies by (1) providing for continued development of the water resources of Goose Lake Basin by the States of California and Oregon, and (2) prohibiting the export of water from Goose Lake Basin without consent of the legislatures of California and Oregon.

### ARTICLE II
### DEFINITION OF TERMS

As used in this compact:

A. "Goose Lake Basin" shall mean the drainage area of Goose Lake within the States of California and Oregon and all closed basins included in the Goose Lake drainage basin as delineated on the official map of the Goose Lake Basin which is attached to and made a part of this compact.

B. "Person" shall mean the States of Oregon and California, any individual and any other entity, public or private.

C. "Water," "waters" or "water resources" shall mean any water appearing on the surface of the ground in streams, lakes, or otherwise, and any water beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of Goose Lake Basin.

### ARTICLE III
### DISTRIBUTION AND USE OF WATER

A. There are hereby recognized vested rights to the use of waters originating in Goose Lake Basin existing as of the effective date of this compact and established under the laws of California and Oregon.

B. Except as provided in this Article, this compact shall not be construed as affecting or interfering with appropriation under the laws of California and Oregon of unappropriated waters of Goose Lake Basin for use within the basin.

C. Export of water from Goose Lake Basin for use outside the basin without prior consent of both state legislatures is prohibited.

D. Each state hereby grants the right for a person to construct and operate facilities for the measurement, diversion, storage and conveyance of water from the Goose Lake Basin in one state for use within the basin in the other state, providing the right to such use is secured by appropriation under the general laws administered by the Water Resources Director of the State of Oregon or the Water Rights Board of California and the laws of the state from which the water is to be taken shall control.

E. Should any facilities be constructed in one state to implement use of water in the other state, the construction, operation, repairs and replacement of such facilities shall be subject to the laws of the state in which the facilities are constructed.

ARTICLE IV
ADMINISTRATION

No commission or administrative body is necessary to administer this compact.

ARTICLE V
TERMINATION

This compact may be terminated at any time by consent of the legislatures of California and Oregon and upon such termination all rights then established hereunder shall continue unimpaired.

ARTICLE VI
GENERAL PROVISIONS

Nothing in this compact shall be construed to limit, or prevent any state from instituting or maintaining any action or proceeding, legal or equitable, in any court having jurisdiction thereof for the protection of any right under this compact or the enforcement of any of its provisions.

ARTICLE VII
RATIFICATION

A. This compact shall become operative when ratified by the legislatures of California and Oregon and consented to by the Congress of the United States.

B. This compact shall remain in full force and effect until amended in the same manner as is required for it to be ratified to become operative or until terminated.

C. A copy of any proposed amendments to or termination of this compact shall be filed with the Board of Supervisors of Modoc County, California, and the County Court of Lake County, Oregon, at least 30 days prior to any legislative consideration by the legislatures of the States of California and Oregon.

ARTICLE VIII
FEDERAL RIGHTS

Nothing in this compact shall be deemed:

A. To impair or affect the existing rights or powers of the United States of America, its agencies, or instrumentalities, in and to the use of the waters of the Goose Lake Basin nor its capacity to acquire rights in and to the use of said waters.

B. To subject any property of the United States of America, its agencies or instrumentalities to taxation by any state or subdivision thereof, nor to create an obligation on the part of the United States of America, its agencies or instrumentalities by reason of the acquisition, construction or operation of any property or works of whatsoever kind, to make any payments to any state or political subdivision thereof, state agency, municipality or entity, whatsoever in reimbursement for the loss of taxes.

C. To subject any property of the United States of America, its agencies or instrumentalities, to the laws of any state to any extent other than the extent to which these laws would apply without regard to the compact.

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[1963 c.473 §2]

## COLUMBIA RIVER NATURAL RESOURCES MANAGEMENT COMPACT

**542.550 Content of Columbia River Natural Resources Management Compact; when effective.** A compact, in form as in this section fully set forth, shall be in effect when the States of Idaho, Montana and Washington become parties thereto, and the consent of Congress has been granted as required by section 10, Article I of the United States Constitution.

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The contracting states do hereby agree as follows:

ARTICLE I

The purposes of this compact, entitled the Columbia River Natural Resources Management Compact, are and shall be to promote the better regional management and coordination of natural resources management issues and other issues pertaining to the governance and use of the Columbia River.

ARTICLE II

This agreement shall become operative immediately as to those states executing it in the form that is in accordance with the laws of the executing states and the Congress has given its consent.

ARTICLE III

Each state joining herein shall appoint, as determined by state statutes, six legislators, three from the state Senate and three from the state House of Representatives, to a commission hereby constituted and designated as the Columbia River Governance Commission. Of the members appointed, all may not belong to the same political party. This commission shall be invested with the powers and duties set forth herein.

The term of each commissioner of the Columbia River Governance Commission shall be four years. A commissioner shall hold office until a successor shall be ap-

pointed and qualified but such successor's term shall expire four years from legal date of expiration of the term of the predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time, to a deputy, the power to be present and participate, including voting as the representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one vote for each state regardless of the number of representatives.

ARTICLE IV

The duty of the Columbia River Governance Commission shall be to assess programs of state and federal agencies responsible for natural resource management issues and governance issues of the Columbia River and to participate in decision-making by federal agencies on issues affecting the use of and activities on the Columbia River. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions to promote the efficient use and management of the Columbia River and resources related to the Columbia River.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the Governors and legislative branches of the various signatory states hereto legislation dealing with the governance and management of the Columbia River and the natural resources related to the Columbia River over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the Governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states of such regulations as it deems advisable with regard to problems connected with the governance and use of the Columbia River and that lie within the jurisdiction of such agencies.

The commission shall have power to recommend to the federal government and to states signatory hereto management strategies for the natural resources of the Columbia River and any changes to federal or state statutes, regulations or rules necessary to the efficient and sound governance of the Columbia River and its natural resources.

ARTICLE V

The commission shall elect from its number a chairperson and a vice chairperson and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry out the provisions of this compact and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business and may meet at any time or place within the territorial limits of the signatory states but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to the management of natural resources related to, or the governance and use of, the Columbia River except by the vote of a majority of the compacting states that have an interest in such issues.

ARTICLE VII

The natural resource agencies of the signatory states shall act in collaboration as the official research agency of the Columbia River Governance Commission.

An advisory committee to be representative of such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

ARTICLE VIII

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its natural resources.

ARTICLE IX

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the Governor thereof.

ARTICLE X

The states that sign this compact agree to make available annual funds for the support of the commission on the following basis:

Sixty percent (60%) of the annual budget shall be shared equally by those member states having as a boundary the Columbia River; and forty percent (40%) of the annual budget shall be shared equally by the other member states.

The annual contribution of each member state shall be figured to the nearest one hundred dollars.

This article shall become effective upon its enactment by the States of Idaho, Montana, Oregon and Washington and upon ratification by Congress by virtue of the authority vested in it under section 10, Article I of the United States Constitution.

ARTICLE XI

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six months' written notice of intention to withdraw from the compact to the other parties hereto.

ARTICLE XII

The State of Nevada or any state having rivers or streams tributary to the Columbia River may become a contracting state by enactment of the Columbia River Natural Resources Management Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the use and governance of the Columbia River and its natural resources in which the contracting states share mutual concerns.

This article shall become effective upon its enactment by the States of Idaho, Montana, Oregon and Washington and upon ratification by Congress by virtue of the authority vested in it under section 10, Article I of the United States Constitution.

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[1999 c.540 §1]

**Note:** 542.550 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 542 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## KLAMATH RIVER BASIN COMPACT

**542.610 Klamath River Basin Compact ratified; when effective.** (1) The Legislative Assembly of the State of Oregon hereby ratifies the Klamath River Basin Compact set forth in ORS 542.620, and the provisions of such compact hereby are declared to be the law of this state upon such compact becoming effective as provided in subsection (2) of this section.

(2) The compact shall become effective when it has been ratified by the legislatures of the States of California and Oregon, and has been consented to by the Congress of the United States as provided in Article XIII of the compact. [1957 c.142 §1]

**Note:** The Klamath River Basin Compact became effective on September 11, 1957. The compact was ratified by the State of Oregon by chapter 142, Oregon Laws 1957 (signed by Governor on April 17, 1957). The compact was ratified by the State of California by chapter 113, California Statutes 1957 (signed by Governor on April 17, 1957, and effective on September 11, 1957). The Congress of the United States consented to the compact by Public Law 85-222, 85th Congress (signed by President on August 30, 1957).

**542.620 Klamath River Basin Compact.** The provisions of the Klamath River Basin Compact are as follows:

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ARTICLE I
PURPOSES

The major purposes of this compact are, with respect to the water resources of the Klamath River Basin:

A. To facilitate and promote the orderly, integrated and comprehensive development, use, conservation and control thereof for various purposes, including, among others: The use of water for domestic purposes; the development of lands by irrigation and other means; the protection and enhancement of fish, wildlife and recreational resources; the use of water for industrial purposes and hydroelectric power production; and the use and control of water for navigation and flood prevention.

B. To further intergovernmental cooperation and comity with respect to these resources and programs for their use and development and to remove causes of present and future controversies by providing (1) for equitable distribution and use of water among the two states and the Federal Government, (2) for preferential rights to the use of water after the effective date of this compact for the anticipated ultimate requirements for domestic and irrigation purposes in the Upper Klamath River Basin in Oregon and California, and (3) for prescribed relationships between beneficial uses of water as a practicable means of accomplishing such distribution and use.

ARTICLE II
DEFINITION OF TERMS

As used in this compact:

A. "Klamath River Basin" shall mean the drainage area of the Klamath River and all its tributaries within the States of California and Oregon and all closed basins included in the Upper Klamath River Basin.

B. "Upper Klamath River Basin" shall mean the drainage area of the Klamath River and all its tributaries upstream from the

boundary between the States of California and Oregon and the closed basins of Butte Valley, Red Rock Valley, Lost River Valley, Swan Lake Valley and Crater Lake, as delineated on the official map of the Upper Klamath River Basin approved on September 6, 1956, by the commissions negotiating this compact and filed with the Secretaries of State of the two states and the General Services Administration of the United States, which map is incorporated by reference and made a part hereof.

C. "Commission" shall mean the Klamath River Compact Commission as created by Article IX of this compact.

D. "Klamath Project" of the Bureau of Reclamation of the Department of the Interior of the United States shall mean that area as delineated by appropriate legend on the official map incorporated by reference under subdivision B of this Article.

E. "Person" shall mean any individual or any other entity, public or private, including either state, but excluding the United States.

F. "Keno" shall mean a point on the Klamath River at the present needle dam, or any substitute control dam constructed in section 36, township 39 south, range 7 east, Willamette Base and Meridian.

G. "Water" or "waters" shall mean waters appearing on the surface of the ground in streams, lakes or otherwise, regardless of whether such waters at any time were or will become ground water, but shall not include water extracted from underground sources until after such water is used and becomes surface return flow or waste water.

H. "Domestic use" shall mean the use of water for human sustenance, sanitation and comfort; for municipal purposes; for livestock watering; for irrigation of family gardens; and for other like purposes.

I. "Industrial use" shall mean the use of water in manufacturing operations.

J. "Irrigation use" shall mean the use of water for production of agricultural crops, including grain grown for feeding wildfowl.

## ARTICLE III
## DISTRIBUTION AND USE OF WATER

A. There are hereby recognized vested rights to the use of waters originating in the Upper Klamath River Basin validly established and subsisting as of the effective date of this compact under the laws of the state in which the use or diversion is made, including rights to the use of waters for domestic and irrigation uses within the Klamath Project. There are also hereby recognized rights to the use of all waters reasonably required for domestic and irrigation uses which may hereafter be made within the Klamath Project.

B. Subject to the rights described in subdivision A of this Article and excepting the uses of water set forth in subdivision E of Article XI, rights to the use of unappropriated waters originating within the Upper Klamath River Basin for any beneficial use in the Upper Klamath River Basin, by direct diversion or by storage for later use, may be acquired by any person after the effective date of this compact by appropriation under the laws of the state where the use is to be made, as modified by the following provisions of this subdivision B and subdivision C of this Article, and may not be acquired in any other way:

1. In granting permits to appropriate waters under this subdivision B, as among conflicting applications to appropriate when there is insufficient water to satisfy all such applications, each state shall give preference to applications for a higher use over applications for a lower use in accordance with the following order of uses:

(a) Domestic use,

(b) Irrigation use,

(c) Recreational use, including use for fish and wildlife,

(d) Industrial use,

(e) Generation of hydroelectric power,

(f) Such other uses as are recognized under the laws of the state involved.

These uses are referred to in this compact as uses (a), (b), (c), (d), (e) and (f), respectively. Except as to the superiority of rights to the use of water for use (a) or (b) over the rights to the use of water for use (c), (d), (e) or (f), as governed by subdivision C of this Article, upon a permit being granted and a right becoming vested and perfected by use, priority in right to the use of water shall be governed by priority in time within the entire Upper Klamath River Basin regardless of state boundaries. The date of priority of any right to the use of water appropriated for the purposes above enumerated shall be the date of the filing of the application therefor, but such priority shall be dependent on commencement and completion of construction of the necessary works and application of the water to beneficial use with due diligence and within the times specified under the laws of the state where the use is to be made. Each state shall promptly provide the commission and the appropriate official of the other state with complete information as to such applications and as to all actions taken thereon.

2. Conditions on the use of water under this subdivision B in Oregon shall be:

(a) That there shall be no diversion of waters from the Upper Klamath River Basin, but this limitation shall not apply to out-of-basin diversions of waters originating within the drainage area of Fourmile Lake.

(b) That water diverted from Upper Klamath Lake and the Klamath River and its tributaries upstream from Keno, Oregon, for use in Oregon and not consumed therein and appearing as surface return flow and waste water within the Upper Klamath River Basin shall be returned to the Klamath River or its tributaries above Keno, Oregon.

3. Conditions on the use of water under this subdivision B in California shall be:

(a) That the waters diverted from the Klamath River within the Upper Klamath River Basin for use in California shall not be taken outside the Upper Klamath River Basin.

(b) That substantially all of the return flows and waste water finally resulting from such diversions and use appearing as surface waters in the Upper Klamath River Basin shall be made to drain so as to be eventually returned to the Klamath River upstream from Keno, Oregon.

C. 1. All rights, acquired by appropriation after the effective date of this compact, to use waters originating within the Upper Klamath River Basin for use (a) or (b) in the Upper Klamath River Basin in either state shall be superior to any rights, acquired after the effective date of this compact, to use such waters (i) for any purpose outside the Klamath River Basin by diversion in California or (ii) for use (c), (d), (e) or (f) anywhere in the Klamath River Basin. Such superior rights shall exist regardless of their priority in time and may be exercised with respect to inferior rights without the payment of compensation. But such superior rights to use water for use (b) in California shall be limited to the quantity of water necessary to irrigate 100,000 acres of land, and in Oregon shall be limited to the quantity of water necessary to irrigate 200,000 acres of land.

2. The provisions of paragraph 1 of this subdivision C shall not prohibit the acquisition and exercise after the effective date of this compact of rights to store waters originating within the Upper Klamath River Basin and to make later use of such stored water for any purpose, as long as the storing of waters for such later use, while being effected, does not interfere with the direct diversion or storage of such waters for use (a) or (b) in the Upper Klamath River Basin.

## ARTICLE IV
## HYDROELECTRIC POWER

It shall be the objective of each state, in the formulation and the execution and the granting of authority for the formulation and execution of plans for the distribution and use of the water of the Klamath River Basin, to provide for the most efficient use of available power head and its economic integration with the distribution of water for other beneficial uses in order to secure the most economical distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.

## ARTICLE V
## INTERSTATE DIVERSION AND STORAGE RIGHTS; MEASURING DEVICES

A. Each state hereby grants for the benefit of the other and its designees the right to construct and operate facilities for the measurement, diversion, storage and conveyance of water from the Upper Klamath River Basin in one state for use in the other insofar as the exercise of such right may be necessary to effectuate and comply with the terms of this compact. The location of such facilities shall be subject to approval by the commission.

B. Each state or its designee, exercising within the jurisdiction of the other a right granted under subdivision A of this Article, shall make provision for the establishment, operation and maintenance of permanent gaging stations at such points on streams or reservoir or conveyance facilities as may be required by the commission for the purpose of ascertaining and recording the volume of diversions by the streams or facilities involved. Said stations shall be equipped with suitable devices for determining the flow of water at all times. All information obtained from such stations shall be compiled in accordance with the standards of the United States Geological Survey, shall be filed with the commission, and shall be available to the public.

## ARTICLE VI
## ACQUISITION OF PROPERTY FOR STORAGE AND DIVERSION; IN LIEU TAXES

A. Subject to approval of the commission, either state shall have the right (1) to acquire such property rights in the other state as are necessary for the diversion, storage, conveyance, measurement and use of water in conformity with this compact, by donation or purchase, or (2) to elect to have the other state acquire such property rights for it by purchase or through the exercise of the power of eminent domain. A state making the latter election shall make a written request therefor and the other state shall expeditiously acquire said property rights

either by purchase at a price satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise of its power of eminent domain, and shall convey said property rights to the requesting state or its designee. All costs of such acquisition shall be paid by the requesting state. Neither state shall have any greater power to acquire property rights for the other state through the exercise of the power of eminent domain than it would have under its laws to acquire the same property rights for itself.

B. Should any diversion, storage or conveyance facilities be constructed or acquired in either state for the benefit of the other state, as herein provided, the construction, repair, replacement, maintenance and operation of such facilities shall be subject to the laws of the state in which the facilities are located, except that the proper officials of that state shall permit the storage, release and conveyance of any water to which the other state is entitled under this compact.

C. Either state having property rights other than water rights in the other state acquired as provided in this Article shall pay to each political subdivision of the state in which such property rights are located, each and every year during which such rights are held, a sum of money equivalent to the average annual amount of taxes assessed against those rights during the 10 years preceding the acquisition of such rights in reimbursement for the loss of taxes to such political subdivisions of the state. Payments so made to a political subdivision shall be in lieu of any and all taxes by that subdivision on the property rights for which the payments are made.

## ARTICLE VII
## POLLUTION CONTROL

A. The states recognize that the growth of population and the economy of the Upper Klamath River Basin can result in pollution of the waters of the Upper Klamath River Basin constituting a menace to the health and welfare of, and occasioning economic loss to, people living or having interests in the Klamath River Basin. The states recognize further that protection of the beneficial uses of the waters of the Klamath River Basin requires cooperative action of the two states in pollution abatement and control.

B. To aid in such pollution abatement and control, the commission shall have the duty and power:

1. To cooperate with the states or agencies thereof or other entities and with the United States for the purpose of promoting effective laws and the adoption of effective regulations for abatement and control of pollution of the waters of the Klamath River Basin, and from time to time to recommend to the governments reasonable minimum standards for the quality of such waters.

2. To disseminate to the public by any and all appropriate means information respecting pollution abatement and control in the waters of the Klamath River Basin and on the harmful and uneconomic results of such pollution.

C. Each state shall have the primary obligation to take appropriate action under its own laws to abate and control interstate pollution, which is defined as the deterioration of the quality of the waters of the Upper Klamath River Basin within the boundaries of such state which materially and adversely affects beneficial uses of waters of the Klamath River Basin in the other state. Upon complaint to the commission by the state water pollution control agency of one state that interstate pollution originating in the other state is not being prevented or abated, the procedure shall be as follows:

1. The commission shall make an investigation and hold a conference on the alleged interstate pollution with the water pollution control agencies of the two states, after which the commission shall recommend appropriate corrective action.

2. If appropriate corrective action is not taken within a reasonable time, the commission shall call a hearing, giving reasonable notice in writing thereof to the water pollution control agencies of the two states and to the person or persons which it is believed are causing the alleged interstate pollution. Such hearing shall be held in accordance with rules and regulations of the commission, which shall conform as nearly as practicable with the laws of the two states governing administrative hearings. At the conclusion of such hearing, the commission shall make a finding as to whether interstate pollution exists, and if so, shall issue to any person or persons which the commission finds are causing such interstate pollution an order or orders for correction thereof.

3. It shall be the duty of the person against whom any such order is issued to comply therewith. Any court of general jurisdiction of the state where such discharge is occurring or the United States District Court for the district where the discharge is occurring shall have jurisdiction, on petition of the commission for enforcement of such order, to compel action by mandamus, injunction, specific performance, or any other appropriate remedy, or on petition of the person against whom the order is issued to review any order. At the conclusion of such enforcement or review proceedings, the court may enter such decree or judgment affirming, reversing, modifying, or remanding such

order as in its judgment is proper in the circumstances on the basis of the rules customarily applicable in proceedings for court enforcement or review of administrative actions.

D. The water pollution control agencies of the two states shall, from time to time, make available to the commission all data relating to the quality of the waters of the Upper Klamath River Basin which they possess as the result of studies, surveys and investigations thereof which they may have made.

ARTICLE VIII
MISCELLANEOUS

A. Subject to vested rights as of the effective date of this compact, there shall be no diversion of waters from the basin of Jenny Creek to the extent that such waters are required, as determined by the commission, for use on land within the basin of Jenny Creek.

B. Each state shall exercise whatever administrative, judicial, legislative or police powers it has that are required to provide any necessary reregulation or other control over the flow of the Klamath River downstream from any hydroelectric power plant for protection of fish, human life or property from damage caused by fluctuations resulting from the operation of such plant.

ARTICLE IX
ADMINISTRATION

A. 1. There is hereby created a commission to administer this compact. The commission shall consist of three members. The representative of the State of California shall be the Department of Water Resources. The representative of the State of Oregon shall be the Water Resources Commission of Oregon who shall serve as ex officio representative of the Water Resources Commission of Oregon. The President is requested to appoint a federal representative who shall be designated and shall serve as provided by the laws of the United States.

2. The representative of each state shall be entitled to one vote in the commission. The representative of the United States shall serve as chairman of the commission without vote. The compensation and expenses of each representative shall be fixed and paid by the government which he represents. Any action by the commission shall be effective only if it be agreed to by both voting members.

3. The commission shall meet to establish its formal organization within 60 days after the effective date of this compact, such meeting to be at the call of the Governors of the two states. The commission shall then adopt its initial set of rules and regulations governing the management of its internal affairs providing for, among other things, the calling and holding of meetings, the adoption of a seal, and the authority and duties of the chairman and executive director. The commission shall establish its office within the Upper Klamath River Basin.

4. The commission shall appoint an executive director, who shall also act as secretary, to serve at the pleasure of the commission and at such compensation, under such terms and conditions and performing such duties as it may fix. The executive director shall be the custodian of the records of the commission with authority to affix the commission's official seal, and to attest to and certify such records or copies thereof. The commission, without regard to the provisions of the civil service laws of either state, may appoint and discharge such consulting, clerical and other personnel as may be necessary for the performance of the commission's functions, may define their duties, and may fix and pay their compensation. The commission may require the executive director and any of its employees to post official bonds, and the cost thereof shall be paid by the commission.

5. All records, files and documents of the commission shall be open for public inspection at its office during established office hours.

6. No member, officer or employee of the commission shall be liable for injury or damage resulting from (a) action taken by such member, officer or employee in good faith and without malice under the apparent authority of this compact, even though such action is later judicially determined to be unauthorized, or (b) the negligent or wrongful act or omission of any other person, employed by the commission and serving under such officer, member or employee, unless such member, officer or employee either failed to exercise due care in the selection, appointment or supervision of such other person, or failed to take all available action to suspend or discharge such other person after knowledge or notice that such other person was inefficient or incompetent to perform the work for which he was employed. No suit may be instituted against a member, officer or employee of the commission for damages alleged to have resulted from the negligent or wrongful act or omission of such member, officer or employee or a subordinate thereof occurring during the performance of his official duties unless, within 90 days after occurrence of the incident, a verified claim for damages is presented in writing and filed with such member, officer or employee and with the commission. In the event of a suit for damages against any member, officer or employee of the commission on account of

any act or omission in the performance of his or his subordinates' official duties, the commission shall arrange for the defense of such suit and may pay all expenses therefor on behalf of such member, officer or employee. The commission may at its expense insure its members, officers and employees against liability resulting from their acts or omissions in the performance of their official duties. Nothing in this paragraph shall be construed as imposing any liability upon any member, officer or employee of the commission that he would otherwise not have.

7. The commission may incur obligations and pay expenses which are necessary for the performance of its functions. But it shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the constitution of such government, nor shall the commission incur any obligations prior to the availability of funds adequate to meet them.

8. The commission may:

(a) Borrow, accept or contract for the services of personnel from any government or agency thereof, from any intergovernmental agency, or from any other entity.

(b) Accept for any of its purposes and functions under this compact any and all donations, gifts, grants of money, equipment, supplies, materials and services from any government or agency thereof or intergovernmental agency or from any other entity.

(c) Acquire, hold and dispose of real and personal property as may be necessary in the performance of its functions.

(d) Make such studies, surveys and investigations as are necessary in carrying out the provisions of this compact.

9. All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the commission and its staff, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive sessions under such rules and regulations as may be established therefor.

10. In the case of the failure of the two voting members of the commission to agree on any matter relating to the administration of this compact as provided in paragraph 2 of this subdivision A, the representative from each state shall appoint one person and the two appointed persons shall appoint a third person. The three appointees shall sit as an arbitration forum. The terms of appointment and the compensation of the members of the arbitration forum shall be fixed by the commission. Matters on which the two voting members of the commission have failed to agree shall be decided by a majority vote of the members of the arbitration forum. Each state obligates itself to abide by the decision of the arbitration forum, subject, however, to the right of each state to have the decision reviewed by a court of competent jurisdiction.

11. The commission shall have the right of access, through its authorized representatives, to all properties in the Klamath River Basin whenever necessary for the purpose of administration of this compact. The commission may obtain a court order to enforce its right of access.

B. 1. The commission shall submit to the Governor or designated officer of each state a budget of its estimated expenditures for such period and at such times as may be required by the laws of that state for presentation to the legislature thereof. Each state pledges itself to appropriate and pay over to the commission one-half of the amount required to finance the commission's estimated expenditures as set forth in each of its budgets, and pledges further that concurrently with approval of this compact by its legislature the sum of not less than $12,000 will be appropriated by it to be paid over to the commission at its first meeting for use in financing the commission's functions until the commission can prepare its first budget and receive its first appropriation thereunder from the states.

2. The commission shall keep accurate accounts of all receipts and disbursements, which shall be audited yearly by a certified public accountant, and the report of the audit shall be made a part of its annual report. The accounts of the commission shall be open for public inspection during established office hours.

3. The commission shall make and transmit to the legislature and Governor of each state and to the President of the United States an annual report covering the finances and activities of the commission and embodying such plans, recommendations and findings as may have been adopted by the commission.

C. 1. The commission shall have the power to adopt, and to amend or repeal, such rules and regulations to effectuate the purposes of this compact as in its judgment may be appropriate.

2. Except as to matters involving exclusively the management of the internal affairs of the commission and its staff or involving emergency matters, prior to the adoption, amendment or repeal of any rule or regulation the commission shall hold a hearing at which any interested person shall have the opportunity to present his views on the

proposed action in writing, with or without the opportunity to present the same orally. The commission shall give adequate advance notice in a reasonable manner of the time, place and subject of such hearings.

3. Emergency rules and regulations may be adopted without a prior hearing, but in such case they may be effective for not longer than 90 days.

4. The commission shall publish its rules and regulations in convenient form.

ARTICLE X
STATUS OF INDIAN RIGHTS

A. Nothing in this compact shall be deemed:

1. To affect adversely the present rights of any individual Indian, tribe, band or community of Indians to the use of the waters of the Klamath River Basin for irrigation.

2. To deprive any individual Indian, tribe, band or community of Indians of any rights, privileges, or immunities afforded under federal treaty, agreement or statute.

3. To affect the obligations of the United States of America to the Indians, tribes, bands or communities of Indians, and their reservations.

4. To alter, amend or repeal any of the provisions of the Act of August 13, 1954, (68 Stat. 718) as it may be amended.

B. Lands within the Klamath Indian Reservation which are brought under irrigation after the effective date of this compact, whether before or after section 14 of said Act of August 13, 1954, becomes fully operative, shall be taken into account in determining whether the 200,000 acre limitation provided in paragraph 1 of subdivision C of Article III has been reached.

ARTICLE XI
FEDERAL RIGHTS

Nothing in this compact shall be deemed:

A. To impair or affect any rights, powers or jurisdiction of the United States, its agencies or those acting by or under its authority, in, over and to the waters of the Klamath River Basin, nor to impair or affect the capacity of the United States, its agencies or those acting by or under its authority in any manner whatsoever, except as otherwise provided by the federal legislation enacted for the implementation of this compact as specified in Article XIII.

B. To subject any property of the United States, its agencies or instrumentalities, to taxation by either state or any subdivision thereof, unless otherwise provided by Act of Congress.

C. To subject any works or property of the United States, its agencies, instrumentalities or those acting by or under its authority, used in connection with the control or use of waters which are the subject of this compact, to the laws of any state to an extent other than the extent to which those laws would apply without regard to this compact, except as otherwise provided by the federal legislation enacted for the implementation of this compact as specified in Article XIII.

D. To affect adversely the existing areas of Crater Lake National Park or Lava Beds National Monument, or to limit the operation of laws relating to the preservation thereof.

E. To apply to the use of water for the maintenance, on the scale at which such land and water areas are maintained as of the effective date of this compact, of officially designated waterfowl management areas, including water consumed by evaporation and transpiration on water surface areas and water used for irrigation or otherwise in the Upper Klamath River Basin; nor to affect the rights and obligations of the United States under any migratory bird treaty or the Migratory Bird Conservation Act (45 Stat. 1222), as amended to the effective date of this compact.

ARTICLE XII
GENERAL PROVISIONS

A. Each state and all persons using, claiming or in any manner asserting any right to the use of the waters of the Klamath River Basin under the authority of either state shall be subject to the terms of this compact.

B. Nothing in this compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of any of its provisions.

C. Should a court of competent jurisdiction hold any part of this compact to be contrary to the Constitution of either state or the United States, all other provisions shall continue in full force and effect, unless it is authoritatively and finally determined judicially that the remaining provisions cannot operate for the purposes, or substantially in the manner, intended by the states independently of the portions declared unconstitutional or invalid.

D. Except as to matters requiring the exercise of discretion by the commission, the provisions of this compact shall be self-executing and shall by operation of law be conditions of the various state permits, licenses or other authorizations relating to the

waters of the Klamath River Basin issued after the effective date of this compact.

E. The physical and other conditions peculiar to the Klamath River Basin constitute the basis for this compact, and neither of the states hereby, nor the Congress of the United States by its consent, considers that this compact establishes any general principle or precedent with respect to any other interstate stream.

ARTICLE XIII
RATIFICATION

A. This compact shall become effective when ratified by the legislature of each signatory state, and when consented to by an Act of Congress of the United States which will, in substance, meet the provisions hereinafter set forth in this Article.

B. The Act of Congress referred to in subdivision A of this Article shall provide that the United States or any agency thereof, and any entity acting under any license or other authority granted under the laws of the United States (referred to in this Article as "the United States"), in connection with developments undertaken after the effective date of this compact pursuant to laws of the United States, shall comply with the following requirements:

1. The United States shall recognize and be bound by the provisions of subdivision A of Article III.

2. The United States shall not, without payment of just compensation, impair any rights to the use of water for use (a) or (b) within the Upper Klamath River Basin by the exercise of any powers or rights to use or control water (i) for any purpose whatsoever outside the Klamath River Basin by diversions in California or (ii) for any purpose whatsoever within the Klamath River Basin other than use (a) or (b). But the exercise of powers and rights by the United States shall be limited under this paragraph 2 only as against rights to the use of water for use (a) or (b) within the Upper Klamath River Basin which are acquired as provided in subdivision B of Article III after the effective date of this compact, but only to the extent that annual depletions in the flow of the Klamath River at Keno resulting from the exercise of such rights to use water for uses (a) and (b) do not exceed 340,000 acre-feet in any one calendar year.

3. The United States shall be subject to the limitation on diversions of waters from the basin of Jenny Creek as provided in subdivision A of Article VIII.

4. The United States shall be governed by all the limitations and provisions of paragraph 2 and subparagraph (a) of paragraph 3 of subdivision B of Article III.

5. The United States, with respect to any irrigation or reclamation development undertaken by the United States in the Upper Klamath River Basin in California, shall provide that substantially all of the return flows and waste water finally resulting from such diversions and use appearing as surface waters in the Upper Klamath River Basin shall be made to drain so as to be eventually returned to the Klamath River upstream from Keno, unless the Secretary of the Interior shall determine that compliance with this requirement would render it less feasible than under an alternate plan of development, in which event such return flows and waste waters shall be returned to the Klamath River at a point above Copco Lake.

C. Upon enactment of the Act of Congress referred to in subdivision A of this Article and so long as such Act shall be in effect, the United States, when exercising rights to use water pursuant to state law, shall be entitled to all of the same privileges and benefits of this compact as any person exercising similar rights.

D. Such Act of Congress shall not be construed as relieving the United States of any requirement of compliance with state law which may be provided by other federal statutes.

ARTICLE XIV
TERMINATION

This compact may be terminated at any time by legislative consent of both states, but despite such termination, all rights then established hereunder or recognized hereby shall continue to be recognized as valid by the states.

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[1957 c.142 §2]

**542.630 Water Resources Director to represent state in administering the Klamath River Basin Compact.** The Water Resources Director shall be the only representative of this state in administering the Klamath River Basin Compact set forth in ORS 542.620. The director shall receive no additional compensation for services as such representative, but, subject to any other applicable law regulating mileage and traveling and other expenses for state officers, shall receive actual and necessary traveling and other expenses incurred in the performance of official functions as such representative, to be paid in the same manner and out of the same moneys as other similar expenses of the director are paid. [1957 c.142 §3]

**542.710** [Formerly 184.460; 2009 c.762 §85; repealed by 2015 c.767 §4]

**542.720** [Formerly 184.470; repealed by 2015 c.767 §4]

## WATERSHED PROTECTION AND FLOOD PREVENTION PROJECTS

**542.750 Cooperative studies of projects under federal Watershed Protection and Flood Prevention Act.** (1) The Water Resources Commission may make surveys and investigations and prepare plans, specifications, estimates and other data, as in the commission's judgment can accomplish the purposes of the Watershed Protection and Flood Prevention Act. As soon as practicable after completion the commission shall prepare, or have prepared, a report setting forth the results of the surveys and investigations. All work performed by the commission under this section shall be correlated with that performed by the United States Natural Resources Conservation Service, or its successor agency, under the Watershed Protection and Flood Prevention Act.

(2) The commission, on behalf of the State of Oregon, may enter into contracts or agreements with any agencies of the United States Department of Agriculture for the execution of surveys and investigations and the preparation of plans, specifications and estimates or other data to determine costs and feasibility of reservoir or other works of improvement that may be constructed under the provisions of the Watershed Protection and Flood Prevention Act, as amended.

(3) The intent of this section is to expedite the investigation and planning of works of improvement that may be constructed under the Watershed Protection and Flood Prevention Act to reduce the delay in time occurring between initiation of a project and beginning of construction. [1961 c.617 §§1,2; 1965 c.95 §1; 1985 c.673 §138; 1997 c.249 §181; 2003 c.14 §347]

# Chapter 543

## 2015 EDITION

# Hydroelectric Projects


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## GENERAL PROVISIONS

**543.010 Definitions for ORS 543.010 to 543.610.** As used in ORS 543.010 to 543.610:

(1) "Actual original cost" includes the sum paid to the state at the time the application was made for a preliminary permit; the sum paid or secured to be paid to the state by the applicant for license at the time such application was made; such sums as may be paid to the United States or any department thereof; and such sums as shall have been reasonably and prudently expended in preliminary investigations, explorations and organization expenses, as determined by the Water Resources Commission.

(2) "Project" means a complete unit, improvement or development. It includes, among other things, power houses, water wheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with the unit or any part thereof, rights of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation and maintenance of any such unit. [Amended by 1985 c.673 §139; 1995 c.229 §1]

**543.012 Applicability of chapter to reauthorization of existing hydroelectric project.** (1) Except for the provisions of ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990, nothing in this chapter shall apply to the reauthorization of an existing project.

(2) All references in ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990 to a license or a license issued under ORS 543.010 to 543.610 also shall be considered a reference to a water right issued under ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A. [1997 c.449 §42]

**543.013 Applicability of chapter and ORS chapter 543A to ocean renewable energy facility.** The provisions of this chapter and ORS chapter 543A do not apply to an ocean renewable energy facility as defined in ORS 274.870 if:

(1) The facility is located within Oregon's territorial sea, as defined in ORS 196.405; or

(2) The facility is in an estuary, unless any part of the facility is not subject to a proprietary authorization issued by the Department of State Lands under ORS 274.873. [2015 c.386 §17]

**Note:** 543.013 was added to and made a part of ORS chapter 543 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

**543.014** [2007 c.212 §2; 2009 c.405 §§1,2; repealed by 2015 c.386 §15]

**543.015 Policy.** The Legislative Assembly declares that it is the policy of the State of Oregon:

(1) To protect the natural resources of this state from possible adverse impacts caused by the use of the waters of this state for the development of hydroelectric power.

(2) To permit siting of hydroelectric projects subject to strict standards established to protect the natural resources of Oregon.

(3) To require the Water Resources Commission, the Energy Facility Siting Council, the Department of Environmental Quality and other affected state agencies to participate to the fullest extent in any local, state or federal proceedings related to hydroelectric power development in order to protect the natural resources of Oregon. [1985 c.569 §2]

**543.017 Minimum standards for development of hydroelectric power; public interest considerations; rules.** (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Water Resources Commission relating to the development of hydroelectric power in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commission shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the commission may allow mitigation if the commission finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation that may re-

sult in a wild game fish population, or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities that, in the judgment of the commission, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity, including water quality, wildlife, scenic and aesthetic values, and historic, cultural and archaeological sites, shall be maintained or enhanced. No activity may be approved that, in the judgment of the commission after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the commission may consider mitigation if the commission determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable, the commission shall consult with appropriate state, federal and local agencies.

(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section.

(3) Nothing in this section limits the authority of any state agency to make recommendations regarding appropriate license conditions during the consideration of the issuance of a license or permit for an existing hydroelectric project. [1985 c.569 §3; 1993 c.544 §6; 1995 c.229 §2; 2007 c.71 §176]

**543.020** [Repealed by 1961 c.224 §20]

**543.030** [Repealed by 1961 c.224 §20]

**543.040** [Repealed by 1961 c.224 §20]

**543.050 Powers of Water Resources Commission as to permits, licenses, investigations, reports, forms and examination of records.** The Water Resources Commission may:

(1) Issue preliminary permits, as provided in ORS 543.210 to 543.250, to any person qualified to become a licensee.

(2) Issue licenses, as provided in ORS 543.260, to citizens of the United States, associations of citizens, or private corporations organized under the laws of the United States or any state of the United States, to appropriate, initiate, perfect, acquire and hold the right to the use of waters within the state, including waters over which the state has concurrent jurisdiction, and to construct, operate and maintain dams, reservoirs, power houses, conduits, transmission lines, and all other works and structures necessary or convenient for the use of the waters in the generation and utilization of electricity.

(3) Conduct investigations and collect information the commission considers necessary or useful for the purposes of ORS 543.010 to 543.610 and cooperate with the federal government and adjoining states concerning all such matters, particularly with reference to waters forming the boundary between this state and another state.

(4) Prescribe the forms of all accounts, records and memoranda to be kept by licensees under ORS 543.010 to 543.610.

(5) Examine at any time all accounts, books of account and documents and data related to the business of a licensee under ORS 543.010 to 543.610; and require a licensee to submit, whenever required by the commission, reports and statements under oath containing information as to assets, liabilities, capitalization, gross receipts, interest and dividend requirements, interest due and paid, amortization and other reserves,

net investment, cost of any project constructed, maintained or operated, in whole or in part, cost of maintenance, operation, renewals, replacements, cost of production, transmission, distribution and sale of electricity, and other data as the commission may require.

(6) Perform all acts, exercise all powers and issue all orders which, in the judgment and discretion of the commission, are necessary to effectuate the purposes of ORS 543.010 to 543.610. [Amended by 1955 c.673 §3; 1955 c.707 §39; 1961 c.224 §13; 1985 c.673 §140; 1995 c.229 §3]

**543.055 Hearings and witnesses.** (1) The Water Resources Commission may hold hearings and take testimony orally, by deposition or in such other form as the commission considers satisfactory, either within or without this state. The Water Resources Commission may require, by subpoena, the attendance of witnesses and the production of documentary evidence.

(2) An administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, shall conduct any contested case hearing that the commission is required or permitted by law to hold. The administrative law judge has the same powers with respect to the conduct of the hearing as are granted by law to the commission, including the taking of testimony, the signing and issuance of subpoenas and the administering of oaths and affirmations to witnesses. The administrative law judge shall keep a record of the proceedings on the hearing and shall transmit such record to the commission.

(3) The commission may designate any person to take the testimony, affidavit or deposition of a witness. The person so designated may administer an oath or affirmation to any such witness and take the testimony thereof in accordance with such rules as the commission may prescribe.

(4) Witnesses appearing before the commission or any person designated by the commission to take testimony shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2). [1955 c.673 §2; 1961 c.224 §14; 1985 c.673 §141; 1989 c.980 §15; 1999 c.849 §§112,113; 2003 c.75 §46]

**543.060 Investigations; access to project, maps, books and other project data.** The Water Resources Commission, the Water Resources Director or any employee of the Water Resources Department, at all reasonable times, shall have free access to any project, addition or betterment during or after construction or acquisition, and to all maps, plans, profiles, estimates, engineers' reports, books, accounts, records and other data relating to the project. [1985 c.673 §142]

**543.070** [Repealed by 1975 c.581 §29]

## HYDROELECTRIC PROJECT FEES

**543.075 Definitions for ORS 543.075 to 543.092.** As used in ORS 543.075 to 543.092:

(1) "1998 dollar" means a dollar amount that when adjusted for inflation or deflation equals the value of a dollar in 1998.

(2) "Holder" means a person authorized to operate a hydroelectric project under the authority of either a time-limited water right, a certificated water right or a pre-1909 uncertificated claim. "Holder" includes licensees, power claimants, uncertificated claimants and water right certificants.

(3) "Licensee" means a person authorized to operate a hydroelectric project through the means of a license containing a time-limited water right.

(4) "Power claimant" means a person authorized to operate a hydroelectric project through the means of a water right that does not expire.

(5) "Reauthorize" means the process by which a hydroelectric project holding a time-limited hydroelectric license acquires new authorization to continue operating for an additional fixed amount of time according to ORS chapter 543A.

(6) "Relicense" means the process by which the Federal Energy Regulatory Commission issues a new license to allow a hydroelectric project to continue operating past the expiration date of its current license.

(7) "Team" means a Hydroelectric Application Review Team created pursuant to ORS 543A.035, 543A.075 or 543A.300.

(8) "Uncertificated claimant" means a person authorized to operate a hydroelectric project through the means of an uncertificated claim established prior to 1909.

(9) "Water right certificant" means a person authorized to operate a hydroelectric project through the means of a time-limited certificated water right. [1999 c.873 §4]

**543.078 Annual fee for hydroelectric project.** (1) On or before January 1 of each year, each holder shall pay to the State of Oregon an annual fee for each hydroelectric project that is subject to this section. The annual fee required by this section shall be based on the theoretical horsepower specified in the water right for each project.

(2) The amount of the annual fee required under subsection (1) of this section shall be determined in the following manner:

(a) Subject to the schedule set forth in subsection (3) of this section, each holder shall pay an amount, in 1998 dollars, equal to $0.405 per theoretical horsepower covered by the water right for the holder's hydroelectric project. The annual fee may be set

forth in the water right or may be established by order of the Water Resources Director and shall be adjusted annually for inflation according to rules established by the Water Resources Commission. The annual fee also may be adjusted through the periodic review process established in ORS 543.085.

(b) Each holder of a hydroelectric project that produces 123.5 theoretical horsepower or less shall pay an annual fee of $50 for that project.

(3) The fee determined in subsection (2) of this section shall apply to a project on the January 1 following the occurrence of an event enumerated as follows:

(a) A licensee or water right certificant shall begin to pay the annual fee after the final order for the reauthorized water right is issued under ORS 543A.130.

(b) Notwithstanding paragraph (a) of this subsection, if a licensee holds, on October 23, 1999, an original state hydroelectric license for which the original expiration date was or is more than five years after the expiration date of the original Federal Energy Regulatory Commission license for the project, the licensee shall begin payment of the annual fee established under this section after the expiration date of the original state hydroelectric license.

(c) A power claimant, or uncertificated claimant, licensed by the Federal Energy Regulatory Commission shall begin to pay the annual fee after the Federal Energy Regulatory Commission issues a new license. A power claimant or uncertificated claimant that received a new license from the Federal Energy Regulatory Commission within 10 years prior to October 23, 1999, shall begin to pay the annual fee on January 1, 2000.

(d) A power claimant, or uncertificated claimant, whose project is exempted from licensure by the Federal Energy Regulatory Commission or not licensed by the Federal Energy Regulatory Commission shall begin paying the annual fee under this section on January 1, 2008, for that project.

(4) No fee shall be assessed under ORS 543.710 for a project subject to an annual fee under this section. [1999 c.873 §5]

**543.080 Project specific fees; summary of project specific expenditures.** (1) In addition to the annual fee set forth in ORS 543.078, a holder may be required to pay project specific fees.

(2) Project specific fees are fees that compensate a state agency for the agency's reasonable and necessary oversight of a holder's implementation of the protection, mitigation and enhancement measures included in a water right for the project, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Federal Energy Regulatory Commission license.

(3) Project specific fees shall be considered at the time of reauthorization or relicensing of a hydroelectric project and, if needed, shall be established before the proposed final order is issued under ORS 543A.115, and shall be included in the reauthorized water right or the certificate issued pursuant to ORS 468B.040 or 468B.045. In the case of power claims and uncertificated claims, project specific fees shall be considered at the time of relicensing and, if needed, shall be included in an order of the Water Resources Director amending the claim pursuant to ORS 543.092 or in a certificate issued for the project pursuant to ORS 468B.040 or 468B.045.

(4) The need for, and amount of, a project specific fee shall be based upon the following factors:

(a) Experimental or unproven nature of the proposed mitigation;

(b) Significance of the resource affected;

(c) Need for ongoing agency involvement in reviewing the effectiveness of the proposed measure;

(d) Need for agency personnel to perform field work or research efforts; and

(e) Overall nature of the protection, mitigation or enhancement measures, including but not limited to consideration of whether the measure is simple, complex, closed-ended or adaptive and whether the measure is determined solely by the holder or by an agency or public committee.

(5) A project specific fee may not be assessed for:

(a) Work on projects other than the project for which the fee is established;

(b) Work that is paid for by the annual hydroelectric fee;

(c) Development of statewide hydroelectric policy;

(d) Coordination of statewide activities within an agency;

(e) Costs to the agency of Attorney General assistance associated with ongoing litigation; or

(f) Routine monitoring of compliance with nonadaptive management provisions of the water right, an uncertificated claim, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Federal Energy Regulatory Commission license.

(6) A project specific fee shall be time-limited. One year before expiration of a project specific fee, the holder and any affected agency shall review the need, if any, to

modify, extend or terminate the project specific fee. After such review, the agency shall propose a fee modification, extension or termination. Any dispute regarding the proposed fee action shall be referred to an independent fact finder selected by mutual agreement, whose costs shall be borne one-half by the holder and one-half by the agency. The fact finder shall review whether the proposed fee action is appropriate under and consistent with the criteria set forth in subsections (2), (4) and (5) of this section. The fact finder shall not review the substance of the protection, mitigation and enhancement measures contained in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The fact finder shall forward its determination in writing to the holder and agency. Upon receipt and consideration of the fact finder's determination, the agency shall notify the holder whether the project specific fee is modified, extended or terminated. If the holder is dissatisfied with the fee action, the holder may request administrative or judicial review in accordance with statutes or rules applicable to a particular agency's fee action. The written determination of the fact finder shall be admissible in any such administrative or judicial hearing. Notwithstanding any other law, a presumption shall exist in favor of the determination of the fact finder and the burden shall be on the party seeking a fee action contrary to the determination of the fact finder to demonstrate that a different fee action is justified under this section.

(7) Subject to subsections (2) to (5) of this section, the amount of a project specific fee shall be established based on an estimate of the cost to the agency of the labor, supplies and overhead expended by the agency in providing reasonable and necessary oversight of a holder's implementation of the protection, mitigation and enhancement measures included in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The estimate used to derive a project specific fee amount shall be determined by using increments of not more than 0.25 full-time equivalents.

(8) A project specific fee shall be payable after issuance of the final order pursuant to ORS 543A.130, or in the case of power claimants and uncertificated claimants, after the issuance of either the director's order or a certificate issued for the project pursuant to ORS 468B.040 or 468B.045. A project specific fee shall be paid in increments that are reasonably related to the work to be performed and set forth in the final order, certificate issued pursuant to ORS 468B.040 or 468B.045 or the director's order.

(9) Each agency receiving project specific fees shall, on a biennial basis, provide the holder paying the fees with a summary of project specific expenditures. [1999 c.873 §6]

**543.082 Invoice for fees; overdue fee; interest on delinquent fees.** (1) At least 45 days before the fees required under ORS 543.078 or 543.080 become due, the Water Resources Department shall issue invoices to the holder for each fee.

(2) If any holder fails to pay the fees required under ORS 543.078 or 543.080 within 15 days after the date specified in the invoice, the department shall notify the holder of the amount and nature of the overdue fee. Any such notice shall be sent to the holder by certified mail and shall include notification that the holder has 30 days from the date of the certified delivery of the notice to pay the overdue fee or the holder shall be subject to the late payment penalty provisions of subsection (3) of this section.

(3) Any fee that is not paid within 30 days of the date a holder receives certified delivery of the notice required under subsection (2) of this section shall be considered delinquent and shall be increased by 25 percent. In addition, the state shall have a preference lien for any such fee, together with interest at the rate of 10 percent per annum from the date of delinquency, upon the property of the holder used, or necessary for use, in the development of the water right, together with any improvements erected on the property for such development. Upon notice from the Water Resources Commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(4) The remedy set forth in subsection (3) of this section is in addition to any other remedy provided by law for the collection of moneys or for noncompliance with a condition of a water right order, uncertificated claim or certification under ORS 468B.040 or 468B.045. [1999 c.873 §7]

**543.085 Periodic review of annual fee.** (1) The Water Resources Director shall appoint a review panel to review the amount of the annual fee established under ORS 543.078 in 2003 and 2009 and every eight years thereafter. The review panel shall consist of at least one representative from the following and others at the director's discretion:

(a) The Department of Environmental Quality;

(b) The State Department of Fish and Wildlife;

(c) The Public Utility Commission;

(d) The Water Resources Department;

(e) Investor owned utilities;

(f) Publicly owned utilities;

(g) Municipalities;

(h) Environmental organizations;

(i) Agricultural organizations; and

(j) Nonutility owners of hydroelectric projects.

(2) All holders paying annual fees under ORS 543.078 shall be notified by the Water Resources Department at least 60 days in advance of the meeting of the review panel established in subsection (1) of this section, and provided the opportunity to submit comments to the panel.

(3) Any periodic review conducted under subsection (1) of this section shall evaluate each agency's hydroelectric program to determine if current staffing levels, activities and funding are appropriate to fulfill program objectives. There shall be a presumption that the fee should not change. To overcome the presumption and alter the existing fee, the panel must find compelling reasons for alteration and must reach unanimous consent on the new fee. If the presumption is overcome, upon completion of the review process the director shall either adjust the annual fee as recommended by the panel or elect not to adjust the fee. Any change in the annual fee as a result of this section shall become effective on the January 1 following the director's action. The director shall notify all holders of any change in the annual fee and the effective date of such change. [1999 c.873 §8]

**543.088 Payment of costs or fee for reauthorization or relicensing of project.** (1) Notwithstanding ORS 543A.405 and 543A.410, during each year of the interim period established in subsection (2) of this section, any licensee or water right certificant seeking reauthorization of a state water right to operate a federally licensed hydroelectric project shall pay the greater of:

(a) The actual cost of the Hydroelectric Application Review Team's reauthorization activities for the year in question as established pursuant to ORS 543A.405 and 543A.410; or

(b) 12.5 cents per theoretical horsepower as specified in the water right for each project under consideration for reauthorization. This amount shall be calculated in 1998 dollars.

(2) For any project, the interim period referred to in subsection (1) of this section shall begin on the January 1 immediately following submission to the Water Resources Department of a proposed final order for reauthorization of the project under ORS 543A.115 (2). For any project, the interim period referred to in subsection (1) of this section shall end on December 31 of the year the department issues a final order on reauthorization of the project pursuant to ORS 543A.130.

(3) Notwithstanding ORS 543.090, during each year of the interim period established in subsection (4) of this section, any power claimant or uncertificated claimant seeking to relicense a federally licensed hydroelectric project shall pay the greater of:

(a) The actual cost of the team's relicensing activities for the year in question as established pursuant to ORS 543.090; or

(b) 12.5 cents per theoretical horsepower as specified in the water right for each project under consideration for relicensing. This amount shall be calculated in 1998 dollars.

(4) For any project, the interim period referred to in subsection (3) of this section shall begin on the January 1 immediately following issuance of an annual license for the project by the Federal Energy Regulatory Commission. For any project, the interim period referred to in subsection (3) of this section shall end on December 31 of the year the Federal Energy Regulatory Commission issues a new license for the project.

(5) The Water Resources Department shall reimburse a participating agency for costs incurred in the agency's review of a project during the year for which the fees are collected. Such costs shall not include expenses of other state agencies for which a fee is otherwise collected under state law. Any fees collected under subsection (1) or (3) of this section in excess of the team's actual cost of evaluation of the project for the year shall be distributed according to ORS 536.015.

(6) No fee shall be charged under this section unless the project is a federally licensed project.

(7) No fee shall be charged pursuant to subsection (1) of this section unless the Hydroelectric Application Review Team proposes to reauthorize the water right for the project in the proposed final order submitted to the Water Resources Department under ORS 543A.115 (2).

(8) Water right certificants and licensees with water rights or licenses that expire more than five years after the original federal license for the project expires shall not begin paying fees assessed under this section until after the expiration date of the original state hydroelectric license or water right. [1999 c.873 §9]

**543.090 Payment of expenses of Hydroelectric Application Review Team for project operating under federal license and state power claim or uncertificated claim.** (1) Any project operating under a hydroelectric license issued by the Federal Energy Regulatory Commission and concurrently operating under the authority of a power claim or uncertificated claim shall pay all expenses related to the review and decision of a Hydroelectric Application Review Team established under ORS 543A.075 that:

(a) Are incurred by the team and any agency participating as part of the team in the federal relicensing process; and

(b) Are not otherwise covered by the reauthorization fee paid under ORS 543A.415.

(2) Not later than six years before the expiration of a hydroelectric license issued by the Federal Energy Regulatory Commission to any project operating concurrently under the authority of a power claim or uncertificated claim, the Water Resources Department shall contact the holder to schedule a consultation meeting regarding expected fees to be incurred by the Hydroelectric Application Review Team.

(3) Relicensing fees shall be calculated and assessed according to the terms and conditions set forth in ORS 543A.405 and 543A.410 for application fees. [1999 c.873 §10]

**543.092 Amendment of hydroelectric water right or claim; rules; unilateral amendment of power claim or uncertificated claim to assess project specific fees.** (1) Upon the request of the holder and the approval of the Water Resources Department, a hydroelectric water right or claim may be amended.

(2) The Water Resources Department shall develop rules governing the process by which a hydroelectric water right or claim may be amended. Any amendments under subsection (1) of this section shall:

(a) Be consistent with the final unified state position for the project;

(b) Be consistent with the requirements of ORS chapter 543A;

(c) Cause no injury to other water rights; and

(d) Allow for public participation in the amendment process.

(3) The Water Resources Director may unilaterally amend a power claim or uncertificated claim in order to assess project specific fees under ORS 543.080. [1999 c.873 §11]

**543.095 Challenges to certain statutes related to hydroelectric projects.** (1) As used in this section, "person" has the meaning given that term in ORS 174.100.

(2) No person shall be estopped or precluded from challenging the constitutionality or validity of any provision of chapter 449, Oregon Laws 1997, or the provisions of chapter 873, Oregon Laws 1999, as a result of having received or sought benefits under, complied with, paid fees under or filed an application under those statutes, or as a result of having participated in their drafting, enactment or implementation.

(3) Nothing in this section shall be construed to imply that a person is estopped or precluded from challenging the validity or constitutionality of any statute as a result of having participated in the drafting, enactment or implementation of the legislation that resulted in the enactment of such statute. [1999 c.873 §29]

**Note:** Legislative Counsel has substituted "chapter 873, Oregon Laws 1999," for the words "this 1999 Act" in section 29, chapter 873, Oregon Laws 1999, compiled as 543.095. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1999 Comparative Section Table located in Volume 20 of ORS.

**Note:** 543.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW

**543.110 Appropriation and use of water for power is governed by this chapter.** After February 26, 1931, no right to appropriate or to use the waters of the lakes, rivers, streams or other bodies of water within this state, including water over which this state has concurrent jurisdiction, in connection with the development of any water power project for the generation of electricity, shall be initiated, perfected, acquired or held, except for and during the periods or extensions thereof stated in ORS 543.010 to 543.610, and pursuant to the provisions thereof.

**543.120 Water power projects to be in conformity with this chapter.** After February 26, 1931, no water power project involving the use of the waters of lakes, rivers, streams or other bodies of water within this state, including waters over which this state has concurrent jurisdiction, for the generation of electricity, shall be begun or constructed except in conformity with the provisions of ORS 543.010 to 543.610.

**543.130** [Repealed by 1961 c.224 §20]

**543.135** [1961 c.100 §§2,3; repealed by 1985 c.673 §185]

**543.140 Projects or developments constructed by federal government excepted from law.** The provisions of ORS 543.010 to 543.610 shall not apply to any water power

project or development constructed by the United States.

**543.150 Municipal corporations and utility districts; applicability of laws; powers of commission respecting districts.** The provisions of ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to 543.610 shall not apply to cities, towns or other municipal corporations of this state, including utility districts organized under section 12, Article XI, Oregon Constitution, and legislation enacted thereunder; saving, however, to such cities, towns and other municipal corporations the rights and preferences specified in ORS 543.260, 543.270 and 543.610. The Water Resources Commission shall exercise the powers in relation to utility districts as may be conferred upon the commission by any legislation providing for the creation of such utility districts. [Amended by 1985 c.673 §144; 1991 c.869 §7]

**543.160 Hydroelectric facility on North Santiam River prohibited; exception.** (1) No person shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on the North Santiam River between river mile 27 and Big Cliff Dam.

(2) Nothing in subsection (1) of this section applies to any hydroelectric facility or structure constructed on the North Santiam River prior to October 15, 1983, to the historic uses of such a hydroelectric facility or structure or to the repair or reconstruction of such a hydroelectric facility or structure at the present site. [1983 c.418 §§1,2]

**Note:** 543.160 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.165 Hydroelectric facility on part of Deschutes River prohibited.** No person, state agency, local government, district or municipal corporation shall construct, and no officer or agency of the state shall issue any permit for the construction of any hydroelectric facility or structure on the Deschutes River between river mile 172 below Lava Island Falls and river mile 227 below but not including Wickiup Dam. [1985 c.560 §1]

**Note:** 543.165 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.170 Hydroelectric facility on Squaw Creek prohibited.** No person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on Squaw Creek. [1985 c.560 §2]

**Note:** 543.170 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.175 Hydroelectric facility on Deschutes River within City of Bend prohibited; exception.** (1) Except as provided in subsection (2) of this section, no person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on that portion of the Upper Deschutes River situated within the city limits of the City of Bend except for a facility that meets all of the following criteria:

(a) The facility is located on an existing irrigation diversion facility or structure constructed by persons.

(b) The operation of the facility would not require any water in addition to water appropriated for irrigation purposes.

(c) Operation of the facility would be limited to the period of time during which water is diverted for irrigation purposes and the diversion would not be extended for the purpose of hydroelectric power generation.

(2) Subsection (1) of this section shall not apply to the construction and maintenance of or the issuance of a permit for a hydroelectric facility or structure for which the hearing record is closed on or before the July 12, 1985, whether or not the record is later reopened by or at the direction of the Water Resources Commission for any reason.

(3) As used in this section, "Upper Deschutes River" means that portion of the mainstem Deschutes River between the North Canal Dam at approximately river mile 165 and the head waters of the Deschutes River. [1985 c.560 §3]

**Note:** 543.175 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## PRELIMINARY PERMITS; LICENSES

**543.210 Preliminary permits; application; contents; fee.** (1) Any person who proposes to operate a hydroelectric project in Oregon shall apply for a state preliminary permit. Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. The Water Resources Commission may issue a preliminary

permit to any person possessing the qualifications of a licensee as specified in ORS 543.010 to 543.610.

(2) The application for a preliminary permit shall set forth:

(a) The name and post-office address of the applicant;

(b) The approximate site of any proposed dam or diversion;

(c) The amount of water in cubic feet per second;

(d) The theoretical horsepower; and

(e) Any other data the commission may by rule require.

(3) Upon receipt of an application for a preliminary permit the commission shall indorse on the application the date of receipt, and keep a record of the receipt of the application. The date so indorsed shall determine the priority of the use of water initiated under the provisions of ORS 543.010 to 543.610.

(4) At the time of filing application for preliminary permit the applicant shall pay to the state the portion of the total project fee required in ORS 543.280, to cover costs of recording, publishing notices and making investigations necessary to determine whether or not a preliminary permit should be granted. [Amended by 1961 c.224 §15; 1985 c.673 §147; 1991 c.869 §8]

**543.220 Notice of filing of application; waiting period.** (1) If an application is made for a preliminary permit, after said application has been referred to hearing the Water Resources Commission shall give written notice of the filing of the application to:

(a) Any municipality or other person or corporation that, in the judgment of the commission, is likely to be interested in or affected by the proposed project; and

(b) The owner of any land that is:

(A) Adjacent to any portion of the stream in which the quantity of water will be decreased by the project; or

(B) Adjacent to the site of the proposed project.

(2) The commission shall also publish notice of the application once each week for at least two successive weeks and for such further time, if any, as the commission shall determine, in a newspaper of general circulation in each county in which the project covered by the application is located.

(3) No application for the appropriation or use of water for the development of 1,000 theoretical horsepower or more shall be granted until at least six months after the application for a preliminary permit has been filed. [Amended by 1961 c.224 §16; 1975 c.581 §27; 1985 c.569 §23; 2011 c.52 §9]

**543.225 Hearing on application; notice; policy.** (1) The Water Resources Commission shall conduct a public hearing on any application or amended application for a preliminary permit or for a license for a major project of more than 100 theoretical horsepower and an application for preliminary permit or license for a minor project of less than 100 theoretical horsepower if the commission concludes it is in the public interest to do so.

(2) The commission shall give proper notice of the public hearing on an application under subsection (1) of this section, to the applicant and to each protestant, if any. After the hearing, if the commission determines that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the commission under ORS 543.017, or would otherwise impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned, it shall enter an order rejecting the application or requiring its modification to conform to the public interest, to the end that the highest public benefit may result from the proposed project. The order may set forth any or all of the provisions or restrictions to be included in a preliminary permit or license 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.

(3) In determining whether the proposed project would impair or be detrimental to the public interest, the commission shall have due regard for:

(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 thereof, 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.

(4) After the entry of the order specified in subsection (2) of this section, the application for a preliminary permit or for a license shall be referred to the Water Resources Director for further proceedings consistent with the commission's order. [1955 c.707 §42; 1961 c.224 §17; 1975 c.581 §28; 1985 c.569 §20; 1985 c.673 §148]

**543.230 Hearings on application; rules; protest.** (1) The Water Resources Commission shall, by order or rule, provide for the time and manner of hearings upon applications. However, upon request by any person made within 30 days after the Water Resources Director issues an order pertaining to cumulative impacts under ORS 543.255, the Water Resources Commission shall conduct a contested case hearing in accordance with the applicable provisions of ORS chapter 183 and any rules adopted by the commission.

(2) Every application for the appropriation of water for the generation of electricity subject to the terms of ORS 543.010 to 543.610 shall be subject to protest or remonstrance on behalf of the public, or any district organized for public purposes, or any interested private person, on the ground that the proposed construction, development or improvement would damage or destroy the use or utility of the stream or other body of water involved for other beneficial purposes, including propagation of fish, scenic, aesthetic, recreational, park, highway or other beneficial use. All protests and remonstrances under this subsection must be filed with the commission within the time specified in the notice and must be in writing and verified by the parties protesting, and a certified copy thereof shall be served upon the applicant for the permit. However, in the discretion of the administrative law judge, at the time of the hearing any interested party may make an oral protest if there exists any good reason therefor, and the administrative law judge shall allow the applicant to be heard in opposition thereto. Every protest or remonstrance under this subsection which is not filed and served as required in this subsection shall be deemed waived. [Amended by 1955 c.673 §4; 1955 c.707 §40; 1961 c.224 §18; 1993 c.544 §7; 1995 c.416 §41; 1999 c.849 §115; 2003 c.75 §98]

**543.240** [Repealed by 1991 c.869 §15]

**543.250 Permit; duration; transfer; cancellation; priority; terms and conditions; denial.** A preliminary permit may be issued for a period not exceeding a total of three years. It shall not be transferable except upon written approval of the Water Resources Commission, and may be canceled by order of the commission at any time upon proof to the commission's satisfaction, after hearing, that the holder is not in good faith complying with the provisions of the permit. The holder of a preliminary permit which has not been canceled shall have priority of right to make application for a license covering the project for which the preliminary permit was issued, within the term of the permit or any lawful extension thereof. Except as otherwise specified in ORS 543.010 to 543.610, the commission may fix the terms and conditions of any preliminary permit issued thereunder, and each preliminary permit issued shall set forth all the terms and conditions. The commission may decline to grant any application for a preliminary permit. [Amended by 1985 c.673 §149; 1993 c.63 §1]

**543.255 Determination of cumulative impacts of proposed hydroelectric power projects; consolidated review; applicability.** (1) Whenever the Water Resources Department receives an application to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.610, the department shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the department; or

(b) Existing hydroelectric projects in the same river basin.

(2) If the department determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the Water Resources Director shall issue an order setting forth the department's determination that there are no cumulative effects and the department's decision that consolidated review is not required.

(3) If the department determines that pending applications or existing projects may have cumulative effects, the Water Resources Commission shall conduct a consolidated review before approving any application in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS chapter 183 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the department and existing hydroelectric projects. In its final order on an application, the commission or the department shall include its findings on cumulative impacts. The findings of the commission or department under this section must be sufficient to support the

department's decision to approve or deny an application.

(4) Any application for a project in the same river basin filed after the commission begins a consolidated review contested case hearing shall not be reviewed until the commission has issued final findings on cumulative effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a permit to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.610, the commission may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section. [1985 c.569 §10; 1985 c.673 §193; 1993 c.544 §8; 1995 c.229 §4; 1995 c.416 §39]

**543.257** [1985 c.569 §11; 1985 c.673 §194; repealed by 2007 c.354 §1]

**543.260 Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district.** (1) A license may be issued by the Water Resources Commission to any qualified person for a period not exceeding 50 years. If the project is subject to regulation by the Federal Energy Regulatory Commission, the term shall be concurrent with and expire upon expiration of the federal license for the project. Each license shall be conditioned upon acceptance by the licensee of all the terms and conditions of ORS 543.010 to 543.610, and such further terms and conditions as the commission may prescribe, not inconsistent with those sections. All such terms and conditions, and their acceptance by the licensee, shall be expressed in the license. A license may be terminated for the reasons and in the manner provided in ORS 543.010 to 543.610. The form of license containing all the terms and conditions may be set forth in the preliminary permit.

(2) The commission may deny any application for a license if it appears that the applicant has failed to comply substantially with the terms and conditions of the preliminary permit or, notwithstanding the commission has issued a preliminary permit, if in the judgment of the commission the project is unfeasible or the public interest requires the denial thereof.

(3) A municipal corporation or people's utility district shall be given preference on any project in the issuance of a license, upon condition that the municipal corporation or people's utility district exercising such preference right shall be required to reimburse the holder of a preliminary permit for all reasonable actual expenditures made by the holder upon the project described or referred to therein. [Amended by 1983 c.740 §214b; 1985 c.673 §150; 1995 c.229 §5]

**543.265 Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost.** The Water Resources Department shall impose as a condition to any water right permit to appropriate water for hydroelectric purposes granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the hydroelectric project shall, during the operational lifetime of the project, perform or allow the State Department of Fish and Wildlife to perform, any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish. The scope and cost of these studies will be negotiated between the State Department of Fish and Wildlife and the operator. [1985 c.674 §6; 1987 c.158 §116; 1995 c.416 §40]

**Note:** 543.265 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.270 Preference in granting permit or license; municipal use.** In issuing preliminary permits, and in issuing licenses where no preliminary permit is held by an applicant for a license, preference shall be given to the application which appears to the Water Resources Commission to be best adapted to conserve and utilize the water power involved. However, any application for the use of water made by any municipal corporation of this state under any law of the state, before a preliminary permit is issued, or before a license is issued when no preliminary permit upon the proposed project has been issued, shall always have preference. [Amended by 1985 c.673 §151]

**543.280 Fee payments by licensee.** (1) Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. An applicant for a state preliminary permit for a new hydroelectric project shall submit to the Water Resources Commission a complete copy of any application for the project filed with the Federal Energy Regulatory Commission or other federal agency. For preliminary permits, if the copy of the federal application is filed with the commission at the same time it is filed with the federal agency, at the commission's discretion, such copy may fulfill the requirements of ORS 543.210, except for the fee requirement in ORS 543.210 (4).

(2) An applicant for a preliminary permit or license for a project or for a permit to appropriate water for power purposes shall pay to the state a project fee based on the

capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a permit should be granted.

(3) The amount of the total project fee required under subsection (2) of this section shall be:

(a) For a project of less than 100 theoretical horsepower, $1,000.

(b) For any project of 100 theoretical horsepower or more, an amount equal to $5,000 plus $1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of $100,000.

(4) Except for projects of less than 100 theoretical horsepower, the project fee required under subsection (2) of this section shall be payable in advance before each of four stages of project review as established by rule by the Water Resources Commission. The payment schedule shall not require the applicant to pay more than $2,500 of the project fee at the first stage of project review or more than 50 percent of the total project fee in the first two stages of the project review. For a project of less than 100 theoretical horsepower, the applicant shall pay 50 percent of the fee at the time of filing the application for a preliminary permit or application for a permit to appropriate water for power purposes and the remaining 50 percent before the commission issues a license or a water right permit. A person may withdraw an application for a hydroelectric project after any stage of project review without further payment of fees under this section.

(5) In addition to the project fee required under subsection (2) of this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.

(6) The commission shall provide an applicant a statement itemizing the staff time, resources and costs expended to review the application at each project stage. The statement shall include the costs expended by the State Department of Fish and Wildlife and the Water Resources Department specific to the project. [Amended by 1957 c.581 §1; 1985 c.673 §152; 1991 c.869 §9]

**543.290 Filing of maps, plans, estimates and other materials; incorporation as part of license; alteration; further statements and data.** The applicant for a license shall submit to and file with the Water Resources Commission:

(1) All maps, plans, specifications and cost estimates as may be required by the commission for a full understanding of the proposed project. The maps, plans and specifications, when approved by the commission, shall become a part of the license, if one is issued upon the application, and thereafter no change shall be made in any such maps, plans and specifications until the proposed change has been approved by the commission. When a proposed change is approved by the commission, the changes shall become a part of the license.

(2) Any further statements and data as may be required by the commission concerning the proposed project, the market to be served, the financial responsibility of the applicant, the plan of financing and any other matters deemed material by the commission. [Amended by 1985 c.673 §153]

**543.300 Conditions governing license; fees; waiver of conditions.** Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall be on, the following conditions:

(1) That the proposed project shall be such as, in the judgment of the Water Resources Commission, is well adapted to the development and utilization of the water power involved.

(2) That the licensee shall construct and build the project according to the maps, plans and specifications filed with and approved by the commission, and within the time fixed by the license or by any lawful extension thereof.

(3) The operations of the licensee so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules as the commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe.

(4) That the licensee will maintain the project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the project, and all parts thereof, conformably to the rules of the commission not inconsistent with ORS 543.010 to 543.610.

(5) That the licensee will pay to the state annually not more than $1 for each horsepower covered by the license. This sum shall constitute a first lien upon the project, which lien may be enforced by suit in equity or other appropriate proceeding, or payment thereof may be enforced by the state in an action for debt. Payment of such license fees may be waived by the commission during all or any part of the period of construction. The fees need not be uniform throughout the entire period of the license, but may be for different amounts for different periods. The amount of the license fees, within the minimum and maximum limits herein specified, shall be determined by the commission and expressed in the license.

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the commission may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the commission may waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period for which a license may be issued, and the annual charge as determined by the commission under subsection (5) of this section. In issuing licenses for projects in excess of 100 horsepower for which the applicants are required to secure permits and licenses from the United States as a condition precedent to the construction of the projects, the commission may waive and modify such of the terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a license may be issued and the annual charge as determined by the commission under subsection (5) of this section, as the commission, by order, after full investigation and public hearing, shall find to make impracticable the construction of such projects. During the time that a licensee is not a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt against the licensee's plant, the commission may waive the accounting and amortization requirements of ORS 543.010 to 543.610, even where the project involved exceeds 100 horsepower.

(8) Subsection (5) of this section does not apply to a water right reauthorized pursuant to ORS chapter 543A. [Amended by 1959 c.560 §1; 1961 c.224 §19; 1985 c.673 §154; 1999 c.873 §23]

**543.310 Disposition of moneys collected.** Except as provided in ORS 536.015, all moneys collected under the provisions of ORS 543.010 to 543.610 shall forthwith be paid to the State Treasurer and become a part of the General Fund. [Amended by 1985 c.674 §10; 1991 c.869 §10]

**543.320 Effect of amendment or repeal of law.** The right to alter, amend or repeal ORS 543.010 to 543.610, or any part thereof, hereby is expressly reserved; but no such alteration, amendment or repeal shall affect any license theretofore issued under the provisions of ORS 543.010 to 543.610, or the rights of any licensee thereunder, unless expressly assented to by the licensee.

## TIME FOR CONSTRUCTION; TERMINATION, REVOCATION OR TRANSFER OF LICENSE

**543.410 Construction of project; time for commencement and completion; supply of service; extension of time; nonperformance; termination of license.** (1) The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall, within the time fixed in the license, complete and put into operation such part of the ultimate development as the Water Resources Commission considers necessary to supply the reasonable needs of the then available market, and shall, from time to time thereafter construct such portion of the balance of the development as the commission directs, so as to supply adequately the reasonable market demands until development is completed.

(2) The period for commencement of construction may be extended once but not longer than two additional years, and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests.

(3) If the licensee does not commence actual construction of the project works or of any specified part of the project works, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to the project works or part of the project works, be terminated upon written order of the commission. [Amended by 1985 c.673 §155]

**543.420 Noncompletion of construction within prescribed time; judicial proceedings; sale of property; disposition of proceeds; rights of purchaser.** If construction of a project under license has been begun but has not been completed within the time prescribed in the license or in any lawful extension thereof, then the Attorney General, upon request of the Water Resources Commission, shall institute proceedings in the circuit court for the county in which some part of the project is situated,

for termination of the rights of the licensee under the license, the sale of the property embraced in the project, and for such other relief as the case may demand. Any judgment or decree entered in the proceeding shall provide for distribution of the proceeds of the sale to the parties equitably entitled thereto. The purchaser at any such sale shall take the property subject to all the terms and conditions of the license under which construction was begun, except insofar as they may be modified by the commission. [Amended by 1985 c.673 §156]

**543.430 Proceedings after completion of project for violation of license terms; authority of court; sale of project.** The Attorney General shall, upon request of the Water Resources Commission, institute proceedings in the circuit court for the county in which any project, or the major part of a project is situated, after the project has been completed, for the purpose of revoking for violation of its terms any license issued under ORS 543.010 to 543.610, or for the purpose of correcting or remedying by injunction, mandamus or other appropriate writ or decree, any act by the licensee in violation of the terms of those sections, or of any rule or order of the commission. The court shall have jurisdiction of the proceedings and may issue and execute all necessary process to compel compliance with the terms of any license, the terms of ORS 543.010 to 543.610, the lawful orders and rules of the commission. If a decree revoking a license is entered, the court may sell the whole, or any part, of a project under the license; wind up the business of the licensee conducted in connection with the project; distribute the proceeds to the parties equitably entitled thereto; and make and enforce such further orders and decrees as equity and justice may require. At any such sale the purchaser shall take the rights and privileges belonging to the licensee and shall perform all the duties of the licensee under the license. The remedies provided by this section are in addition to the remedies otherwise provided by ORS 543.010 to 543.610. [Amended by 1985 c.673 §157]

**543.440 Transfer of license, rights or property; effect.** No voluntary transfer of any license or any rights under a license or of any property acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.610 shall be made without written approval of the Water Resources Commission. Any successor or assignee of any licensee under any project acquired, constructed or operated by licensee, whether by voluntary transfer approved by the commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate. [Amended by 1985 c.673 §158]

**Note:** Sections 1 and 2, chapter 63, Oregon Laws 2010, provide:

**Sec. 1.** (1) Notwithstanding ORS 543.440, and subject to subsections (2) and (3) of this section, a license issued for a project under ORS 543.010 to 543.610 shall continue in effect following a transfer of the license, rights or property of the project to a county if:

(a) The project is located in the Umatilla Basin;

(b) The transfer of the license, rights or property is to Umatilla County;

(c) The transfer occurred through the foreclosure of a tax lien; and

(d) The transfer occurred on or before January 1, 2010.

(2) The license for a project described in subsection (1) of this section, and any water right that is included in the license, shall terminate:

(a) Upon Umatilla County commencing to operate the project for purposes of hydroelectric generation;

(b) Two years after transfer of the license, rights or property of the project to Umatilla County, unless the county has transferred all county-held licenses, rights and property of the project to a new owner that is unaffiliated with the county; or

(c) If a new owner of the project fails to comply with subsection (3) of this section prior to operating the project.

(3) If a project is transferred as described in subsection (2)(b) of this section:

(a) The project license authorizing the use of water by the project for hydroelectric purposes, and any water right included in the license, is subordinate in priority to any in-stream water right for which a water right certificate is issued on or before the effective date of this 2010 Act [March 18, 2010].

(b) Prior to the new owner operating the project, the Water Resources Department shall modify the conditions of the license, and of any water right included in the license, to include an implementation plan for fish passage and fish screening approved by the State Department of Fish and Wildlife as described in paragraph (c) of this subsection.

(c) The new owner of the project shall develop an implementation plan for fish passage and fish screening for the project. The implementation plan shall identify project repairs or modifications necessary for the project to meet the fish passage and fish screening criteria of the State Department of Fish and Wildlife. The new owner shall submit the plan to the State Department of Fish and Wildlife for approval. The department shall consult with the Confederated Tribes of the Umatilla Indian Reservation before approving or disapproving a submitted plan. Upon approval of a plan by the State Department of Fish and Wildlife, the department shall notify the Water Resources Department to incorporate the approved plan as a condition of the project license and of any water right included in the license.

(d) An implementation plan may contain provisions allowing the new owner to operate the project while project repairs or modifications are in progress. An implementation plan shall include, but need not be limited to, the following:

(A) Provisions for the protection of salmonids and lamprey.

(B) Interim measures identified by the State Department of Fish and Wildlife to reduce entrainment and improve fish passage. The implementation plan shall require that the new owner install the interim measures prior to the new owner operating the project.

(C) A schedule for making repairs or modifications that provides for all of the repairs and modifications to be completed no later than four years after the project resumes operation.

(D) Provisions for monitoring, reporting and site access to the extent the State Department of Fish and Wildlife considers necessary to ensure compliance with the implementation plan.

(E) Procedures for immediately addressing significant fish mortality, or significant delay in fish passage, resulting from project operations. The procedures shall include, at a minimum, provisions for giving notice to the State Department of Fish and Wildlife and Water Resources Department, and for suspending project operations until the cause of the mortality or delay is identified and remedied.

(4) Notwithstanding any provision of a license for a project described in subsection (1) of this section, the license is not subject to termination based upon a failure to make beneficial use of water:

(a) During the period of any legal proceeding for the foreclosure of a tax lien;

(b) During a period, not exceeding two years, in which Umatilla County owns the project; or

(c) During a period, not exceeding five years following transfer of the license, rights or property of the project from Umatilla County to a new owner, if the new owner is actively engaged in:

(A) Attempting to obtain government authorization for operation of the project; or

(B) Attempting to install interim measures to reduce entrainment and improve fish passage under an implementation plan.

(5) If the water right that is included in the license of a project described in subsection (1) of this section is terminated based upon a failure to make beneficial use of water, the Water Resources Department shall convert the water right to an in-stream water right as provided under ORS 543A.305.

(6) Subject to subsections (1) to (4) of this section, a new owner that acquires a license, right or property of a project described in subsection (1) of this section following Umatilla County ownership of the license, right or property is considered a successor or assignee of an original licensee for purposes of ORS 543.440. [2010 c.63 §1]

**Sec. 2.** Section 1 of this 2010 Act is repealed on January 2, 2018. The repeal of section 1 of this 2010 Act does not terminate or alter the status, terms or conditions of any license, right, property, certificate, permit, water right or other authorization in effect immediately prior to the repeal of section 1 of this 2010 Act. [2010 c.63 §2]

**543.510** [Repealed by 1995 c.229 §9]

**543.520** [Repealed by 1995 c.229 §9]

## FINANCING OF PROJECTS; LIENS; BOND OF LICENSEE

**543.525 ORS 543.530 to 543.550 not applicable to regulated utilities.** The provisions of ORS 543.530 to 543.550 shall not apply to any licensee which is a utility as defined in ORS 757.005 and regulated by the Public Utility Commission of Oregon. [1965 c.333 §1]

**Note:** 543.525 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.530 Issuance by licensee of stocks, bonds or other interest without authorization of Water Resources Commission prohibited.** (1) No licensee shall issue any share of corporate stock, or any bond, or other evidence of interest in or indebtedness of the licensee, or assume any obligation or liability as lessor, lessee, guarantor, indorser, surety or otherwise, in respect of the corporate shares, bonds or other evidence of indebtedness of any person in connection with the financing, acquisition, construction, maintenance or operation of any project, unless and until, and then only to the extent that, upon application by the licensee, and after investigation by the Water Resources Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission, by order, authorizes the issue or assumption. The commission shall make the order only if the commission finds that the issue or assumption:

(a) Is for some lawful object of the licensee, compatible with the public interest, and is necessary to, or appropriate for, the proper performance by the licensee of the terms and conditions of the license and will not impair the licensee's ability to perform the terms and conditions; and

(b) Is reasonably necessary and appropriate for such purposes.

(2) The commission may grant or deny the application to authorize the issue or assumption, or grant the same in part and deny in part, and may modify the provisions of any previous order and prescribe such terms and conditions as the commission considers necessary or appropriate in the premises. Every such application shall be made in such form and contain such data as the commission by rule may prescribe.

(3) No licensee or any director, officer, attorney or agent thereof shall knowingly assent to or concur in any issue or assumption contrary to the provisions of this section, or the orders of the commission made

pursuant to this section or ORS 543.540. [Amended by 1953 c.271 §1; 1985 c.673 §159]

**543.540 Consideration for bonds, stocks and other securities; restrictions; corporate shares; sale price of securities; discount from face value.** No bonds, notes or other obligations or securities or corporate stock shall be issued in connection with the financing, construction or acquisition of any project or part of a project, under a license issued pursuant to ORS 543.010 to 543.610, except for cash or property. If issued for property, the price or value at which the property is to be acquired by the licensee and made a part of any such project must be submitted to and approved by the Water Resources Commission before it is purchased or acquired. All corporate shares issued in connection with any such project shall have a nominal or par value. All bonds, notes or other obligations or securities, and all shares of corporate stock issued or sold by any licensee in connection with the acquisition, construction or financing of any project, or part of a project, shall be issued or sold or used in the purchase or acquisition of property at the full face or nominal value thereof, unless the commission consents to and approves the sale for cash, or the use of cash in the purchase or acquisition of property at a discount from the face or nominal value of the property. Any discount so approved and consented to shall be considered a part of the cost of financing. [Amended by 1985 c.673 §160]

**543.550 Liens prohibited; exceptions; what may be included by mortgage, trust deed, or sale; determination of investment in case of sale of part.** No lien for labor, services, materials, machinery or equipment shall exist or be acquired or enforced upon any property acquired, constructed or made a part of any project under license issued pursuant to ORS 543.010 to 543.610. No property shall be put into or made part of any such project unless owned by the licensee free and clear of all liens and claims whatsoever, except a lien created by the licensee upon the whole property embraced in the project by mortgage or deed of trust, to the end that the entire property embraced in the project be kept and maintained as an indivisible whole. The mortgage or deed of trust may include other property. Any voluntary sale or any sale upon a judgment of foreclosure, execution or otherwise, shall be of the whole property embraced in the project unless the Water Resources Commission, by an order in writing, consents to and approves of a sale of a part of the property. If less than the whole of any property embraced in a project is sold with the consent and approval of the commission, the commission shall determine at the time of the sale the actual net investment in the part sold, as well as the actual net investment in the part remaining unsold. [Amended by 1985 c.673 §161; 2003 c.576 §496]

**543.560 Bond of licensee or letter of credit securing claims of suppliers; enforcement of obligation; action for sums due State Accident Insurance Fund Corporation.** Before entering upon the work of construction or acquisition of any project, the licensee shall execute to the state a bond, with good and sufficient sureties or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case, to be approved by the Water Resources Commission, to the effect that the licensee shall promptly make payment to all persons supplying labor, services, material, machinery or equipment for the prosecution of the work, and all amounts due the State Industrial Accident Fund from the licensee. Any person supplying the licensee with any labor, services, material, machinery or equipment for prosecution of the work who has not been paid therefor within 60 days after the same has been supplied, or when payment is due according to any special agreement, may, within one year after any payment has become due, bring an action against the licensee, and the sureties upon the bond, or the letter of credit issuer for payment of the amount due to the person, and prosecute the same to final judgment and execution. The action shall be brought in the name of the state upon the relation of the person to whom payment is due. The state, at the request of the State Accident Insurance Fund Corporation may prosecute an action to judgment and execution against the licensee and the sureties upon the bond or letter of credit for all sums due the State Industrial Accident Fund. [Amended by 1985 c.673 §162; 1991 c.331 §80; 1997 c.631 §487]

## ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY

**543.610 Acquisition of project by state or municipality.** (1) Upon not less than two years' notice in writing the state, or any municipality thereof, shall have the right at any time to take over and thereafter to maintain and operate any project constructed under a license pursuant to ORS 543.010 to 543.610, upon payment of just compensation, including such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the license, not taken over, as may be caused by the severance therefrom of the property taken, and shall assume all contracts entered into by the licensee which are required to have and do have the express approval of the Water Resources Commission. If the sum to be paid cannot be agreed upon by the holder of the license and the municipality or the state, as the case may be,

it shall be determined in a proceeding in equity instituted by the state or municipality, as the case may be, in the circuit court of the county in which the major part of the project is located.

(2) There is also expressly reserved to the state, and any municipality thereof, the right to take over all or any part of any project by condemnation proceedings as may be provided by the laws of Oregon or the charter of any such municipality. [Amended by 1983 c.799 §8]

**543.620** [Repealed by 1995 c.229 §9]

## POWER GENERATION BY DISTRICTS

**543.650 Policy.** The Legislative Assembly finds that a significant potential exists for the development of the hydroelectric generation capabilities of water systems serving domestic water supply districts, irrigation districts, drainage districts, water improvement districts and water control districts. The Legislative Assembly also finds that the development of such hydroelectric generation capabilities is desirable for meeting the electrical energy needs of the citizens of the State of Oregon. It is the intent of the Legislative Assembly to provide domestic water supply districts, irrigation districts, drainage districts, water improvement districts and water control districts with the authority and the right to exercise municipal preference in the development of hydroelectric generation capabilities in connection with their water systems. Further, it is the intent of the Legislative Assembly that the development of hydroelectric generation capabilities under ORS 543.650 to 543.685 does not become the primary function of domestic water supply districts, irrigation districts, drainage districts, water improvement districts and water control districts. [1981 c.420 §1]

**543.655 Definitions for ORS 543.650 to 543.685.** As used in ORS 543.650 to 543.685, unless the context requires otherwise:

(1) "District" means any one of the following:

(a) A domestic water supply district organized under ORS chapter 264.

(b) An irrigation district organized under ORS chapter 545.

(c) A drainage district organized under ORS chapter 547.

(d) A water improvement district organized under ORS chapter 552.

(e) A water control district organized under ORS chapter 553.

(2) "Principal Act" means the statutes, other than ORS 543.650 to 543.685, which describe the powers of a district, including, but not limited to, the statutes under which a district is proposed or is operating.

(3) "Water system" means any structure or facility constructed by persons and used by a district to achieve the district's purpose under the district's principal Act whether or not such structure or facility is owned by the district. [1981 c.420 §2; 1985 c.561 §4]

**543.660 Authority of district to enlarge or modify water system and power generating facilities; joint district ventures; prohibitions; sale of energy; regulations.** (1) A district, alone or jointly with other districts, electric cooperatives, as defined in ORS 261.010, people's utility districts, a cooperative as defined in ORS 62.015, municipal corporations authorized to engage in generating and distributing electricity or public utilities, as defined in ORS 757.005, engaged in the business of generating and distributing electricity, may enlarge or modify its water system for the purpose of generating electricity and may operate and maintain such facilities, notwithstanding any provision of paragraph (a) of this subsection. If a district already has hydroelectric generating capability, the district may enlarge or modify the district's facilities used for generation of hydroelectric power. Two or more districts may, as a joint venture, generate electricity under ORS 543.650 to 543.685 as long as the structure or facility that is enlarged or modified to produce the electricity is part of the water system of at least one of the districts participating in the joint venture. However, a district may not:

(a) Construct, acquire, operate or maintain any facility or structure that is not an enlargement or modification of the district's water system solely or primarily for the purpose of generating electricity; or

(b) Be created solely or primarily for the purpose of constructing, acquiring, operating or maintaining hydroelectric facilities.

(2) A district shall sell the excess electric energy generated at such hydroelectric facilities to the Bonneville Power Administration, a public utility as defined in ORS 757.005, an electric cooperative as defined in ORS 261.010, a people's utility district, a cooperative as defined in ORS 62.015, a municipal corporation or a municipally owned utility. Any sale of excess electric energy shall be made in accordance with terms and conditions of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978. As used in this subsection, "excess electric energy" means electric energy not used by the district to meet its own electric pumping requirements.

(3) The board of directors of the district shall establish regulations governing electric

energy generation and sale under this section.

(4) Electricity shall be sold under this section only at wholesale. [1981 c.420 §3; 1985 c.561 §5; 1995 c.195 §44; 2003 c.802 §80; 2005 c.22 §381]

**543.662 Authority of district to develop joint project with private person; restrictions.** A district may contract with a private person to enlarge or modify the district's water system for the purpose of generating hydroelectric power. The district shall retain sufficient benefit and interest in, and control of a joint project as necessary for the project to be considered a district project. A district and a private person developing a joint project under ORS 543.650 to 543.685 must comply with the rules adopted by the Water Resources Commission under ORS 543.664. [1985 c.561 §2]

**543.664 Rules relating to joint projects of districts and private persons.** The Water Resources Commission shall establish rules necessary to carry out the provisions of ORS 543.662. The rules shall include the amount of control over and interest in a joint project a district must retain in order to receive the benefit of the municipal preference and proceed under the municipal application process set forth in ORS chapter 537. [1985 c.561 §3]

**543.665 Authority to issue revenue bonds to acquire hydroelectric facilities.** (1) In addition to any other authority under its principal Act to issue bonds, a district, when authorized at any properly called election, shall have the power to sell and dispose of revenue bonds to construct or acquire hydroelectric facilities in conformance with ORS 543.650 to 543.685 to develop the hydroelectric generation capabilities of the water system, and to pledge as security therefor all or any part of the unobligated net revenue of the district or system.

(2) Revenue bonds may be issued by a district to construct or acquire hydroelectric facilities in connection with its water system in conformance with ORS 543.650 to 543.685, including, but not limited to, dams, canals, generating plants, transmission lines, other power equipment and acquire the necessary property and rights therefor, for the purpose of generating hydroelectric energy.

(3) The revenue bonds authorized by this section shall be issued in the same manner and form as are general obligation bonds of the district, but they shall be payable, both as to principal and interest, from revenues only, as specified by this section. The revenue bonds shall not be subject to the percentage limitation applicable to general obligation bonds and shall not be a lien upon any of the taxable property within the corporate limits of such district, but shall be payable solely from such part of the revenues of the district as remain after payment of obligations having a priority and of all expenses of operation and maintenance of the district, including any taxes levied against it. All revenue bonds shall contain a clause reciting that both the principal and interest are payable solely from operating revenues of the district remaining after paying such obligations and expenses. [1981 c.420 §4; 1985 c.561 §6]

**543.670 Manner of issuance of revenue bonds.** All revenue bonds issued under ORS 543.665 shall be issued as prescribed in ORS chapter 287A, but the requirements of ORS 287A.150 do not apply. [1981 c.420 §5; 1983 c.557 §12; 2007 c.783 §216]

**543.675 Power of eminent domain not to be exercised to acquire hydroelectric facilities.** Notwithstanding any powers of eminent domain and condemnation given to a district under its principal Act, a district shall not exercise any power of condemnation or eminent domain to condemn, appropriate or acquire real property for the purpose of constructing, acquiring, operating or maintaining hydroelectric facilities. [1981 c.420 §6]

**543.680 Compliance with water appropriation laws required.** A district shall comply with all applicable provisions of ORS chapter 537 before enlarging or modifying the district's water system for the purpose of generating hydroelectric energy. [1981 c.420 §7; 1985 c.561 §7]

**543.685 District board to require weatherization; Weatherization Fund; purpose.** (1) If the board of directors of a district has not adopted an ordinance, resolution or administrative rule requiring the weatherization of the buildings of the district, the district shall deposit 10 percent of any revenues derived from the sale of excess electric energy under ORS 543.660 with the officer serving as the treasurer of the district to be credited to a special fund designated its Weatherization Fund. Moneys in the fund shall be expended upon written order of the board of directors for the sole purpose of accomplishing weatherization of buildings owned by the district.

(2) As used in this section, "weatherization" means the installation of materials, equipment or fixtures designed primarily to improve the efficiency of space heating and energy utilization of a building. [1981 c.420 §8]

## POWER DEVELOPMENT FEES

**543.705 Definitions for ORS 543.710 to 543.730.** As used in ORS 543.710 to 543.730, "claimant" means any person claiming the right to the use of water for power development. [1957 c.333 §1]

**543.710 Annual fee based on horsepower; exemptions; disbursement.** Every claimant other than a licensee under ORS 543.010 to 543.610 shall on or before January 1 of each year pay to the state in advance an annual fee based upon the theoretical water horsepower claimed under each separate claim to water, graduated as follows: Thirty cents for each theoretical water horsepower or fraction thereof up to and including 50 and 28 cents for each theoretical water horsepower or fraction thereof in excess of 50. However, upon filing the statement provided in ORS 543.720, the United States or the state, claiming the right to the use of water to any extent for the generation of power, or any other claimant to the right to use water for the generation of 10 theoretical water horsepower or less, shall be exempted from the payment of all fees provided for in this section. Four cents of each 28 cents collected as an annual fee under this section shall be deposited to the Water Resources Department Hydroelectric Fund and disbursed to the Department of Environmental Quality. [Amended by 1957 c.333 §2; 1965 c.185 §1; 1973 c.163 §5; 1997 c.449 §38; 1999 c.873 §24; 2001 c.104 §229]

**543.720 Payment of annual fee; accompanying statement; penalty for nonpayment of fees or nonfiling; lien; foreclosure; effect of filing excessive claim; computation of horsepower.** (1) The fees provided for in ORS 543.710 shall be paid to the Water Resources Commission in advance, and shall be accompanied by a written statement showing the extent of the claim. The statement shall set forth the name and address of the claimant; the name of the stream from which the water is appropriated or claimed for power development; a description of the 40 acres, or smallest legal subdivision in which the point of diversion and point of return are located; the date of the right as claimed; the maximum amount of water claimed expressed in cubic feet per second of time; the total average fall utilized under such claim; the manner of developing power; and the use to which the power is applied. If the regular flow is supplemented by water stored in a reservoir, the location of the reservoir, its capacity in acre-feet and the stream from which it is filled and fed, should be given, also the date of the right as claimed, for storage purposes.

(2) If any claimant fails or neglects to file the statement or to pay the fees within the time specified, the fees due and payable shall be the amount specified in ORS 543.710 increased 25 percent. The state shall have a preference lien for the fees due, together with interest at the rate of 10 percent per annum from date of delinquency, upon the property of the claimant used, or necessary for use, in the development of the right or claim, together with any improvements erected on the property for such development. Upon notice from the commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(3) The filing of a claim to water in excess of the amount to which the claimant is legally entitled shall not operate to vest in the claimant any right to the use of such excess water, nor shall the payment of the annual license fee provided for in ORS 543.710 operate to vest in any claimant any right to the use of such water beyond the amount to which claimant is legally entitled. The filing of any such claim to water shall be conclusive evidence as to the abandonment by the claimant of all rights to water for power purposes in excess of the claim as filed.

(4) The amount of theoretical water horsepower upon which fees shall be paid under the provisions of ORS 543.710 and 543.720 shall be computed by multiplying the maximum amount of water claimed, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and dividing the product by 8.8. [Amended by 1985 c.673 §163]

**543.725** [1985 c.674 §9; repealed by 1991 c.869 §15]

**543.730 Failure to file statement or pay fees as evidence of abandonment of claim; cancellation of claim, permit and water right certificate.** (1) Failure of any claimant for a period of five successive years ending after August 20, 1957, to file the written statement showing the extent of the claim as required by ORS 543.720, or failure of any claimant for a period of five successive years ending after August 20, 1957, to pay the annual license fee as required by ORS 543.710, shall be conclusive evidence of the abandonment by the claimant of the claim and of all right to water for power purposes in connection with such claim.

(2) When a claim is abandoned under the provisions of subsection (1) of this section, or whenever a claimant has voluntarily authorized, in writing, the cancellation of a claim or the water right in connection therewith, the Water Resources Commission shall:

(a) Cancel the claim on the records of the Water Resources Department.

(b) Cancel any permit to appropriate water or any water right certificate issued in connection with such claim. [1957 c.333 §3; 1979 c.67 §7; 1985 c.673 §164]

## USE OF EXISTING WATER RIGHT FOR HYDROELECTRIC PURPOSES

**543.760 Definition of water right.** As used in ORS 543.765, "water right" means a water use established by an adjudication under ORS chapter 539 as evidenced by a court decree or a certificated ground water or surface water right that is issued for some use other than for hydroelectric power and that serves as the underlying water right for an application to use water for hydroelectric purposes. [2007 c.657 §1]

**Note:** 543.760 and 543.765 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.765 Certificate to use water for hydroelectric purposes within artificial delivery system; expedited application process; certificate conditions; annual payments; fees.** (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may apply to the Water Resources Department for a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right. If the proposed hydroelectric project meets the applicable capacity limitation under this subsection and meets either the qualifications for a Federal Energy Regulatory Commission exemption from licensing or similar qualifications of another federal agency responsible for authorizing the project, the applicant may use the expedited application process under this section regardless of which federal agency issues the authorization. To qualify under this subsection:

(a) For a project that is to be built as part of an existing dam, the capacity may not exceed five megawatts. Subsection (5)(b) of this section does not apply to a project described in this paragraph.

(b) For in-conduit projects, the capacity may not exceed 15 megawatts for a nonmunicipal facility or 40 megawatts for a municipal facility. Projects described in this paragraph must comply with subsection (5)(b) of this section.

(2) An application, which shall be on a form provided by the Water Resources Department, for a hydroelectric certificate under this section must include:

(a) The certificate number, or decree reference if no confirming certificate has been issued, of the applicant's existing water right associated with the proposed hydroelectric project.

(b) A copy of either a Federal Energy Regulatory Commission exemption application or a similar application submitted to the federal agency responsible for authorizing the project, if applicable.

(c) A proposed schedule of annual water use and an estimate of the maximum power generation of the proposed hydroelectric project.

(d) A statement by the applicant that the amount of water used by the proposed hydroelectric project will not exceed the amount authorized and used under the applicant's existing water right for beneficial use without waste.

(e) A statement that the applicant owns or otherwise controls the water conveyance system.

(f) An application processing fee of $500. The department shall deposit fees collected under this section into the Water Resources Department Hydroelectric Fund established pursuant to ORS 536.015.

(g) A map or drawing and all other data concerning the proposed hydroelectric project, as may be prescribed by the department. The map or drawing must be of sufficient quality and scale to establish the location of the existing point of diversion and the proposed location of the hydroelectric project.

(h) If the water to be used for the proposed hydroelectric project is delivered by a public entity other than the applicant for a certificate under this section, a statement from that entity that the entity will be able to deliver water as described in the application.

(i) Evidence that the water has been used over the past five years according to the terms and conditions of the applicant's existing water right described in paragraph (a) of this subsection.

(3) If an applicant provides the information required by subsection (2) of this section:

(a) The Water Resources Department shall provide notice to both the State Department of Fish and Wildlife and the public, and provide a 30-day period for public comment.

(b) The Water Resources Department may issue a final order and certificate to use water for hydroelectric purposes upon making a final determination that the proposed hydroelectric use does not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 (8).

(4) If the Water Resources Department determines that public interest issues have

been identified, the department shall issue a final order denying the application. The department shall also issue a final order denying the application if the department identifies issues related to the public interest. If the applicant does not appeal the final order as provided in ORS chapter 183 and, within one year of the department's final order denying the applicant's application, files an application with the department for a preliminary permit to operate a hydroelectric project as provided in ORS 537.130 and 543.210, the applicant shall receive a credit toward the applicant's application fees in the amount of $500.

(5) At a minimum, a certificate issued under this section must contain the following conditions:

(a) Except as provided in paragraph (b) of this subsection, fish screens, by-pass devices and fish passages as required by the State Department of Fish and Wildlife.

(b) If the application is for a hydroelectric project that is to be installed in or on a conduit delivery system, the certificate does not need to include a requirement for fish passage at the diversion point for the conduit delivery system if:

(A) The hydroelectric generating equipment for the project is not located on a dam;

(B) The hydroelectric generating equipment for the project is installed within or at the end of a conduit delivery system;

(C) The conduit delivery system is operated for the distribution of water for agricultural, municipal or industrial consumption; and

(D) Except as provided in subsection (15) of this section, the certificate includes a condition for the making of annual payments under subsection (14) of this section.

(c) That use of water be limited to periods when the applicant's existing water right is put to beneficial use without waste and that the amount used is not greater than the quantity of water diverted to satisfy the authorized specific use under the existing water right described in subsection (2)(a) of this section.

(d) That use of water be limited by rate, duty, season and any other limitations of the applicant's existing water right described in subsection (2)(a) of this section.

(e) That the applicant measure and report the quantity of water diverted.

(f) That the restrictions established in ORS 543.660 shall apply as conditions of use to a certificate issued under this section to a district as defined in ORS 543.655.

(g) That a certificate issued under this section shall be invalidated upon a change in the point of diversion of the existing water right described in subsection (2)(a) of this section.

(h) That the right to use water under a certificate issued under this section is invalidated if the federal exemption or authorization related to the certificate is canceled or invalidated.

(i) Any other conditions the Water Resources Department deems necessary to protect the public interest.

(6) The Water Resources Department shall conduct a review of certificates issued under this section and shall issue a final order and a superseding certificate that corresponds to any changes or adjustments made to the applicant's existing water right described in subsection (2)(a) of this section.

(7) Subsection (5)(b) of this section does not affect any requirement for fish passage applicable to a project that is otherwise required by law.

(8) Upon request, the State Department of Fish and Wildlife and the Water Resources Department shall arrange a preapplication meeting with a person to discuss the requirements associated with the installation of a hydroelectric project in an artificial delivery system.

(9) A certificate issued under this section may not have its own priority date. The Water Resources Department may not regulate for or against any certificate issued under this section based on the priority date of the certificate.

(10) A certificate issued under this section does not grant a right to divert water for hydroelectric purposes.

(11) A certificate issued under this section may not be included in the determination of injury to other water rights pursuant to ORS chapter 540.

(12) A certificate issued under this section is subject to review 50 years after the date of issuance and pursuant to the terms described in this section.

(13) Failure to fully develop and put to use a certificate issued under this section within five years of issuance invalidates the hydroelectric certificate.

(14)(a) If a certificate contains a condition described in subsection (5)(b) of this section for annual payments, the payment shall be collected as provided in paragraph (c) of this subsection. Except as provided in paragraph (b) of this subsection, the annual payment amount must be:

(A) Except as provided in subparagraph (D) of this paragraph, for the first five years, four times the base hydropower fee amount

assessed for the project under ORS 543.078 for the year.

(B) Except as provided in subparagraph (D) of this paragraph, for the 6th through 10th years, eight times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(C) Except as provided in subparagraph (D) of this paragraph, after the 10th year, 15 times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(D) $100 for any year in which the base hydropower fee amount assessed for the project under ORS 543.078 is less than $100.

(b) If the certificate is for a hydroelectric project that will operate on a partial-year basis, the fee shall be three-fifths of the amount established in paragraph (a) of this subsection.

(c) The Water Resources Department shall collect the fee on behalf of the State Department of Fish and Wildlife and forward the fee moneys for crediting to the Fish Passage Restoration Subaccount created under ORS 497.141.

(15)(a) Notwithstanding subsection (14) of this section, a certificate for a project to install hydroelectric generating equipment as described in subsection (5)(b) of this section may provide for the termination of annual payments being made under subsection (14) of this section if, after the date the project commences operation:

(A) The project provides for fish passages;

(B) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for fish passages associated with the project; or

(C) A waiver or exemption has been issued under ORS 509.585 for the project.

(b) A certificate for a project to install hydroelectric generating equipment as described in subsection (5)(b) of this section does not need to include a condition for the making of annual payments under subsection (14) of this section if:

(A) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for the conduit delivery system to have fish passages associated with the project; or

(B) A waiver or exemption has been issued under ORS 509.585 for the project.

(16) If a certificate under this section is issued, the certificate holder must pay fees consistent with the fees described in ORS 543.078. Failure to pay a required fee invalidates a certificate issued under this section.

(17) The Water Resources Department shall issue invoices for fees required under this section, and the state shall have a preference lien for delinquent fees, as provided in ORS 543.082.

(18) An applicant for a certificate issued under this section must provide evidence of a Federal Energy Regulatory Commission exemption or approval under a similar process by the federal agency responsible for authorizing the project before a certificate can be issued, if applicable.

(19) Nothing in this section shall alter the preference of municipalities in ORS 543.260 (3) and 543.270. [2007 c.657 §2; 2013 c.674 §4]

**Note:** See note under 543.760.

**Note:** Section 3, chapter 674, Oregon Laws 2013, provides:

**Sec. 3.** (1) The Water Resources Department and the State Department of Fish and Wildlife shall jointly review the adequacy of the amount and structure of the annual fee described in ORS 543.765 (14) in achieving the dual in-conduit energy development and fish passage restoration objectives of ORS 543.765 and review the functionality of the Fish Passage Restoration Subaccount and expenditures made from the subaccount. The departments shall consult with relevant interested parties in conducting the review.

(2) The departments shall commence the review described in subsection (1) of this section five years after the effective date of this 2013 Act [July 25, 2013]. Upon completing the review, the departments shall report any findings and recommendations regarding the adequacy of the fee amount and structure or the functionality of the subaccount or expenditures made from the subaccount, including any recommendations for legislation, to an interim committee of the Legislative Assembly dealing with natural resources no later than October 1, 2018. [2013 c.674 §3]

**543.810** [Repealed by 2001 c.369 §9]

**543.820** [Amended by 1985 c.565 §83; 2001 c.104 §230; repealed by 2001 c.369 §9]

**543.830** [Repealed by 2001 c.369 §9]

## PENALTIES

**543.990 Penalties.** (1) Violation of ORS 543.530 (3) is a Class A misdemeanor.

(2) Violation of any of the provisions of ORS 543.010 to 543.610, or any of the conditions made a part of any license issued under ORS 543.010 to 543.610, or any subpoena of the Water Resources Commission or of an administrative law judge or any person designated by the commission to take testimony, any lawful order or rule of the commission is a Class B misdemeanor.

(3) Any person who willfully and knowingly gives false testimony concerning a material matter in any hearing before the commission, an administrative law judge or any person designated by the commission to take testimony, or in any deposition or affidavit to be used in a matter pending before the commission or administrative law judge, or willfully and knowingly verifies a false

statement or report filed with the commission, commits perjury and may be prosecuted and punished as otherwise provided by law for the prosecution and punishment of perjury. [Amended by 1955 c.673 §5; 1985 c.673 §165; 1999 c.849 §117; 2003 c.75 §99; 2011 c.597 §228]

# Chapter 543A

## 2015 EDITION

# Reauthorizing and Decommissioning Hydroelectric Projects


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## GENERAL PROVISIONS

**543A.005 Definitions.** As used in ORS 543A.005 to 543A.415:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Water Resources Director.

(4) "Federally licensed project" means an existing project licensed under ORS 543.260 that is also licensed by and has been or will be reviewed by the Federal Energy Regulatory Commission under the Federal Power Act, as amended.

(5) "Project" has the meaning given in ORS 543.010.

(6) "State project" means an existing project for which the authority to operate is a time-limited water right for the use of water for hydroelectric purposes and that is not licensed by the Federal Energy Regulatory Commission. "State project" includes a project granted an exemption by the Federal Energy Regulatory Commission.

(7) "Team" means a Hydroelectric Application Review Team established pursuant to ORS 543A.035, 543A.075 or 543A.300.

(8) "Water right" includes the use of water for hydroelectric purposes pursuant to a license issued under ORS 543.260. [1997 c.449 §1]

**543A.010 Findings.** The Legislative Assembly finds that many hydroelectric projects within the state hold water rights for hydroelectric purposes for a limited time period, and that those water rights will expire. State law does not currently prescribe a means for reauthorizing the use of water for hydroelectric purposes. Therefore, the Sixty-eighth Legislative Assembly created a hydroelectric task force to recommend a process and standards for a coordinated state review of existing facilities. The hydroelectric task force was composed of representatives of interested state agencies, investor-owned utilities, publicly owned utilities, municipalities, environmental organizations, agricultural organizations and nonutility owners of hydroelectric projects. In its report to the Sixty-ninth Legislative Assembly, the hydroelectric task force included legislative recommendations that served as the foundation for the provisions of this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710. [1997 c.449 §2]

**543A.015 Purpose.** It is the purpose of this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 to establish a process for developing a coordinated state position to be reflected in governmental proceedings related to the reauthorization of existing hydroelectric facilities. The coordinated state position shall be reflected in state decisions, including but not limited to decisions relating to the allocation of water, certification of water quality and other state regulatory actions, as well as in state comments on federal actions, including relicensing by the Federal Energy Regulatory Commission. [1997 c.449 §3]

**543A.020 Policy.** The Legislative Assembly declares that it is the policy of the State of Oregon:

(1) To reauthorize the use of water by existing projects provided that such projects meet the standards established in ORS 543A.025, are consistent with other applicable state laws and will not impair or be detrimental to the public interest.

(2) To recognize that existing projects have resulted in both benefits and costs to society, and that the opportunity exists on reauthorization to promote the public benefits while minimizing the public costs.

(3) To maintain or enhance the natural resources of the state and to protect the natural resources of the state from adverse impacts caused by the continued existence of a project.

(4) To protect the health and safety of the residents of the state.

(5) To require the Water Resources Department and other affected state agencies to conduct a coordinated review of projects seeking reauthorization in order to develop a unified state position in any local, state or federal proceedings related to the reauthorization of hydroelectric projects. [1997 c.449 §4]

**543A.025 Minimum standards for decision on reauthorization of water right; rules.** (1) Following the process set forth in ORS 543A.005 to 543A.410, the Water Resources Director shall issue a water right for continued operation of an existing hydroelectric project upon a finding that the proposed use will not impair or be detrimental to the public interest, 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.

(2) In determining whether the proposed use will impair or be detrimental to the public interest, the following minimum standards shall apply:

(a) For impacts to fish and wildlife resources attributable to the project, the Water Resources Department shall require:

(A) Mitigation for:

(i) Adverse impacts that occur due to new construction or operational changes to the project; and

(ii) Ongoing adverse impacts existing at the time of reauthorization; and

(B) Appropriate measures to promote restoration and rehabilitation of fish and wildlife resources to support goals expressed in statute or in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission.

(b) All conditions included in a water right certificate issued to reauthorize the use of water for hydroelectric purposes shall be consistent with any plan adopted by the Pacific Northwest Electric Power and Conservation Planning Council for the protection, mitigation and enhancement of the fish and wildlife resources of the region.

(c) The project shall comply with water quality standards adopted by the Environmental Quality Commission.

(d) The project shall not endanger the public health and safety. The project shall be operated in a manner that provides practical protection from vulnerability to seismic and geologic hazards.

(e) Wetland resources shall be protected, maintained or enhanced. The Water Resources Department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to wetland resources associated with the project, including wetlands lost or created by construction and operation of the project, and mitigation proposed by the applicant. Reauthorization that results in a net loss to existing wetland resources shall not be approved.

(f) Other resources in the project vicinity including recreational opportunities, scenic and aesthetic values, historic, cultural and archaeological sites, and botanical resources shall be protected, maintained or enhanced. The department shall impose conditions on reauthorization consistent with this paragraph after considering impacts to such resources associated with the project, including resources lost or created by construction and operation of the project, and mitigation proposed by the applicant. If the project results in a net loss to existing resources, reauthorization shall not be approved.

(3) In determining the mitigation, restoration and rehabilitation measures required under subsection (2) of this section, the Water Resources Department shall consider historic impacts, ongoing impacts and projected future impacts of the project and the existence and success of past mitigation measures associated with the project. Required mitigation, restoration and rehabilitation may include measures to restore or replace the benefits of historic resource conditions in order to meet resource goals contained in standards, plans, guidelines and policies adopted by rule by the State Fish and Wildlife Commission and in rules adopted by other state agencies with regulatory or advisory responsibility for the project.

(4) The Water Resources Commission shall adopt all rules necessary to carry out the policy set forth in ORS 543A.020 and to implement the minimum standards set forth in subsection (2) of this section. In the absence of implementing rules, the department may act on applications for reauthorization of a project subject to the standards set forth in this section.

(5) As used in this section, "mitigation" means addressing the adverse effects of a project proposed for reauthorization by considering, in the following order of priority:

(a) Avoiding the impact altogether by not taking a certain development action or parts of that action;

(b) Minimizing impacts by limiting the degree or magnitude of the development action and its implementation;

(c) Rectifying the impact by repairing or rehabilitating the affected environment;

(d) Reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute resources or environments. [1997 c.449 §5]

## WATER RIGHT APPLICATION PROCESS FOR REAUTHORIZING A STATE PROJECT

**543A.030 Notice of intent.** (1) Not later than three years before the expiration of a water right for a state project, the Water Resources Department shall notify the project owner of the expiration of the water right and request that the owner advise the department whether the owner intends to seek reauthorization of the water right for the state project.

(2) If the owner does not intend to seek reauthorization, the owner shall, within 90 days after receiving notice under subsection (1) of this section, inform the department of the disposition of the state project.

(3) If the owner intends to seek reauthorization, the owner shall, within 90 days after receiving notice under subsection (1) of this section, submit to the department a notice of intent to file an application for reauthorization of the water right. The notice of intent shall:

(a) Include a statement of the applicant's intent to continue operation of the state project; and

(b) Describe the state project, including but not limited to the location and capacity of the state project and the identification of affected Indian tribes and local government entities.

(4) The department shall cause public notice to be given upon receipt of a notice of intent. The public notice shall include the date of expiration of the water right and a description of the state project.

(5) Only the project owner may apply to reauthorize the water right for a state project. [1997 c.449 §6]

**543A.035 Reauthorization application and public comment.** (1) Within 60 days after submitting a notice of intent under ORS 543A.030, the applicant shall submit to the Water Resources Department an application to reauthorize the water right for the state project on a form prescribed by the department.

(2) The reauthorization application for a water right for the use of water for hydroelectric purposes shall set forth:

(a) The name and post-office address of the applicant;

(b) The location of the project by county and stream and, when appropriate, by city or nearby city;

(c) The amount of water in cubic feet per second;

(d) The theoretical water horsepower; and

(e) Any other information required in the application form.

(3) Upon receipt of a reauthorization application for the use of water for hydroelectric purposes, the Water Resources Department shall convene the Hydroelectric Application Review Team for the state project. The team shall consist of representatives of the Water Resources Department, the Department of Environmental Quality and the State Department of Fish and Wildlife and may include a representative of any other state agency that has regulatory or advisory responsibility for the state project or a resource or hazard affected by the state project.

(4) Within seven days after receiving a reauthorization application under subsection (3) of this section, the department shall notify any person who responded to the notice of intent and 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 participate in the reauthorization process.

(5) Within 45 days after the public notice under subsection (4) of this section, any person interested in the application shall request future notices about the state project and may submit written comments to the department. [1997 c.449 §7]

**543A.040 Process determination.** (1) Within 60 days after the close of the period allowed for public comment under ORS 543A.035, the Hydroelectric Application Review Team shall determine whether the reauthorization application for the water right contains sufficient information to determine whether reauthorization of the state project will comply with ORS 543A.025.

(2) If the team decides that sufficient information is available to determine whether reauthorization of the water right for the state project will comply with ORS 543A.025, the team shall proceed with expedited processing of the reauthorization application. The team shall review the application and any public comments received on the application and prepare a draft proposed final order, including findings of fact and conclusions of law, for the water right. Upon completion of the draft proposed final order, the team shall give public notice of the draft proposed final order in the weekly notice published by the Water Resources Depart-

ment. The notice shall include a request for comments on the draft proposed final order.

(3) Within 60 days after the public notice under subsection (2) of this section, any person interested in the draft proposed final order shall submit written comments to the team. A person who submits written comments under this subsection shall identify the provision of the draft proposed final order in question and specify why the person objects to or supports the provision. The team shall review the comments received and may revise the draft proposed final order. Unless the department receives a request under subsection (4) of this section, the team shall submit a proposed final order to the department within 30 days after the close of the period for public comment on the draft proposed final order.

(4) If the draft proposed final order prepared by the team under subsection (2) of this section proposes to deny the application for reauthorization of the water right, the applicant may request the department to process the application in accordance with ORS 543A.045 to 543A.055. The applicant shall submit a request under this subsection within the 60-day period allowed for public comment on the draft proposed final order.

(5) Unless the department receives a request under subsection (4) of this section, the department shall issue the proposed final order in accordance with the provisions of ORS 543A.120 to 543A.300.

(6) If the team determines that additional information is necessary to determine whether reauthorization of the state project will comply with ORS 543A.025, the applicant shall comply with the process established in ORS 543A.045 to 543A.055 and 543A.120 to 543A.300. [1997 c.449 §8]

**543A.045 Public scoping meeting.** (1) If the Hydroelectric Application Review Team finds additional information is necessary to complete the reauthorization process, the applicant, in conjunction with the team, shall convene a public scoping meeting.

(2) The applicant shall be responsible for conducting the public scoping meeting. The team, federal agencies, federally recognized Indian tribes and members of the public shall be invited to participate. The purpose of the public scoping meeting shall be to allow an opportunity for the participants to review the information available and to:

(a) Discuss a proposed schedule for completion of the reauthorization process;

(b) Discuss studies and additional information that may be needed; and

(c) Identify other resources and other health and safety issues of the state that must be considered in the reauthorization process.

(3) At the public scoping meeting, the team shall:

(a) Explain to the public the process for reauthorizing the state project; and

(b) Identify to the public the members of the team.

(4) Within 90 days after the public scoping meeting, the team shall publish notice of the availability of the plan for completing the review process, including a time schedule. The plan shall be developed by the Water Resources Department in consultation with the applicant. [1997 c.449 §9]

**543A.050 Application report.** In accordance with the schedule established pursuant to ORS 543A.045, and after conducting the studies and collecting the additional information identified at the public scoping meeting under ORS 543A.045, the applicant shall prepare an application report and file the report with the Hydroelectric Application Review Team. The application report shall include study results, proposed mitigation measures, applicable state statutes and rules and any necessary changes to the operation of the hydroelectric project required to comply with such statutes and rules. [1997 c.449 §10]

**543A.055 Hydroelectric Application Review Team review of application; draft proposed final order; public comment.** (1) The Hydroelectric Application Review Team shall review the application report prepared under ORS 543A.050 and prepare a draft proposed final order approving or denying the reauthorization of the water right. The draft proposed final order shall include the findings required for a proposed final order under ORS 543A.120. Upon completion of the draft proposed final order, the Water Resources Department shall give public notice of the draft proposed final order in the weekly notice published by the department. The notice shall include a request for comments on the draft proposed final order.

(2) Within 60 days after the public notice under subsection (1) of this section, any person interested in the draft proposed final order shall submit written comments to the team.

(3) Within 30 days after the close of the period for public comment on the draft proposed final order, the team shall make any revisions necessary in response to comments received and submit a proposed final order to the department.

(4) The department shall complete the reauthorization process in accordance with the provisions of ORS 543A.120 to 543A.300. [1997 c.449 §11]

## WATER RIGHT APPLICATION PROCESS FOR REAUTHORIZING A FEDERALLY LICENSED PROJECT

**543A.060 Coordination of state and federal reauthorization processes.** (1) For a federally licensed project, the Water Resources Department and the Hydroelectric Application Review Team shall conduct the state reauthorization review, to the maximum extent feasible, in a manner that is consistent with and avoids duplication of federal agency review. Such coordination shall include, but need not be limited to:

(a) Whenever feasible, elimination of duplicative application, study and reporting requirements;

(b) Hydroelectric Application Review Team use of information generated and documents prepared for the federal agency review;

(c) Development with the federal agency and reliance on a joint record to address applicable state standards;

(d) Whenever feasible, joint hearings and issuance of a state water right decision in a time frame consistent with the federal agency review; and

(e) To the extent consistent with applicable state standards, establishment of conditions in any state hydroelectric water right that are consistent with the conditions established, or required to be incorporated into licensing, by the federal agency.

(2) In order to better coordinate with the review of the project by the Federal Energy Regulatory Commission, the team may, at the request of an applicant, make changes to the process set forth in ORS 543A.060 to 543A.115, if the changes do not diminish opportunities for public input otherwise provided by ORS 543A.060 to 543A.115. [1997 c.449 §12]

**543A.065 Changes to expiration date of water right for existing project.** (1) Notwithstanding the expiration date set forth in a water right for an existing federally licensed project, upon the request of the holder of the water right, the Water Resources Department may:

(a) Extend the expiration date of the water right, for a period of up to 15 years, to correspond to the expiration date of the federal license for the project; or

(b) Process an application for reauthorization of the water right prior to the actual expiration date of the water right in order to correspond with the expiration of the federal license for the project.

(2) For a project with a water right that expires more than 15 years before the expiration date of the federal license for the project, the Hydroelectric Application Review Team shall evaluate the project under the process and standards established in ORS 543A.005 to 543A.025 and 543A.060 to 543A.410 for a state project. A reauthorized water right for such a project may be for a term concurrent with the federal license. [1997 c.449 §13]

**543A.070** [1997 c.449 §14; repealed by 1999 c.873 §14 (543A.071 enacted in lieu of 543A.070)]

**543A.071 Water Resources Department notification to holder of hydroelectric license or water right for hydroelectric purposes; response of holder.** (1) Not later than six years before the expiration of any state or federal hydroelectric license or state authorized water right issued to a federally licensed project, the Water Resources Department shall notify the holder of the date of expiration of the right or license and shall ask that the holder advise the department whether the holder intends to seek reauthorization or relicensing.

(2) If the holder does not intend to seek reauthorization, the holder shall inform the department within 90 days after receiving notice under subsection (1) of this section of the proposed disposition of the federally licensed project.

(3) If the holder intends to seek reauthorization, the holder shall inform the department within 90 days after receiving notice under subsection (1) of this section whether the holder intends to seek reauthorization of the water right concurrently with the federal relicensing.

(4) A holder seeking relicensing and reauthorization concurrently:

(a) Shall not, by applying for reauthorization, under ORS 543A.075 and in the absence of agreement by the holder, be deemed to have accelerated the actual expiration date of the project's water right; and

(b) May, upon providing concurrent notification to the Federal Energy Regulatory Commission, withdraw and void its application for reauthorization at any time prior to issuance of the final water right certificate issued by the Water Resources Director without prejudice to its right to reapply for reauthorization of its water right.

(5) Any water right issued by the Water Resources Department pursuant to an application filed under this chapter shall become effective upon the issuance of the new water right. The existing water right shall be canceled immediately upon issuance of the new water right.

(6) A holder not electing to concurrently seek reauthorization but seeking relicensing shall notify the Water Resources Department

of its position and shall indicate in the notification its plans for the project and the project's state water right.

(7) In the absence of agreement by the holder to pay the application fees under ORS 543A.405, and notwithstanding the provisions of ORS 543A.015, the state is not required to develop and provide a coordinated state position. [1999 c.873 §15 (enacted in lieu of 543A.070)]

**543A.075 Notice of intent to apply for reauthorization of right to use water for hydroelectric purposes.** (1) Each person operating an existing federally licensed project and intending to apply for reauthorization shall submit to the Water Resources Department a notice of intent to file an application for reauthorization of the water right for the project. If the person intends to seek reauthorization concurrently with federal relicensing, the notice of intent shall be submitted at the same time the person provides the information to the department under ORS 543A.071 (3). The notice of intent shall include:

(a) The name and post-office address of the applicant;

(b) The federal project number;

(c) The expiration date of the federal license and state water right for the project;

(d) An unequivocal statement of the applicant's intention to file an application for reauthorization of the state water right;

(e) The location of the project by county and stream and, when appropriate, by city or nearby city;

(f) The amount of water in cubic feet per second; and

(g) The project capacity.

(2) Upon receipt of a notice of intent under subsection (1) of this section, the department shall:

(a) Convene the Hydroelectric Application Review Team for the project. The team shall consist of representatives of the Water Resources Department, the Department of Environmental Quality and the State Department of Fish and Wildlife and may include a representative of any other agency that has regulatory or advisory responsibility for the project or a resource or hazard affected by the project.

(b) Provide public notice of the receipt of the notice of intent. The public notice shall provide the date of the public scoping meeting to be conducted under ORS 543A.085 and include a description of the hydroelectric project, the location of the project, the expiration dates of the water right for the project and the Federal Energy Regulatory Commission license for the project, and information pertaining to how an interested person may obtain future notices about the application and participate in the reauthorization process.

(3) Any person who is authorized by the Federal Energy Regulatory Commission to apply for a license for a federally licensed project may apply to reauthorize a water right for the project. The team shall process such applications under the standards and process set forth in ORS 543A.060 to 543A.300 for a federally licensed project. A nonowner applicant may obtain a water right with the priority date of the expiring water right only if the applicant submits a notice of intent within six months after the owner submits a preliminary application as described in ORS 543A.080, or within 30 days after June 30, 1997, whichever is later. [1997 c.449 §15; 1999 c.873 §16]

**543A.080 Submission of preliminary application information.** Within 30 days after an applicant provides a notice of intent under ORS 543A.075, the applicant shall provide to the Water Resources Department a preliminary application, which shall be the first-stage consultation document of the Federal Energy Regulatory Commission. The preliminary application shall include the following information:

(1) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range and section, and also showing the specific location of all existing and proposed project facilities, including but not limited to roads, transmission lines and other appurtenant facilities;

(2) A general engineering design of the existing project and any proposed changes, with a description of any existing or proposed diversion of a stream through a canal or a penstock;

(3) A summary of the existing operational mode of the project and any proposed changes;

(4) Identification of the environment affected or to be affected, the significant resources and hazards present and the applicant's existing and proposed environmental protection, mitigation and enhancement plans, to the extent known at that time;

(5) Streamflow and water information;

(6) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(7) Any other information required in the application form provided by the department. [1997 c.449 §16]

**543A.085 Public scoping meeting.** (1) Not less than 30 days but not more than 60 days after submitting the preliminary application information as required under ORS 543A.080, the applicant, in conjunction with the Hydroelectric Application Review Team, shall convene a public scoping meeting. To the extent practicable, the applicant shall conduct the public scoping meeting at the first stage of the Federal Energy Regulatory Commission review of the federal license for the project.

(2) The applicant is responsible for conducting the public scoping meeting and shall invite the team, federal agencies, federally recognized Indian tribes and members of the public to participate. The purpose of the public scoping meeting is to allow an opportunity for the participants to review the information available and to:

(a) Discuss a proposed schedule for completion of the reauthorization process;

(b) Discuss studies and additional information that may be needed; and

(c) Identify other resources and other health and safety issues of the state that must be considered in the reauthorization process.

(3) At the public scoping meeting, the team shall:

(a) Explain to the public the process for reauthorizing the project; and

(b) Identify to the public the members of the team.

(4) Following the public scoping meeting, the team shall allow 60 days for public comment on the preliminary application information, the proposed schedule, proposed studies and other resources and other health and safety issues to be considered in the reauthorization process.

(5) Within 90 days after the public scoping meeting, the applicant shall develop and submit study proposals to the team. Upon receipt of the proposals, the team and the applicant shall publish notice of the availability of the proposals and allow 30 days for the public to provide comments on the proposals.

(6) Based on its review of the comments and recommendations on the study proposals from the Hydroelectric Application Review Team, other state agencies and local governments, federally recognized Indian tribes and members of the public, the applicant shall prepare final study proposals and methodology and submit the final study proposals and methodology to the team. Upon receipt of the final study proposals and methodology, the team shall make the applicant's study proposals and methodology available to the public.

(7) The study proposals shall allow at least two years for completing the studies. [1997 c.449 §17; 2001 c.369 §1]

**543A.090 Mid-study status report; public meeting; period for comment on status report.** (1) Upon completion of the first year of studies, the applicant shall prepare a mid-study status report and present the mid-study status report to all interested persons at a public meeting. Following the public meeting, the Hydroelectric Application Review Team, other state agencies and local governments, federally recognized Indian tribes, federal agencies and members of the public shall have 30 days to comment on the status report and suggest changes to the studies.

(2) The applicant shall consider any comments received in response to the mid-study status report and make any necessary changes prior to completing the second year of studies. [1997 c.449 §18; 2001 c.369 §2]

**543A.095 Draft application.** (1) Not later than one year before the applicant files a final application with the Federal Energy Regulatory Commission to reauthorize the federal license for the hydroelectric project, the applicant shall file with the Hydroelectric Application Review Team:

(a) A draft application for a water right for the project, which shall be the Federal Energy Regulatory Commission draft application; and

(b) Information regarding potential water quality impacts of the project.

(2) The applicant shall provide the team with copies of any agency and public comment submitted to the applicant in the Federal Energy Regulatory Commission proceedings or in the state reauthorization proceedings.

(3) The applicant shall include with the application required under subsection (1) of this section the final report on the studies conducted pursuant to ORS 543A.085.

(4) Upon receipt of the draft application, the team shall identify in writing to the applicant any informational and analytical deficiencies. Subject to any identified deficiencies, the team shall prepare a provisional state position on:

(a) Whether, and under what conditions, the Water Resources Department should issue the water right;

(b) Whether the project would comply with ORS 468B.040 and water quality standards adopted by the Environmental Quality Commission, and what conditions might be appropriate under 33 U.S.C. 1341(d); and

(c) Recommendations to the Federal Energy Regulatory Commission under 16 U.S.C. 803(j).

(5) Upon completion of the provisional state position, the team shall give public notice of the availability of the provisional state position. The notice shall allow 30 days for the public to comment on the provisional state position.

(6) Based on comments received during the 30-day public comment period allowed under subsection (5) of this section, the team may revise the provisional state position. The team also shall resolve any conflict between agencies about the provisional state position.

(7) After considering agency and public comments, resolving interagency conflicts and making any necessary revisions, but no later than 160 days before the date by which the final application must be filed with the Federal Energy Regulatory Commission, the team shall provide the applicant with the provisional unified position of the state. However, the provisional unified position shall not constitute a final agency determination or action under any authority. [1997 c.449 §19; 2001 c.369 §3]

**543A.100 Final application for water right; application for water quality certification.** Not less than two years before the expiration of the federal license for the project, the applicant shall submit the final application to reauthorize the water right and a request for certification under ORS 468B.040 and 33 U.S.C. 1341. The application submitted under this section shall be the same as the final application submitted to the Federal Energy Regulatory Commission for the new federal license for the project. [1997 c.449 §20]

**543A.105 Hydroelectric Application Review Team review of final application; unified state position in federal proceeding.** (1) The Hydroelectric Application Review Team shall review the applications submitted under ORS 543A.100 and prepare a second proposed unified state position, which shall include:

(a) A draft proposed final order approving or denying the reauthorization of the water right, which shall include but need not be limited to the findings required for a proposed final order under ORS 543A.120;

(b) Proposed recommendations to the Federal Energy Regulatory Commission under 16 U.S.C. 803(j);

(c) A proposed coordinated state response to the Federal Energy Regulatory Commission, including any additional information requests and recommended conditions to be included in the federal license for the project; and

(d) Proposed recommendations for certification of the project under ORS 468B.040 and 33 U.S.C. 1341, including any proposed conditions under 33 U.S.C. 1341(d).

(2) The team shall submit the second proposed unified state position to the Department of Environmental Quality. The team shall provide public notice and a 60-day opportunity for public comment on the proposals required under subsection (1)(a) to (c) of this section. The Department of Environmental Quality shall concurrently provide public notice and a 60-day opportunity for public comment on the proposed water quality certification decision and conditions required under subsection (1)(d) of this section.

(3) The team shall provide the second proposed unified state position even if an application required under ORS 543A.100 contains incomplete or deficient information or analysis. The second proposed unified state position may reflect the incomplete or deficient information or analysis.

(4) The team may submit to the Federal Energy Regulatory Commission and the applicant any proposed state response, recommendations, conditions or additional information requests, coordinated in accordance with this chapter, at any time necessary to satisfy a deadline established by the Federal Energy Regulatory Commission for the submission, even if the procedures set forth in this section for the development of a second proposed unified state position have not been completed. [1997 c.449 §21; 2001 c.369 §4]

**543A.110 Water quality certification.** (1) Upon completion of the public comment period for proposed recommendations under ORS 543A.105 (1)(d), the Department of Environmental Quality shall evaluate the request for water quality certification submitted under ORS 543A.100 in accordance with ORS 468B.040 and rules adopted under ORS 468B.040. The Director of the Department of Environmental Quality shall act in accordance with the proposed recommendations submitted by the Hydroelectric Application Review Team under ORS 543A.105 (1)(d) unless the director finds, based upon public comment or new information, that the project would not comply with water quality standards adopted by the Environmental Quality Commission or would not be consistent with other appropriate requirements of state law. If the director's proposed decision is not in accordance with the proposed recommendations submitted by the team under ORS 543A.105 (1)(d), the director shall seek a recommendation from the team before issuing a final decision on water quality certification. The director shall consider any further recommendation from the team, and

issue a final certification decision to the applicant and to the team.

(2) As used in this section, "director" means the Director of the Department of Environmental Quality. [1997 c.449 §21a; 2001 c.369 §5]

**543A.115 Final unified state position.** (1) Upon receipt of the Department of Environmental Quality's water quality certification decision, the Hydroelectric Application Review Team shall prepare a final unified state position. The final unified state position shall take into consideration public comments received, shall be consistent with the Department of Environmental Quality's water quality certification decision and shall incorporate conditions attached to any certification by the Director of the Department of Environmental Quality pursuant to 33 U.S.C. 1341(d). The final unified state position also shall include recommendations under 16 U.S.C. 803(j), any other conditions recommended for inclusion in the federal license for the project and any additional information requests to be addressed in the federal proceeding. The team also shall prepare a proposed final order on reauthorization of a water right for the project.

(2) The team shall provide the final unified state position to the applicant and to the Federal Energy Regulatory Commission. The team shall submit the proposed final order on reauthorization of the water right to the Water Resources Department. Upon receipt of the proposed final order, the department shall complete processing of the application for reauthorization of the water right in accordance with the provisions of ORS 543A.120 to 543A.300.

(3) The team may submit to the Federal Energy Regulatory Commission and the applicant any proposed final unified state position, comments, recommendations, conditions or additional information requests, coordinated in accordance with this chapter, at any time necessary to satisfy a deadline established by the Federal Energy Regulatory Commission for such submission, even if the procedures set forth in this section for the development of a final unified state position have not been completed. [1997 c.449 §22; 2001 c.369 §6]

## PROCESS FOR COMPLETING REAUTHORIZATION OF WATER RIGHT FOR EITHER STATE OR FEDERALLY LICENSED PROJECT

**543A.120 Proposed final order.** (1) A proposed final order prepared by a Hydroelectric Application Review Team and submitted to the Water Resources Department under ORS 543A.040, 543A.055 or 543A.105 shall be based on the application of the standards set forth in ORS 543A.025 and shall reflect the complete review of the water right application for compliance with applicable statutes and rules.

(2) 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, the compatibility of the proposed use with applicable land use plans and information set forth in the application report or final report on studies;

(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 543A.025;

(f) A draft certificate, including any proposed conditions, or a recommendation to deny the application; and

(g) The date by which protests to the proposed final order must be received by the department.

(3) The department shall mail copies of the proposed final order, as submitted by the team, 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 give public notice of the proposed final order in the weekly notice published by the department.

(4) Any person 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).

(5) 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 (1)(j).

(6) 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.

(7) The Hydroelectric Application Review Team shall review any protest received and provide to the Water Resources Director a recommended response to any protest received.

(8) Within 120 days after the close of the period for receiving protests and after consultation with the Hydroelectric Application Review Team, the director shall:

(a) Issue a final order as provided under ORS 543A.130; 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 reauthorization of the project; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing.

(9) At the request of the applicant, the department may extend the time periods set forth in subsection (8) of this section for a reasonable period of time.

(10) If the application is for reauthorization of a water right for a federally licensed project, the department may postpone the issuance of the final order until the Federal Energy Regulatory Commission license is issued. [1997 c.449 §23; 2013 c.644 §13]

**543A.125 Approval or rejection of application for reauthorization.** (1) Subject to the provisions of subsection (2) of this section and ORS 543A.130 and 543A.140, the Water Resources Department shall approve all applications for reauthorization of a water right for the use of water for hydroelectric purposes made in proper form, unless the proposed reauthorization conflicts with existing rights.

(2) The department shall reject any 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 543A.025 or rules adopted by the Water Resources Commission under ORS 543A.025. [1997 c.449 §24]

**543A.130 Contested case hearing; final order.** (1) If a contested case hearing is conducted under ORS 543A.120, 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 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 543A.120 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) 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.

(5) 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 reauthorization does not comply with the standards set forth in ORS 543A.025 or rules adopted by the Water Resources Commission under ORS 543A.025, 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 reauthorization complies with

ORS 543A.025, the director shall issue a final order approving the application for reauthorization or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the certificate 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.

(6) 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 543A.120 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 orders other than contested cases.

(7) Before issuing a final order, the director or the commission, if applicable, shall make the final determination of whether the proposed reauthorization or the proposed reauthorization as modified in the proposed final order complies with the standards set forth in ORS 543A.025.

(8) In a proceeding to reauthorize a water right for a federally licensed project, the final order may be different from the proposed final order based on:

(a) New information developed during the federal relicensing process pertaining to environmental impacts or assessments that reveals impacts not known at the time the proposed final order was issued;

(b) Significant changes in the final application to the Federal Energy Regulatory Commission;

(c) Conditions and restrictions in the Federal Energy Regulatory Commission license that are inconsistent with the water right as proposed in the proposed final order; or

(d) Protests received after the proposed final order is issued.

(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 the fee required under ORS 536.050 (1)(p). [1997 c.449 §25; 2003 c.75 §100]

**543A.135 Exceptions to final order.** (1) Within 20 days after the Water Resources Director issues a final order under ORS 543A.130 after the conclusion of a contested case hearing, any party may file exceptions to the order with the Water Resources Commission.

(2) The commission shall issue a modified order, if the exceptions are allowed, or deny the exceptions within 60 days after the close of the exception period under subsection (1) of this section. [1997 c.449 §26]

**543A.140 Terms, limitations and conditions of water right.** (1) The Water Resources Department may issue a water right to any applicant for reauthorization of a federally licensed project whose proposed water use complies with the standards set forth in ORS 543A.025. Every water right for a federally licensed project shall provide as a condition that the water right holder may not operate the federally licensed project unless the water right holder is authorized to operate the project by the Federal Energy Regulatory Commission.

(2) The department may approve an application for reauthorization for less water than applied for, or upon terms, limitations and conditions necessary for the protection of the public interest. [1997 c.449 §28]

**543A.145 Water right certificate.** Any water right for the use of water for hydroelectric purposes shall:

(1) Except as provided in ORS 543A.065 (2), be for a period of not more than 50 years;

(2) If for a federally licensed project, be for the period established in the new Federal Energy Regulatory Commission license;

(3) For the quantity of water authorized for use under the expiring water right for the project, retain the same priority date as the expiring water right for the project. For enlargement of the water right beyond the amount of water authorized in the expiring water right, the priority date for the additional amount shall be the date of filing a reauthorization application under ORS 543A.035, or a notice of intent under ORS 543A.075, whichever is applicable;

(4) If for a federally licensed project, include a provision allowing the Water Resources Department to amend conditions or limitations on the water right after the Federal Energy Regulatory Commission issues the federal license for the project; and

(5) Include conditions allowing the department to reopen the certificate on a clear showing of a significant threat to the public

health or safety or the environment that was not identified and addressed during the most recent project authorization proceeding, and that requires modification of the certificate. [1997 c.449 §29]

**543A.150 Modification of time limits.** (1) The Water Resources Department may extend the time limits set forth in ORS 543A.005 to 543A.145 and 543A.300 for a reasonable period of time if the time limits are incompatible with the substantive requirements applicable to applications to reauthorize a water right for the use of water for hydroelectric purposes.

(2) The expiration date of the water right for any project that begins the reauthorization process under ORS 543A.005 to 543A.415 before the expiration date shall be extended by the department if necessary to allow for completion of the reauthorization process. [1997 c.449 §31]

## DECOMMISSIONING

**543A.300 Decommissioning; rules.** (1) If any person operating a hydroelectric project fails to advise the Water Resources Department within 60 days of the time established in ORS 543A.030 or 543A.075, the Water Resources Commission may order the decommissioning of the project.

(2) The Water Resources Commission shall adopt by rule procedures for ordering a decommissioning of a project and standards for conducting a decommissioning in a manner that ensures the protection of the public health and safety and the environment. The rules shall include a provision for establishing a Hydroelectric Application Review Team for the project to coordinate the activities of all state agencies involved in the decommissioning process. [1997 c.449 §30]

**543A.305 Conversion of hydroelectric water right to in-stream water right; exceptions.** (1) As used in this section:

(a) "Holder" has the meaning given that term in ORS 543.075.

(b) "In-stream water right" has the meaning given that term in ORS 537.332.

(c) "Reauthorize" has the meaning given that term in ORS 543.075.

(2) An in-stream water right shall be subject to the limitations of ORS 537.350 and shall be maintained in perpetuity, in trust for the people of the State of Oregon. The priority date of the in-stream water right shall be the same as that of the converted hydroelectric water right. The location of the in-stream water right shall be the same as the point of diversion identified in the hydroelectric water right.

(3) Five years after the use of water under a hydroelectric water right ceases, or upon expiration of a hydroelectric water right not otherwise extended or reauthorized, or at any time earlier with the written consent of the holder of the hydroelectric water right, up to the full amount of the water right associated with the hydroelectric project shall be converted to an in-stream water right, upon a finding by the Water Resources Director that the conversion will not result in injury to other existing water rights. In making the evaluation, the director shall consider the actual use of the hydroelectric project and the resulting impacts on actual use by other existing water rights as of October 23, 1999. The director may include mitigation measures as conditions of the in-stream water right to avoid injury and to ensure the continuation of authorized water uses by other existing water rights.

(4) If the hydroelectric project is authorized by a pre-1909 unadjudicated claim of registration, the determination of injury shall be based upon an evaluation of the actual use as measured during the five years preceding the conversion action, and shall not constitute a determination under ORS 537.670 to 537.695 as to the underlying claim of registration of the pre-1909 use. Judicial review of a final order relating to such a conversion shall be limited to review of the conversion action.

(5) This section shall not apply to projects on boundary waters that operate with water rights issued by the State of Oregon and by any other state except upon the written request of the water right holder.

(6) If hydroelectric production is not the sole beneficial use authorized by a water right, this section shall apply only to conversion of that portion of the water right used exclusively for hydroelectric purposes.

(7) This section shall not apply if the holder, at any time prior to conversion under subsection (3) of this section, transfers the hydroelectric water right under ORS 540.520 and 540.530, except that if a time-limited hydroelectric water right is transferred under ORS 540.520 and 540.530, the provisions of this section shall apply at the time of expiration of the time-limited water right. [1999 c.873 §2]

**Note:** 543A.305 was added to and made a part of 543A.005 to 543A.415 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

## HYDROELECTRIC APPLICATION REVIEW TEAM

**543A.400 Duties of Hydroelectric Application Review Team.** (1) The duties of a Hydroelectric Application Review Team shall be determined on the basis of the operating authority of the project that the team is responsible for reviewing.

(2) A team responsible for reviewing a state project shall:

(a) Make an initial determination of whether the state project may proceed under an expedited reauthorization process under ORS 543A.040 and, if so, develop a proposed final order under ORS 543A.040.

(b) If a state project does not qualify for the expedited process under ORS 543A.040:

(A) Convene a public scoping meeting under ORS 543A.045;

(B) Review the application report and prepare a draft proposed final order under ORS 543A.055;

(C) Revise the draft proposed final order and submit the proposed final order to the Water Resources Department for further processing as set forth in ORS 543A.120 to 543A.300; and

(D) Review protests received and recommended responses to the protests as required under ORS 543A.120.

(3) A team responsible for reviewing a federally licensed project shall:

(a) Represent the state in any federal proceeding to reauthorize the federal license for the project;

(b) Participate in the state process in accordance with ORS 543A.085, 543A.090, 543A.105, 543A.110 and 543A.115;

(c) Recommend a state response to a request for certification for reauthorization of a federally licensed project under ORS 468B.040; and

(d) Develop a state position as required under 16 U.S.C. 803(j).

(4) The Water Resources Department may also convene a team to:

(a) Coordinate the activities of all state agencies involved in decommissioning a project.

(b) Develop a unified state position for a project that is subject to federal relicensing but that operates under a water right that does not expire. The unified state position developed under this paragraph shall include the elements set forth in ORS 543A.105 except for the reauthorization of the state water right. In developing the unified state position under this paragraph the team shall participate to the fullest extent possible in all proceedings conducted pursuant to the Federal Energy Regulatory Commission relicensing process for the project. [1997 c.449 §32]

## FEES AND EXPENSES

**543A.405 Application fees.** (1) Subject to the provisions of ORS 543A.410, any person submitting a notice of intent to seek reauthorization, a preliminary application or an application for reauthorization of a project under ORS 543A.030, 543A.035, 543A.075, 543A.080 or 543A.095 shall pay all expenses related to the review and decision of the Hydroelectric Application Review Team that are incurred by the team and any agency participating as part of the team, and that are not otherwise covered by the reauthorization fee paid under ORS 543A.415.

(2) Every person submitting a notice of intent to seek reauthorization of a project shall submit the fee required under ORS 536.050 (1)(r) to the Water Resources Department when the notice of intent is submitted.

(3) Before submitting an application to reauthorize a state project under ORS 543A.035, the applicant shall request from the team an estimate of the costs expected to be incurred in processing the application. The team shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for payment of 25 percent of the estimated costs when the applicant submits an application under ORS 543A.035.

(4) Before the close of public comment on study proposals developed by the applicant for a federally licensed project under ORS 543A.085, the team shall estimate the costs expected to be incurred in evaluating the project. The team shall inform the applicant of that amount and require the applicant to make periodic payments of such costs pursuant to a cost reimbursement agreement. The cost reimbursement agreement shall provide for a first payment of 25 percent of the estimated costs on a schedule established in the agreement.

(5) If costs of the team's evaluation of a project exceed the estimate in the cost reimbursement agreement, the applicant shall pay any excess costs shown in an itemized statement prepared by the team. In no event shall the team and its participating agencies incur evaluation expenses in excess of 110 percent of the fee initially estimated unless the team provided prior notification to the applicant and a detailed projected budget the team believes is necessary to complete evaluation of the application. If costs are less

than the fee paid, the team shall refund the excess to the applicant.

(6) The Water Resources Department shall reimburse participating agencies for costs incurred in their review of a project. Such costs shall not include expenses of other state agencies for which a fee is otherwise collected under state law. [1997 c.449 §33; 2001 c.369 §7]

**543A.410 Fee schedule; appeal.** (1) All expenses incurred by the Hydroelectric Application Review Team and its participating agencies that are charged to or allocated to the fee paid by an applicant shall be necessary, just and reasonable. Upon request, the team shall provide the applicant with a detailed justification for all charges. Not later than January 1 of each year, the Water Resources Director by order shall establish a schedule of fees that those persons submitting a notice of intent must submit under ORS 543A.030 or 543A.075. The fee schedule shall be designed to recover the actual costs of evaluating the notice of intent. Fees shall be based on actual, historical costs incurred by the team and its participating agencies to the extent historical costs are available. The fees established by the schedule shall reflect the size and complexity of the project for which a notice of intent is submitted.

(2) If a dispute arises regarding the necessity or reasonableness of expenses charged to or allocated to the fee paid by an applicant, and if the dispute is not resolved by the directors of the affected agencies, the applicant may seek judicial review in circuit court of the amount of expenses charged or allocated as provided in ORS 183.480, 183.484, 183.490 and 183.500. If the applicant establishes that any of the charges or allocations are unnecessary or unreasonable, the amount found to be unnecessary or unreasonable shall be refunded to the applicant. The applicant shall not waive the right to judicial review by paying the portion of the fee or expense in dispute. [1997 c.449 §34]

**543A.415 Reauthorization fee.** (1) Except as provided in subsection (2) of this section, each holder of an existing hydroelectric license shall pay to the Water Resources Department annually a reauthorization fee in an amount per theoretical horsepower covered by the existing license that, when added to the amount per theoretical horsepower covered by the existing license that is paid under ORS 543.300, equals 28 cents for each horsepower covered by the existing license, or $15, whichever is greater, for the purpose of implementing the state reauthorization process established by this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710. The reauthorization fee shall be paid until the project is reauthorized, and a water right issued, under this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710. Upon reauthorization and issuance of a water right, a new annual fee shall be assessed under ORS 543.300, and the reauthorization fee shall no longer apply.

(2) The department shall notify existing license holders of the amount of the fee described in subsection (1) of this section. The notice shall state the date by which the license holder must notify the department if the license holder does not intend to reauthorize the project. The department shall assess the fee described in subsection (1) of this section unless the license holder notifies the state that it does not intend to apply to reauthorize the project upon expiration of the license. The holder of an existing hydroelectric license that notifies the department that it does not intend to reauthorize the project need not pay the reauthorization fee and may not seek reauthorization of the project upon expiration of the existing license.

(3) The department shall submit a report to the Legislative Assembly during each odd-numbered year regular session describing the department's use of reauthorization funds.

(4) Four cents of each 28 cents paid as a reauthorization fee as required by subsection (1) of this section shall be deposited to the Water Resources Department Hydroelectric Fund and disbursed to the Department of Environmental Quality. [1997 c.449 §37; 1999 c.873 §17; 2003 c.14 §348; 2011 c.545 §61]

## MISCELLANEOUS

**543A.800 Effect of hydroelectric reauthorization process on existing rights.** (1) Nothing in this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 shall prejudice or alter any rights granted to the state or its agencies under federal law.

(2) Nothing in this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 shall prejudice or alter any rights of an existing federally licensed project to apply for or obtain a new federal license for the project. Nothing in this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 shall be construed to create any preference or priority on behalf of any applicant for a federal license. [1997 c.449 §§42a,45]

**543A.805 Reference to licensee or license.** Notwithstanding any other provision of law, any reference to a licensee or to a hydroelectric license for a hydroelectric

project shall be considered a reference to a time-limited water right certificate for the use of water for hydroelectric purposes for the purpose of applying the provisions of this chapter and ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 pertaining to reauthorizing the use of water for hydroelectric purposes. [1997 c.449 §43]

**543A.810 Effect of amendment or repeal of law.** Amendment or repeal of any section of ORS chapter 543A does not affect any water right or the rights of any holder of a water right issued thereunder. [2001 c.369 §8]

**Note:** 543A.810 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

# Chapter 549

## 2015 EDITION

# Drainage and Flood Control Generally


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## CONTRACTS WITH FEDERAL AGENCIES AS TO FLOOD CONTROL

**549.010 Definitions for ORS 549.020 and 549.030.** As used in ORS 549.020 and 549.030, unless a different meaning appears from the context:

(1) "Federal agency" includes the United States, the President of the United States, and any agency or instrumentality of the United States which is designated, granted or authorized to engage in the building, construction and maintaining of flood control projects on any lakes, rivers or streams within Oregon.

(2) "Board of commissioners" means the governing body of any county in the state, whether the same consists of two county commissioners and the county judge or three commissioners.

(3) "Contract" includes contracts and agreements in the customary form; also a commitment by a federal agency by which it undertakes to make or engage in the construction of works for the purpose of controlling floods, and the terms, conditions and restrictions therein set forth.

(4) "Flood control project" means any plan, system, manner or means for the control, diversion, conservation or abatement of floodwaters or any excessive or unusual accumulation of water in any natural or artificial stream or body of water, or for protection of life and property against danger, menace, injury or damage resulting therefrom.

**549.020 Contracts between counties and federal agencies.** Any county may make contracts with any federal agency containing such terms, provisions and conditions as, in the discretion of the board of commissioners, may be necessary, proper or advisable for the purpose of meeting the conditions necessary in the construction of flood control projects as provided in any federal flood control Acts wherein the federal government is entirely financing such projects.

**549.030 Agreement by two or more counties with federal agency.** If two or more counties in the state desire jointly or severally to make any agreement with federal agencies relative to flood control, they may enter into such agreements with any agency named in ORS 549.010 in accordance with all the provisions stated in ORS 549.010 and 549.020 that will facilitate cooperative action between boards of commissioners and federal agencies to meet conditions of any federal flood control Acts wherein the federal government is entirely financing such projects.

## DITCHES TO DRAIN LAND; FLOOD CONTROL MEASURES

**549.110 Application to county court for authority to build drainage ditch or levee, or to widen or straighten a stream.** (1) When any person owns land which requires draining, or any incorporated city in which there is any ditch, standing water or surplus water requiring draining has no means of draining such ditch, standing water or surplus water, and objection is made by the owners of adjacent land to the construction thereon or thereover of necessary means of drainage, such person or city may make application in writing to the county court of the county in which such land or city is situated, for the right of way or privilege to cut or dig or construct sufficient means of drainage over the adjacent land.

(2) Likewise any person or municipal corporation whose land is so situated that it is injured or liable to be injured by floodwaters from any natural stream flowing through or near the land may make application to the county court for the right to enlarge or straighten the bed of such natural stream, or strengthen or build up the banks so as to protect such lands from overflow or injury.

**549.120 Procedure; appointment of commissioners; order to commissioners.** Thereupon the court shall appoint three disinterested householders of the county as a commission and shall issue an order directing them to meet on a day named in the order, after subscribing to an oath or affirmation to faithfully and impartially discharge the duties of their appointment. At least three days' notice of the time and place of the meeting shall be given to all persons through whose lands the ditch is to be located or upon whose lands the natural stream is to be straightened, enlarged, or its banks are to be strengthened or built up.

**549.130 Commissioner's oath.** In the absence of an officer authorized to administer oaths, the commissioners may administer the oath to each other.

**549.140 Duties of commissioners.** The commissioners shall proceed to locate and mark out the route of the ditch so as to do the least damage to the lands the ditch passes through, or to designate the location, character and extent of the work to be done in straightening the bed or building up the banks of the stream, and shall at the same time assess the damages sustained by the person owning the land.

**549.150 Considering benefits in assessing damages.** In assessing damages, the commissioners shall take into consideration

all benefits which will accrue to the lands from the work contemplated.

**549.160 Report of commissioners to county court; payment to landowner; recording report; construction of improvement.** The commissioners, or a majority of them, shall make a report to the county court at the next regular session thereof, stating the location of the ditch or other work contemplated, the name of the person entitled to damage, and the amount, if any is assessed. If the county court is satisfied that the report is just, and after payment by the applicant for the right of way of all costs of locating such ditch or other work, and the damages, if any are assessed, the court shall cause the same to be recorded. The applicant then may proceed to make such ditch, or do such work of straightening the stream or building up or straightening the banks thereof, doing as little damage to the land it passes through as possible.

**549.170 Appeal to circuit court from assessment of damages.** Any person aggrieved by the assessment of damages may appeal within 20 days to the circuit court.

**549.180 Bringing additional water into ditch without payment of compensation prohibited; civil liability.** No person shall tap or bring additional water into any drainage district or drainage district ditch already dug without paying a reasonable compensation therefor and securing the written permission of district officials. The criminal penalty for violation of this section shall not relieve the defendant from civil liability for damages.

**549.190 Other rights protected.** ORS 549.110 to 549.180 shall not be construed so as to interfere with the rights of companies or individuals for mining, manufacturing, or watering towns or cities.

## IMPROVEMENT OF WATERCOURSES OR DRAINS WEST OF CASCADES

**549.310 Application of ORS 549.320 to 549.400.** ORS 549.320 to 549.400 shall not be construed to interfere with or to prevent the right or power to construct drainage ditches under any other statute of this state, and shall apply only to that portion of the state lying west of the Cascade Mountains.

**549.320 Petition by landowners to drain lands or improve drains.** Whenever 60 percent or more of the owners of land contiguous to and crossed by some watercourse or drain desire to have such lands drained or such natural course or drain straightened, altered, widened or deepened, they may petition the county court of the county in which the land is situated for such improvement, describing all property affected thereby and giving the names of the owners thereof. Upon the filing of the petition the county court shall ascertain whether 60 percent or more of the owners of land affected have signed the petition, and if so, shall make a finding to that effect.

**549.330 Survey of work; plats, plans; estimates of cost; assessment of damages; hearing and determination by county court.** The county court shall direct the county surveyor, or county engineer if the county employs a registered professional engineer, to make a survey of the work contemplated to be done and prepare plats, plans, profiles and estimates of cost of the work to be done, and shall assess the damage sustained by any person owning any land affected by such improvement, taking into consideration all benefits which will accrue from the work contemplated to be done to the land. The county surveyor, or county engineer, shall file with the county clerk the plats, plans, profiles, estimates of cost, and assessment of damages. Not less than 30 nor more than 60 days after the county surveyor, or county engineer, has filed the data with the county clerk, the county court shall hold a hearing, of which at least 10 days' notice shall be given to all landowners affected, and to the authority which maintains any highway and to the owners of any railroad or tramway through which or under which any conduit is to be constructed, by publishing the same once a week for two successive weeks in a newspaper of general circulation in the county. At the hearing the county court shall hear evidence in support of the petition and in support of any protest or objection thereto, and after consideration shall determine whether it is to the interest and benefit of the land affected and conducive to the public welfare to grant the petition for the improvement. [Amended by 1965 c.287 §1]

**549.340 Construction; functions of county surveyor or county engineer; performance by landowner.** If the county court authorizes the improvement, it shall be done under the direction and supervision of the county surveyor, or the county engineer, who shall set all necessary grade stakes and bench marks. The owner of any of the lands through which or on which any portion of the improvement is to be constructed may, at the expense of the owner, perform such construction work under the supervision of the county surveyor, or the county engineer. If the owner does not elect to do such work, it shall be done by the county under the direction and supervision of the county surveyor, or the county engineer. [Amended by 1965 c.287 §2]

**549.350 Report as to work done; assessment of costs; unpaid assessments.** On the completion of the work by the county, the county surveyor or the county engineer shall make and file with the county clerk a report showing in detail the work done on each parcel of land separately owned, the names of the owners, and the amount of costs to each such parcel of land. The cost shall be assessed against the owner of the lands by the county court. Any unpaid assessment may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the assessment and the amount of the assessment in the County Clerk Lien Record. [Amended by 1965 c.287 §3; 1991 c.459 §427]

**549.360 Extension of work across or under highway or railroad; duty as to construction and maintenance; cost.** The drainage work may be extended across or under any highway and may also be carried under or through any railroad or tramway. The authority which maintains the highway through which the conduit crosses shall construct and maintain the same in good condition and repair, free from obstruction, at its own expense. The owner of the railroad or tramway under or through which the conduit is to be constructed shall construct and maintain the same in good condition and repair, free from obstruction, at its own expense.

**549.370 Maintenance of work; inspection; notice to landowners; when work ordered; assessment of cost.** At least one member of the county court in the fall of each year shall inspect the improvements constructed under the provisions of ORS 549.310 to 549.400, for the purpose of ascertaining whether or not they have been properly maintained and are in a good and serviceable condition. If it is found that the works are not properly maintained or are not in a good and serviceable condition either in whole or in part, the county court shall give notice in writing to the owner of land upon which it was found that the works are not properly maintained or are not in a good and serviceable condition, which notice shall set forth the necessary work to be done and the time of beginning and completion of the same. In the event the owner fails to comply with the conditions set forth in the notice, the county court shall order the necessary work to be done and assess the cost against the land upon which the work was done in the manner provided in ORS 549.350.

**549.380 Acquisition of property necessary to improvement; condemnation; prior payment of compensation unnecessary.** Whenever a county court finds it necessary, in order to carry out any of the purposes mentioned in ORS 549.310 to 549.370, to condemn, acquire or appropriate any land, property or right of any nature, it shall so declare its intention by resolution spread on the records of the court, setting out the necessity that exists. If it is unable to agree with the owner for the purchase of such land, property or right, the district attorney for the county, upon request of the county court, shall commence and prosecute in any court of competent jurisdiction, in the name of the county, any necessary suit, action or proceeding for the condemnation of such land, property or right, for such public use. The procedure in such suit, action or proceeding shall be, as far as applicable, the procedure provided by law for the condemnation of lands or rights of way by public or quasi-public corporations for public use or for corporate purposes; provided, nothing in this section shall be construed to require the county to make or tender compensation prior to the condemnation and taking possession of such land, property or right.

**549.390 Appeal from order authorizing work or assessing damages.** Any person aggrieved by any order pursuant to the provisions of ORS 549.310 to 549.400 authorizing any construction work or by the assessment of any damages, may appeal to the circuit court within 20 days from the date when the county court approved such improvement. From the judgment of the circuit court an appeal to the Court of Appeals may be taken in the manner provided for appeals in civil proceedings. [Amended by 1979 c.562 §26]

**549.400 Obstruction, befoulment or pollution of ditch prohibited.** No person shall throw, dump, place or allow to be thrown, dumped or placed, any rubbish, refuse or any article or thing in any ditch, lateral, canal, slough, waterway or conduit constructed, operated or maintained under the provisions of ORS 549.310 to 549.390, or befoul, pollute or allow to be befouled or polluted any such ditch, lateral, canal, slough or conduit.

## REPAIR OF DIKES

**549.510 Repair of dikes protecting contiguous tracts of different owners; refusal of one owner to repair; reconstruction by other; recovery of expense.** Whenever two or more contiguous tracts of land, not in a diking district, the property of separate owners, have been protected by a common dike or by separate dikes so constructed as to afford a common benefit to the lands affected thereby, or upon which the dike has been constructed, and any portion of the dike has become broken or destroyed or in such condition of repair that the lands intended to be benefited and protected by the

dike are being injured by reason of its broken, destroyed or other bad condition, and the owner of the land upon which the broken or destroyed dike is located refuses to rebuild, repair, reconstruct or otherwise improve the same so as to afford the proper protection and benefit to the land, the owners of the other contiguous tracts may attempt to agree with the owner of the land upon which the dike in question is located, with reference to its repair, reconstruction or rebuilding. If the owner refuses to rebuild, reconstruct or repair the dike, the owners of the other contiguous tracts of land affected by the dike and upon whose land the dikes are in a good condition of repair, may reconstruct, rebuild or repair the broken or destroyed dike and shall be entitled, by action in any court having jurisdiction, to recover from the delinquent owner the reasonable value of the material furnished and labor used in rebuilding, reconstructing or repairing the same, together with the cost and disbursements of such action. The action shall be prosecuted in the name of the owners and against the delinquent party. Any party to the action is entitled to a jury trial.

**549.520 Complaint to county judge of neglect to repair; notice; examination; findings; direction to delinquent owner to repair dike.** If anyone neglects to repair, rebuild or reconstruct a dike as specified in ORS 549.510, the owners of the contiguous tracts of land may complain to the county judge of the county in which the lands or some portion thereof are situated, who, after due notice, shall examine the premises. If the county judge determines that the dike is in need of reconstruction, rebuilding or repair, and that the dike is of sufficient benefit to the lands affected thereby to warrant its maintenance, and if the county judge finds that the dikes on the other contiguous tracts owned by the persons complaining are in a good state of repair, the county judge shall so signify in writing and shall cause to be served upon the delinquent owner a copy of such finding and shall direct the owner to rebuild, reconstruct or repair the dike within such time as the judge determines to be reasonable.

**549.530 Entry on land by complainant to repair dike; recovery of cost of repair.** If such dike is not repaired or rebuilt accordingly, the complainants may repair or rebuild the dike, and for that purpose may go upon the premises where the destroyed or broken dike is located, doing as little damage as possible thereto, and may recover the value or cost of rebuilding, reconstructing or repairing the dike from the delinquent owner, before any court having jurisdiction.

**549.540 Dikes constructed under agreement excepted.** The provisions of ORS 549.510 to 549.530 shall not apply to dikes constructed under agreement between the owners of contiguous tracts of land, under which agreement the maintenance of the dike is provided for.

## FEDERAL FLOOD CONTROL PROJECTS

**549.605 Definitions for ORS 549.605 to 549.645.** As used in ORS 549.605 to 549.645, unless the context requires otherwise:

(1) "Commission" means the Water Resources Commission.

(2) "Federal flood control projects" includes all authorized federal projects located wholly or partially within this state which the commission determines would be beneficial to this state as flood control measures.

(3) "Federal government" means the United States, or any agency or instrumentality of the United States which is designated or authorized to engage in flood control projects within Oregon. [1957 c.466 §1]

**549.610 Water Resources Commission to participate on behalf of state in federal flood control projects; powers and duties of commission.** The Water Resources Commission is directed to carry out, for and on behalf of the state, the state's participation in federal flood control projects. In discharging this responsibility, the commission, or one or more of its members or employees designated by the commission to represent it, may sign agreements with the federal government and other persons, to integrate, if possible, into the federal project necessary or desirable state or local features and works, to relocate facilities displaced by such projects and to perform all other acts connected with and necessary to such participation. Work to be done by the state may be carried out by contract or by available state forces or by a combination of these two methods. If the commission deems it to be in the public interest, they may agree with public or quasi-public bodies and other persons affected by such projects to have such bodies or persons perform the work. The commission shall, in all instances, carry out the powers and duties imposed upon it by ORS 549.605 to 549.645 in a manner which will comply with federal flood control legislation and rules and regulations promulgated pursuant to such legislation. [1957 c.466 §2]

**549.615 Entering upon land.** The Water Resources Commission and its agents and employees may enter upon lands to gather information when necessary for the performance of those duties imposed upon them by ORS 549.605 to 549.645. [1957 c.466 §3]

**549.620 Acquisition of property.** The Water Resources Commission may acquire property, as defined in ORS 35.550 (1), by purchase, donation or condemnation in the manner provided in ORS 35.550 to 35.575, when necessary to carry out the duties assigned it by ORS 549.610. [1957 c.466 §4]

**549.625 Powers of commission with respect to acquired property.** As to any property acquired pursuant to ORS 549.605 to 549.645, the Water Resources Commission may sell, donate, exchange or lease it or grant easements thereon, on terms which are beneficial to the state and meet all federal flood control project requirements; and the commission, or one or more of its members or employees designated by the commission to represent it, may execute and deliver, in the name of the State of Oregon, a lease, deed or other instrument of conveyance of such property. These leases, deeds and instruments may contain such reservations as the commission deems necessary to protect the interests of the state in flood control. [1957 c.466 §5]

**549.630 Operation and maintenance of projects.** After the completion of a flood control project or a portion thereof and, in the case of projects constructed by the federal government, after such project or a useful portion thereof has been turned over to the state by the federal government, such projects may be operated and maintained by the Water Resources Commission for the primary purpose of flood control; or, when the commission deems such action to be in the public interest, the commission may enter into agreements with public or quasi-public bodies and other persons to operate and maintain such projects. [1957 c.466 §6]

**549.635 Agreements for joint participation or aid.** The Water Resources Commission may enter into agreements with the federal government, public and quasi-public bodies, including but not limited to drainage and irrigation districts organized under the laws of Oregon, water control districts and subdistricts formed under ORS chapter 553 and district improvement companies formed under ORS chapter 554, and other persons for the purpose of participating jointly with such bodies or persons in federal flood control projects or aiding such bodies or persons in meeting obligations imposed upon them in connection with federal flood control project agreements. The commission shall not aid or agree to aid any public or quasi-public body or person unless such body or person is meeting satisfactorily or to the best of its ability all obligations imposed upon it under such agreements. [1957 c.466 §7]

**549.640 Disposition of moneys received by commission.** Except as provided in ORS 536.500, all moneys received by the Water Resources Commission under the provisions of ORS 549.605 to 549.645, including any allotment of moneys from the federal government to reimburse the state for expenditures made in connection with a flood control project, shall be turned over to the State Treasurer to be placed in the State Treasury to the credit of the General Fund. [1957 c.466 §8]

**549.645 Waiver of state's immunity to suit or action.** Except upon contracts providing for arbitration under the provisions of ORS 36.600 to 36.740, a suit or action may be maintained against the State of Oregon through and in the name of the Water Resources Commission for an injury to the rights of the plaintiff arising from some act or omission attributable to the Water Resources Commission acting as authorized by ORS 549.605 to 549.645. [1957 c.466 §9; 2003 c.598 §46]

## POWERS OF CERTAIN COUNTIES WITH RESPECT TO WATER CONSERVATION AND FLOOD CONTROL

**549.710 Powers of counties with populations in excess of 50,000.** In any county having a population in excess of 50,000, according to the latest federal decennial census, the county court or board of county commissioners may:

(1) Carry out surveys and plan and engage in projects relating to water conservation and flood control.

(2) Contract and cooperate with federal and state agencies, with other counties and with other public corporations in making surveys and planning and engaging in projects relating to water conservation and flood control.

(3) Provide lands and rights of way, operate and maintain flood control projects and do such other things as are necessary for county participation in federal flood control and water conservation projects.

(4) Remove or destroy drifts and drifting material in rivers and streams or on land that has been flooded. [1957 c.296 §1]

**549.720 Procedure for removing or destroying drifts and drifting materials.** When removing or destroying drifts or drifting material in rivers or streams or on land that has been flooded the county shall:

(1) Have the right to enter upon any land for purposes of inspection, removal and destruction of drifts and drifting material.

(2) Give reasonable notice to owners of salvable material that the county has sal-

vaged their property and that if such property has not been reclaimed or arrangements made for its removal within a reasonable time but in no event less than 30 days the county will dispose of the property by sale and, after deducting the amount necessary to reimburse the county for removal costs, hold the balance for one year for the owner. If, at the end of that time, the balance remains unclaimed it shall be placed in the general fund of the county. The county may hold any salvable material until the owner has reimbursed the county for removal costs. [1957 c.296 §2]

**549.730 Budgeting and appropriating money for water conservation and flood control.** The county court of each county may include in its budget and appropriate out of moneys in the general fund of the county not otherwise appropriated, an amount for the purposes of ORS 549.710 to 549.730. Out of the amount so appropriated the county court may set aside an amount, not to exceed one-half of the annual appropriation, to be placed in a special fund to be expended for emergency purposes or for future water conservation and flood control programs. [1957 c.296 §3; 1981 c.416 §11]

## PENALTIES

**549.990 Penalties.** (1) Subject to ORS 153.022, violation of ORS 549.180 is a Class D violation, and the violator shall be compelled to restore the drainage to the condition previously existing.

(2) Violation of ORS 549.400 is a Class C misdemeanor. [Amended by 1999 c.1051 §197; 2011 c.597 §230]

# Chapter 555

## 2015 EDITION

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## RECLAMATION UNDER CAREY ACT

**555.010 Acceptance by state of conditions of Carey Act and grants thereunder.** The State of Oregon hereby accepts the conditions of section 4 of the Act of Congress approved August 18, 1894 (28 Stat. 422), and amendments thereto, known as the "Carey Act," together with all grants of land to the state under the provisions of that Act.

**555.020 Water Resources Commission to manage lands; general powers; transfer of powers of former state boards.** The selection, management, and disposal of the land referred to in ORS 555.010 shall be vested in the Water Resources Commission. The commission may employ necessary assistance, purchase material and supplies, and shall have charge and control of all reclamation work undertaken, contracted for, or initiated by the State Land Board prior to the passage of chapter 226, Oregon Laws 1909, or by the Desert Land Board prior to the passage of chapter 434, Oregon Laws 1927, and of the reclamation companies which were operating under either of those boards.

**555.030 Duties of Water Resources Commission.** The Water Resources Commission, or some authorized assistant, shall:

(1) Have custody of all the records and files under the provisions of ORS 555.010 to 555.160, which shall be public records and open to inspection by the public during office hours.

(2) Receive and file all proposals for construction of irrigation works to reclaim lands selected under the provisions of ORS 555.010 to 555.160.

(3) Keep for public inspection maps or plats of all land selected.

(4) Receive entries of settlers on these lands.

(5) Do any and all work necessary in carrying out the provisions of ORS 555.010 to 555.160. [Amended by 1955 c.707 §68]

**555.040 Powers of Water Resources Commission as to contracts with Secretary of Interior for lands to be reclaimed; lien for expenses.** Upon application, made as provided in ORS 555.050, by any person desiring to reclaim any of the desert government lands in this state, the Water Resources Commission shall make proper application for the lands which the applicant undertakes to reclaim, and make and enter into contract or agreement with the Secretary of the Interior for the donation and patent to the state, free of cost for survey or price, of such desert lands. The commission may make and enter into such contracts and agreements, and create and assume such obligations in relation to and concerning the lands, as may be necessary to induce and cause such reclamation thereof as is required by the contract with the Secretary of the Interior and the Acts of Congress. The commission may create a lien which shall be valid on and against the separate legal subdivisions of land reclaimed, for the necessary expenses of reclamation, and reasonable interest thereon from the date of reclamation until the lien is satisfied; provided that in no event, in no contingency, and under no circumstances, shall the state be in any manner directly or indirectly liable for any amount of any such lien or liability, in whole or in part.

**555.050 Application to Water Resources Commission for lands to be reclaimed; selection and withdrawal of lands.** (1) Any person desiring to construct ditches, canals or other irrigation works to reclaim land under the provisions of ORS 555.010 to 555.160 shall, at the expense of the person, file with the Water Resources Commission an application for selection on behalf of the state, by the commission, of the land to be reclaimed. The application shall conform to all requirements of the federal laws and rulings thereunder, and be accompanied by the necessary land office fees and such additional data as may be prescribed by the commission, including a preliminary estimate of costs and the amount of lien asked for. If the application is made in proper form, and it appears that the proposed plan is feasible, that the applicant is financially able to complete the work, and that its completion will be to the best interests of the state, then the commission, at the expense and cost of the applicant, shall make proper application for the selection and withdrawal of the lands included in the application.

(2) The commission may do all things necessary to secure the withdrawal of lands on behalf of the commission by the Secretary of the Interior, and let a contract to the lowest responsible bidder for the reclamation and colonization of the same when withdrawn.

**555.060 Deposit by applicant; disposition of money.** A deposit shall accompany each application in a sum not less than 10 cents per acre up to 1,000 acres, and two cents per acre for each acre over that amount, which sum shall be deposited with the Water Resources Commission and held in trust as a guarantee of good faith on the part of the applicant, to whom it shall be returned at the time of execution of a contract between the state and the applicant. In case the person making the application shall, upon segregation by the Secretary of the Interior of any or all of the lands mentioned

therein, refuse to enter into a contract with the state, the deposit shall be forfeited to the state and credited to the Oregon Irrigation Fund.

**555.070 Contract for reclamation of land; contents; examination and report by Water Resources Commission; sale of water right to settlers; bond of contractor; deposit to secure purchasers of water rights.** Upon withdrawal of the land by the Department of the Interior, the Water Resources Commission shall enter into a contract for the reclamation of such land with the person submitting the application, which contract shall contain plans and specifications of the proposed irrigation works; provided, that no contract shall be executed by the commission until after an examination by the commission concerning the feasibility of the proposed plan of reclamation, sufficiency and availability of the water supply, and reasonableness of the estimate of cost and the lien requested. The contract shall provide for the sale of the water right to settlers on the land in satisfaction of the reclamation lien allowed. This contract shall not be entered into on the part of the state until the withdrawal of the lands by the Department of the Interior and the filing of a satisfactory bond on the part of the proposed contractor, which bond shall be in a penal sum not less than two percent of the lien to be allowed, and shall be conditioned upon the faithful performance of the provisions of the contract with the state; provided, that in case the contractor is the irrigation district such bond need not be filed. The commission may, however, require the contractor to make a deposit at the time of application for entry of land by settlers to insure the transfer of the system in good condition and repair to the purchasers of water rights as herein provided, which deposit shall be returned by the commission at the time of such transfer. [Amended by 1955 c.707 §69]

**555.080 Reclamation works; control by contractor; transfer to purchasers of water rights.** For such time as is specified in the contract, and not to exceed 10 years from the date thereof, the control and management of the reclamation works shall be vested in the person having contract with the state. At the expiration of such time the clear and unencumbered title to the reclamation works and all franchises thereunto belonging, also the control and management thereof, shall pass to the purchasers of water rights from the reclamation works in the manner to be prescribed in the contract, the contractor retaining an interest in the works proportional to the amount of water right unsold.

**555.090 Time for construction of works; date of commencement; securing of water rights; cessation of work as causing forfeiture; extension of time.** No contract shall be made by the Water Resources Commission which requires a greater time than five years for construction of the works. All contracts shall state that the work shall begin within six months from date of contract; that the contractor shall secure for the use and benefit of the reclamation system all necessary water rights, rights of way, reservoir sites, or other property necessary for its construction and operation; that construction shall be prosecuted diligently and continuously to completion; and that a cessation of work under the contract with the state for a period of six months, without the sanction of the commission, will forfeit to the state all rights under the contract. The commission may extend the time in which to begin the construction of works, or for the completion of work, on account of delay caused by physical or engineering difficulties beyond the power of the contractor to control.

**555.100 Nonperformance by contractor; forfeiture; notice of forfeiture; sale of incomplete works; disposal of proceeds.** (1) Upon the failure of any parties having contracts with the state for the construction of irrigation works, to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, to the satisfaction of the Water Resources Commission, the commission shall give the parties written notice of such failure. If after a period of 60 days from the sending of such notice they have failed to proceed with the work or to conform to the specifications of their contract with the state, or secure an extension of time, their contract and all works constructed thereunder shall be at once forfeited to the state.

(2) In case of any forfeiture, cancellation, or relinquishment of any contract to the state, the commission shall so declare and give notice once each week, for four weeks, in some newspaper of general circulation in the county in which the work is situated, and in one newspaper at the state capital in like manner and for a like period, of the forfeiture, cancellation, or relinquishment of the contract, and that upon a fixed day proposals will be received at the office of the commission for purchase of the incompleted works and for completion of the irrigation works in accordance with plans, specifications and other conditions prescribed by the commission, the time for receiving bids to be at least 60 days subsequent to the issuing of the last notice of forfeiture. The money re-

ceived by the commission from sale of the partially completed works under the provisions of this section shall first be applied to the expenses incurred by the state in their forfeiture and disposal, and the surplus, if any exists, shall be paid to the original contractors with the state.

**555.110 State's liability.** Nothing in ORS 555.010 to 555.160 shall be construed as authorizing the Water Resources Commission to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state.

**555.120 Conditions precedent to entry onto land and sale of water rights; form of applications for purchase or for release of lien; "date of reclamation."** No land shall be open to entry and no water rights shall be sold by the parties under contract with the Water Resources Commission until the construction of the works is sufficiently advanced to insure a water supply, and the entry of an order by the commission opening the land or any portion thereof to entry and sale. All applications to purchase lands, or for release of lien for construction of the reclamation works, shall be upon the forms provided by the commission. The "date of reclamation," for the purposes of ORS 555.010 to 555.160, shall be the date shown by the proof furnished the Secretary of the Interior by the commission at which water was furnished available for the reclamation of each tract in the list of lands.

**555.130 Application to enter; contract for purchase of water rights and release of lien; payment for land.** Any citizen of the United States, or any person having declared an intention to become such, over the age of 21 years, may make application, under oath, to the Water Resources Commission, upon forms prescribed by the commission, to enter any of the lands reclaimed under the provisions of ORS 555.010 to 555.160, in an amount not to exceed 160 acres for any one person. Each application shall be accompanied by a contract, made and entered into by the applicant with the person who has undertaken the reclamation of the tract in question, which contract shall show that the applicant has made proper arrangement for purchase of the necessary water rights and the release of the construction lien. Each application to the commission shall in addition be accompanied by a payment of not less than $1 per acre for each acre included in the application, which payment shall be made by the contractor out of the first payment by the applicant, and shall be deposited by the commission with the State Treasurer, who shall credit it to the Oregon Irrigation Fund. If the application is not approved, the $1 payment shall be returned to the contractor.

**555.140 Deeds to land; execution; form; title conveyed; record; preservation of copies; copies as evidence.** Upon filing with the Water Resources Commission a satisfactory release of the construction lien apportioned by the commission against the land in any application, accompanied by satisfactory proof of reclamation, cultivation and settlement, as required by the rules of the commission, it shall be the duty of the commission to deed to the applicant, or the assignee of the applicant, the land described in the application. The deeds shall be in form of a quitclaim and shall operate to convey only such title as the state may have in the land conveyed. The deeds, without acknowledgment, or copies thereof duly certified and attested under seal by the commission, certified from the official copy in the keeping of the commission, shall be admitted to record. The commission shall preserve, in a suitable book, a true copy of the deeds, with an alphabetical index of the names of the grantees, and such copies or certified copies thereof certified and attested as aforesaid shall be primary evidence of such conveyances.

**555.150 Rules.** The Water Resources Commission shall provide suitable rules for the filing of applications for constructing irrigation works, prescribing the nature of final surveys, and the gathering of engineering data upon which the contract with the state is to be based, the manner in which the plans and specifications shall be submitted, and for the entry of and payment for the land and water rights by settlers and for the settlement or forfeiting of entry by settlers, and such other rules and regulations as are necessary to carry out the provisions of ORS 555.010 to 555.160.

**555.160 Report of work, expenditures and condition of funds; recommendations for legislation.** The Water Resources Commission shall issue, on or before September 30 of each even-numbered year, a full report of the work of the commission under the provisions of ORS 555.010 to 555.160, including a statement of expenditures and condition of all funds, and such recommendations for legislation as are deemed advisable. [Amended by 2011 c.545 §62]

**555.170 Oregon Irrigation Fund.** The Oregon Irrigation Fund is hereby created. Payments to and disbursements from the fund shall be made as provided by law.

**555.171 Transfers from Oregon Irrigation Fund to General Fund.** Notwithstanding the provisions of ORS 555.170, all moneys in the Oregon Irrigation Fund created by ORS 555.170 on February 18, 1955, and all moneys paid into such fund after February 18, 1955, are to be transferred to the General Fund to be available for general governmental expenses. [1955 c.23 §1]

**555.180 Payment for irrigation of acreage in excess of contract; notice by Water Resources Commission; price per acre.** Wherever an irrigation system has been constructed under contract with the State of Oregon pursuant to the Act of Congress known as the Carey Act, and under and pursuant to ORS 555.010 to 555.160, and it develops that the acreage of land actually irrigated in any smallest legal subdivision of the land is greater than the acreage made subject to the lien in the reclamation contract for said smallest legal subdivision and the waters for the excess acres actually irrigated in such legal subdivision over and above the amount fixed in the contract for lien have not as yet been paid for, nor the amount to be paid therefor agreed upon, the Water Resources Commission upon request of the company supplying water to the excess acres shall notify the person using the water upon the excess acres to pay for the same or enter into an arrangement with the company furnishing the water providing for the price to be paid therefor and the manner of payment; provided, the company furnishing the water shall not exact a price per acre for such excess acres greater than the price per acre as now fixed by the commission.

**555.190 Notice to be in writing; service; noncompliance; effect.** The notice given by the Water Resources Commission shall be in writing and may be served by registered mail or by certified mail with return receipt. If the user of the water does not comply with the notice and either pay for the excess water or enter into a definite arrangement with the company for payment thereof within 30 days from the mailing of the notice, the commission shall, upon notice from the company furnishing the water, cancel the right of the landowner to the excess acres and thereafter, without further application for permission so to do, the company furnishing the water may sell and deliver the water to other lands. Upon effecting the sale of the water to other lands the company shall notify the commission of the lands to which the water is transferred. [Amended by 1991 c.249 §57]

## TUMALO PROJECT

**555.310 Reclamation of lands in Tumalo Project; contracts for.** The Water Resources Commission is authorized and empowered to contract for the completion of the reclamation of lands in the Tumalo Project or any part thereof, and to otherwise carry out the provisions of ORS 555.310 to 555.410, with any irrigation district, organized pursuant to the laws of Oregon, including lands in the project or any part thereof, or with any other irrigation district, or with the federal government, or with any person.

**555.320 Project manager; duties and authority.** (1) The Water Resources Commission shall appoint, at a salary to be fixed by the commission, a project manager for the Tumalo Project, who shall hold office and serve at the pleasure of the commission, but not longer than two years without reappointment. In the selection of a project manager, due consideration shall be given the recommendations of the Board of Directors of the Water Users' Association of the Tumalo Project, which project was designated in chapter 119, Oregon Laws 1913, as the Columbia Southern Irrigation Project. The project manager shall have complete charge of the operation, maintenance and management of all matters pertaining to the project, and shall have authority to collect maintenance fees and issue receipts therefor, to employ necessary assistants, purchase materials and supplies, make proper and necessary repairs, renewals and alterations in the irrigation system when required, necessary or authorized by the commission, and to furnish inventories of machinery, equipment and materials at stated intervals.

(2) All machinery, materials, supplies and land acquired by the state under the provisions of chapter 119, Oregon Laws 1913, not required in the future operation of the project, shall be sold by the project manager under the direction of the commission, and the funds arising therefrom shall be placed in the Tumalo Project Fund. The project manager shall render a monthly report to the commission covering the operation of the project and such other matters as the commission may direct. The project manager shall furnish a good and sufficient surety bond in the sum of $5,000 running to the State of Oregon, subject to the approval of the Attorney General, and conditioned upon the faithful performance of duties.

**555.330 Rules.** The Water Resources Commission shall make all necessary rules and regulations for properly carrying out the provisions of ORS 555.310 to 555.410.

**555.340 Water rights; sale price; lien on lands; lien list; expenditures of state; repayment from sale of lands and rights; replacement or surrender of contracts with Columbia Southern Irrigation Company.** (1) Subject to ORS 555.350, the prices to be paid for the sale of water rights on private lands as well as Carey Act lands, in the Tumalo Project, shall be $40, with interest at five percent from the date of contract of sale, in addition to which there shall be a charge of $2.50 per acre for the nonirrigable Carey Act lands; provided, however, that no new lien shall be placed upon any lands having a complete vested water right on June 3, 1913. A certified copy of the lien list shall be prepared by the Water Resources Commission, showing the price to be paid for water rights for each small subdivision or farm unit of Carey Act land in the project. A certified copy of the lien list shall be filed in the records of Crook County. From and after the date of reclamation of any tract designated in the list a valid lien in favor of the State of Oregon shall exist against each tract in the list for the amount designated therein until the same, together with accruing interest, has been paid in full.

(2) The total amount to be realized from the sale of Carey Act lands and water rights for private lands shall insure the return to the state of all money expended by it in the reclamation of the lands in the project with interest at five percent from the date of the contract of sale, in addition to any further sums or amounts which are found necessary to be paid on account of the project.

(3) Any person who holds a contract with the Columbia Southern Irrigation Company or its successors in interest, for any tract in the project, may execute a new contract with the state for reclamation, under the provisions of ORS 555.310 to 555.410, of the land described in the original contract with the company, or a new selection, receiving credit thereon for the principal paid to the company under the original contract; or, may surrender the contract and receive, in cash, the full amount of principal paid to the company on the contract; provided, however, that no contract holder shall be entitled to a refund of the money as herein provided unless an assignment of all rights, title and interest in and to the contract and the land described therein was filed with the Desert Land Board on or before July 1, 1917; provided, further, that refunds shall be made to contract holders pro rata as funds may become available from time to time after July 1, 1915. The failure to comply with the above option by any contract holder under the old Columbia Southern Project shall render the contract void and the lands embraced therein shall revert to the state and be subject to reentry.

**555.350 Increase of lien against unsold land; reduction of amount due to state.** The Water Resources Commission may increase the reclamation lien against the land not now sold in the Tumalo Project as fixed in ORS 555.340, if such increase is necessary or expedient in the completion of the project. The commission may reduce the amount due the state on account of the construction of the Tumalo Project by the amount expended by any such district or the federal government in completing the reclamation of the lands embraced within the project or any amount which may be expended in discharging the obligations of the state incurred under and pursuant to ORS 555.320, 555.340 and 555.380, or otherwise.

**555.360 Arrangements to settle, cultivate and reclaim Carey Act lands; contract provisions; sale of water rights to private lands; rules; fees.** The Water Resources Commission shall make all necessary arrangements to secure the settlement, cultivation and reclamation of Carey Act lands in the Tumalo Project; accept applications for the entry of the lands; make contracts for the purchase of water rights and release of lien for the lands; make rules for their cultivation and settlement; and prescribe the forms to be used for such purposes. Each contract with purchasers shall provide for payment of the full amount of lien assessed against the tract covered by the contract within a period of not to exceed 20 years, with interest on deferred payments at five percent per annum, and shall also provide for payment of an annual maintenance fee, to be fixed by the commission. Contracts executed before May 27, 1913, may be brought under the terms of ORS 555.310 to 555.410, and the rate of interest thereunder shall be five percent from and after December 1, 1916. Contracts for the sale of water rights to private lands within the project shall be upon the same terms and conditions as for Carey Act lands, and the commission shall in addition require the purchaser to give a first mortgage on such private lands, to the state, as security for the payments due under the contract. The contracts with purchasers, both on Carey Act and private lands, shall provide for the sale of a proportionate interest in the reclamation system to each purchaser, and for transfer of the reclamation system to the purchasers when the water rights for a majority of the lands in the project have been fully paid for, the state retaining an interest proportionate to the unpaid balance on the contracts.

**555.370 Cancellation of contract upon default.** Upon failure of any purchaser having a contract with the Water Resources Commission to make payments of principal and interest according to the terms of the

contract, the commission shall notify the purchaser by registered mail or by certified mail with return receipt of the default. If the default continues for a period of six months after the sending of such notice, the commission may cancel the contract, and all payments made thereunder shall be forfeited to the state and placed in the irrigation fund. The commission may reopen the lands covered by the canceled contract for entry, and resell water rights to the land to some other purchaser. Nothing in this section, however, shall be construed so as to prevent the commission from extending the time to make any payment due under any contract with a purchaser, when in the judgment of the commission the purchaser is entitled to an extension. [Amended by 1991 c.249 §58]

**555.380 Tumalo Project Fund; rules.** (1) All moneys received as maintenance fees on the Tumalo Project shall be applied to the cost of maintaining, repairing, operating and distributing water for the project. The money shall be collected and disbursed by the project manager under the direction of the commission, who shall prescribe rules and regulations governing such collections or disbursements.

(2) All moneys derived from the Tumalo Project from whatsoever source, except as maintenance fees, shall be placed in the Tumalo Project Fund in the hands of the State Treasurer, which fund is hereby created. Disbursements from the Tumalo Project Fund shall be made to repay contract holders as provided in ORS 555.310 to 555.410, and to defray the expenses of construction, extension and operation of the project; except that no repayments to contract holders shall be made which shall reduce the Tumalo Project Fund to less than $5,000, which amount shall be held as an emergency fund to be disbursed for the project in case of an emergency. After all payments to contract holders have been made, all moneys in the fund, except $1,000 for an emergency, shall be placed to the credit of the General Fund of the state and credited as payment to the state on account of the original appropriation for the construction of the Tumalo Project and interest on same. From and after that date all money derived from the sale of land and water rights shall be deposited in the General Fund until all expenses incurred by the state in connection with the project, including five percent interest on all money advanced from the date of sale of the lands, have been repaid, after which time all money received from the sale of lands and water rights shall be deposited in the Oregon Irrigation Fund.

(3) All expenditures for the Tumalo Project from the Tumalo Project Fund shall be paid at the same time and in the same manner as state officers are paid.

(4) All fees payable to the office of the commission in connection with or incident to the completion of applications and the issuance of permits for the appropriation, diversion, storage and use of waters in the Tumalo Project are hereby remitted to the project, and payment thereof shall not be required by the commission.

**555.390 Transfer of state's interest to irrigation districts or to federal government.** The Water Resources Commission may, with due regard to the interests of the state, transfer all the right, title and interest of the state in and to the Tumalo Project, and all rights or franchises thereunto appertaining, to any irrigation district or to the federal government, whenever it appears to the commission that such transfer will be in the best interests of the project.

**555.400 Preferred purchasers.** In the sale of water and water rights and the entry upon lands now remaining unsold in the Tumalo Project, honorably discharged soldiers and sailors, marines, and Red Cross nurses of the Mexican, Spanish or Indian wars and of World War I shall have a preferred right to the purchase and acquiring of the same for such period of time as may be designated by the Water Resources Commission.

**555.410 Repayment of appropriation from receipts of sale of lands; expenditures.** The sum of $10,000, which was appropriated by section 2, chapter 424, Oregon Laws 1917, shall be considered a loan to the Tumalo Project and shall be returned to the General Fund, together with interest at the legal rate from the date on which the money is made available, from the receipts of the sale of project lands. All expenditures incurred under the provisions of ORS 555.340, 555.360 and 555.380 shall be paid at the same time and in the same manner as state officers, upon vouchers approved by the Water Resources Commission.

## SAND CONTROL DISTRICTS

**555.500 Formation; purpose; general powers.** (1) Contiguous territory that is not within the corporate boundaries of a city may be formed into, or included in, a sand control district as provided by ORS 555.500 to 555.535 and provisions of ORS 198.705 to 198.955 that are not inconsistent with ORS 555.500 to 555.535.

(2) A sand control district may be created for the purpose of controlling or moving drifting sand within the district or removing drifting sand from within the district. The sand control district may:

(a) Make contracts.

(b) Acquire, hold, receive and dispose of real and personal property.

(c) Sue and be sued.

(d) Exercise the power of eminent domain.

(e) Raise revenue by levying, assessing and collecting taxes on taxable real property within the district under ordinances adopted, amended or repealed under ORS 198.510 to 198.600.

(f) Take action necessary to carry out the purposes and perform the duties of the district.

(3) Plans and actions of the district must comply with the requirements of county ordinances. [2015 c.560 §1]

**555.507 Board of directors; meetings; quorum.** (1) The authority of a sand control district is vested in a district board consisting of three members. Upon taking office, a board member shall take, and subscribe to, an oath of office to support the Constitution and laws of the United States and of the State of Oregon and to honestly and faithfully perform the duties imposed upon the member under the laws of Oregon.

(2) The district board:

(a) Shall hold at least one regular meeting in each calendar month, on a day fixed by the board, and may hold special meetings as the board determines.

(b) Shall hold meetings at times and places within the district as the board determines.

(c) Shall, at the time of its organization, choose from the members a president, a secretary and a treasurer, who hold those offices until the first regular meeting in January, or until their successors are chosen and qualified.

(d) May call a special election at any regular meeting of the district.

(3) A majority of the members constitutes a quorum to conduct business and, in the absence of the member serving as president, another member may preside at a meeting.

(4) The secretary of the district shall:

(a) Assign position numbers one to three to the offices of board members;

(b) Certify the assigned position numbers to the member holding the office; and

(c) File a copy of the certification with the district elections officer.

(5) Except as provided in ORS 555.514, the term of office of a board member is four years.

(6) The district board shall fill a vacancy on the board as provided in ORS 198.320. [2015 c.560 §2]

**555.514 Qualifications to serve on board; initial meeting; initial terms of board members.** (1) If a sand control district contains 100 or more electors residing within its boundaries, electors of the district are qualified to serve as board members. Otherwise, an individual who owns taxable real property within the district and is an elector registered in this state is qualified to serve as a member.

(2) Within 10 days after the creation of the district or the election of the first board members, whichever occurs later, the district board shall:

(a) Meet and organize; and

(b) Determine by lot the length of term of each board member.

(3) The term of one of the members determined under subsection (2) of this section expires June 30 next following the first regular district election. The term of two members determined under subsection (2) of this section expires June 30 next following the second regular district election. [2015 c.560 §3]

**555.521 Finances; records.** (1) A sand control district shall deposit moneys of the district in a depository, as defined in ORS 295.001, designated by the district board.

(2) The moneys may be withdrawn or paid out pursuant to an order of the board upon a check signed by the treasurer or by a person authorized to serve as custodian of district funds by a resolution of the board.

(3) The district board shall keep on file receipts or vouchers that show the nature and items covered by each check drawn.

(4) The district board shall:

(a) Cause all proceedings of the board to be entered at large in a record book.

(b) Preserve, and make available for inspection, public records pertaining to the authority and duties of the district, as required by ORS 192.410 to 192.505. [2015 c.560 §4]

**555.528 Authority to issue general obligation bonds.** (1) Upon approval of the electors of a sand control district, the district may issue general obligation bonds, as prescribed in ORS 287A.300 to 287A.380, from time to time to finance purposes and duties of the district.

(2) The district may not issue, or have outstanding at any time, general obligation bonds in a principal amount that exceeds:

(a) Five percent of the real market value of the taxable property in the district, calculated as provided in ORS 308.207, if the dis-

trict has a population of less than 100 individuals within its boundaries; or

(b) 10 percent of the real market value of the taxable property in the district, calculated as provided in ORS 308.207, if the district has a population of 100 or more individuals within its boundaries.

(3) Bonds issued under this section must mature within 30 years from the date of issuance. [2015 c.560 §5]

**555.535 Application of ORS chapter 255.** (1) ORS chapter 255 governs:

(a) The nomination and election of district board members of a sand control district.

(b) The conduct of sand control district elections.

(2) The electors of the district may exercise the initiative and referendum powers for a district measure as provided in ORS 255.135 to 255.205. [2015 c.560 §6]

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## CHAPTERS 556 AND 557

**[Reserved for expansion]**

# ANNOTATIONS FOR CHAPTER 390
# Statutes Relating to Scenic Waterways
# (2015 Cumulative Supplement Annotations are indicated with *)

## Chapter 390 (Partial)
## Scenic Waterways

**390.805 to 390.925**

NOTES OF DECISIONS

*An easement is not involved in the state's right under these sections to regulate use of related adjacent land, but an easement is an additional right which the state may acquire by purchase or gift. Scott v. State Hwy. Comm., 23 Or App 99, 541 P2d 516 (1975).

*Time factors involved are not designed to freeze land values to subsidize later acquisition by the state, nor do they impose unreasonable restraints upon landowners. Scott v. State Hwy. Comm., 23 Or App 99, 541 P2d 516 (1975).

*The regulatory provisions are separate from the provisions giving the state the right to acquire land or interests in related adjacent land, and the state does not gain an interest in land by the adoption of the Act. Scott v. State Hwy. Comm., 23 Or App 99, 541 P2d 516 (1975).

*The state's power to regulate is analogous to zoning restrictions and therefore the state does not acquire an interest for which compensation must be paid. Scott v. State Hwy. Comm., 23 Or App 99, 541 P2d 516 (1975).

*Where water would otherwise flow through scenic waterway, provisions of Scenic Waterways Act requiring showing that proposed diversion was necessary to beneficial use applied to proposed diversion in city's application for permit to operate hydroelectric facility. Diack v. City of Portland, 306 Or 287, 759 P2d 1070 (1988).

ATTY. GEN. OPINIONS: Application of regulations to state highways, (1971) Vol 35, p 445.

*Prohibition of landfills on scenic waterways, (1971) Vol 35, p 844; authority to designate segment of Snake River as a scenic waterway, (1972) Vol 35, p 1226; definition and regulation of "placer mining," (1982) Vol. 42, p 213.

*LAW REVIEW CITATIONS: 4 EL 299-303, 373-376 (1974); 19 EL 841 (1989); 21 EL 133 (1991); 29 WLR 95 (1993).

**390.805**

*ATTY. GEN. OPINIONS: Authority to designate segment of Snake River as a scenic waterway, (1972) Vol 35, p 1226.

*LAW REVIEW CITATIONS: 4 EL 301 (1974); 21 EL 133 (1991).

**390.815**

*LAW REVIEW CITATIONS: 4 EL 301 (1974).

**390.825**

**NOTE: Repealed December 8, 1988; ORS 390.826 enacted in lieu**

***See** annotations under ORS 390.826.

**390.826**

ATTY. GEN. OPINIONS

**Under former similar statute (ORS 390.825)**

*Application of Scenic Waterways Act to future expansion of City of Maupin boundaries, (1977) Vol 38, p 697.

**390.835**

NOTES OF DECISIONS

*Where petitioner challenges Water Resources Commission's temporary rule amending OAR 690-80-060 (5)(c), Commission's findings and statement of need do not provide adequate support for promulgation of temporary rule and rule was therefore adopted without compliance with applicable rulemaking procedures and violates Scenic Waterways Act. Waterwatch of Oregon v. Oregon Water Res. Comm., 97 Or App 1, 774 P2d 1118 (1989).

*"Mitigation" must be designed to fully offset ground water appropriation impacts on surface flows. WaterWatch v. Water Resources Commission, 199 Or App 598, 112 P3d 443 (2005).

*ATTY. GEN. OPINIONS: Whether federal designation of portion of John Day River as scenic would supersede state law, (1977) Vol 38, p 1321; definition of "placer mining," (1982) Vol 42, p 213; prohibition on placer mining in scenic waterways, (1994) Vol 47, p 84.

*LAW REVIEW CITATIONS: 19 EL 860 (1989); 36 EL 1125 (2006).

**390.845**

NOTES OF DECISIONS

*Value of improvements upon land condemned pursuant to ORS 390.805 to 390.925 is measured as of date of taking, and not as of date of Act, where development of land began before effective date of Act. State Hwy. Comm. v. Chaparral Recreation Assn., 13 Or App 346, 510 P2d 352 (1973).

*Provisions of this section authorizing condemnation of "related adjacent land" (for which, despite department's disapproval, owner proposed and refused to abandon plan substantially impairing natural beauty

of scenic waterway) were constitutionally applied where there was substantial evidence that taking landowners' property was reasonably necessary and that they had made no timely and effective abandonment of objectionable proposal. State ex rel Dept. of Trans. v. Hilderbrand, 35 Or App 403, 582 P2d 13 (1978).

*Structures and buildings erected in connection with existing use are subject to prior notice requirement unless exempted by department rule. State Dept. of Trans. v. Solomon, 57 Or App 72, 643 P2d 1312 (1982), Sup Ct **review denied**.

ATTY. GEN. OPINIONS: Application of regulations to state highways, (1971) Vol 35, p 445.

*Authority to designate segment of Snake River as a scenic waterway, (1972) Vol 35, p 1226.

*LAW REVIEW CITATIONS: 4 EL 301 (1974); 19 EL 853 (1989).

**390.855**

*LAW REVIEW CITATIONS: 4 EL 302 (1974); 19 EL 852 (1989).

# ANNOTATIONS FOR CHAPTERS 536-543, 549 and 555 (2015 Cumulative Supplement Annotations are indicated with *)

## Chapter 536 Water Resources Administration

**Chapter 536**

CASE CITATIONS: Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

ATTY. GEN. OPINIONS: Agreement to hold United States free from damages caused by river construction works as an invalid loan of state credit, 1956-58, p 50; manner and method of water resources study, 1956-58, p 299; power of state to regulate nuclear power installations, (1970) Vol 34, p 996.

LAW REVIEW CITATIONS: 3 WLJ 295-316; *28 WLR 285 (1992).

**536.010**

**See also** cases under ORS 537.160.

ATTY. GEN. OPINIONS: State Engineer's authority to install equipment for the purpose of preventing wastage of underground waters from uncapped wells, 1952-54, p 146.

**536.030**

ATTY. GEN. OPINIONS: Duties of State Engineer as to underground water, 1952-54, p 146.

**536.050**

CASE CITATIONS: Pacific Livestock Co. v. Cochran, (1914) 73 Or 417, 430, 144 P 668.

ATTY. GEN. OPINIONS: Game commission as exempt from payment to state of fees prescribed by statute, 1922-24, p 147; exaction by State Engineer of fees in advance from United States, 1926-28, p 135; recording fees for filing notices of contest of claims filed with State Engineer relative to rights to waters of streams, 1936-38, p 117; refunding filing fees upon denial of application, 1938-40, p 379; fees on Bureau of Land Management applications received prior to 1961 amendment, 1960-62, p 254.

**536.065**

**See also** cases under ORS 537.160.

NOTES OF DECISIONS

**1. Under former similar statute**

Dismissal of appeal from State Engineer's order determining water rights was proper where order only designated land by numbers of permits and application number and actual location of land was not shown. Santiam Reclamation Co. v. Porter, (1928) 126 Or 91, 267 P 820, 268 P 980.

The findings of the State Engineer were entitled to the presumption of correctness. Broughton's Estate v. Central Ore. Irr. Dist., (1940) 165 Or 435, 101 P2d 425, 108 P2d 276.

In granting the right to appeal, the legislature did not confer judicial power on the State Engineer. Id.

FURTHER CITATIONS: Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

**536.075**

NOTES OF DECISIONS

*Water Resources Department is not required to issue order when denying reconsideration. Harrington v. Water Resources Department, 216 Or App 16, 171 P3d 1001 (2007).

*"Party affected" means any petitioner affected by Water Resources Department order whether or not that petitioner achieves formal party status. Pete's Mountain Homeowners Ass'n. v. Water Resources Department, 236 Or App 507, 238 P3d 395 (2010).

**536.210 to 536.550**

*LAW REVIEW CITATIONS: 4 EL 333 (1974); 11 EL 390 (1981).

**536.210 to 536.560**

NOTES OF DECISIONS

The sections establishing the Water Resources Board were not intended to supersede the laws governing issuance and priorities of water rights certificates. Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

LAW REVIEW CITATIONS: 45 OLR 284; 47 OLR 49-51.

**536.210**

ATTY. GEN. OPINIONS: Classifying ground water, 1960-62, p 426.

**536.220**

CASE CITATIONS: Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Facts relevant to water resources study, 1956-58, p 299; classifying ground water, 1960-62, p 426.

LAW REVIEW CITATIONS: 45 OLR 278, 279; 3 WLJ 382; *21 EL 154 (1991).

**536.230**

ATTY. GEN. OPINIONS: Validity of law creating board to be appointed by the Governor, 1954-56, p 96.

LAW REVIEW CITATIONS: 45 OLR 279.

**536.235**

*LAW REVIEW CITATIONS: 21 EL 13, 133 (1991).

**536.240**

ATTY. GEN. OPINIONS: Same person serving as member of State Water Resources Board, as manager and secretary of irrigation district and as county judge, 1958-60, p 308.

**536.300 to 536.340**

*ATTY. GEN. OPINIONS: Authority of the State Water Resources Board to reclassify the waters of the Middle Snake Basin, (1972) Vol 36, p 250; authority of Water Policy Review Board to formulate integrated, coordinated program for water of Upper Klamath River Basin, (1979) Vol 39, p 748; effect of minimum perennial stream flow requirements, (1982) Vol 42, p 312.

**536.300**

NOTES OF DECISIONS

*Water Resources Commission's failure to adopt coordinated program governing state's water resources under this section does not render invalid Commission's rule establishing basin program when rule is not in conflict with this section, and this section does not make statewide program necessary precursor to local basin program. Waterwatch of Oregon v. Oregon Water Res. Comm., 97 Or App 604, 776 P2d 1307 (1989), Sup Ct **review denied**.

ATTY. GEN. OPINIONS: Formulation of water resources program, 1956-58, p 299; classifying ground water, 1960-62, p 426.

LAW REVIEW CITATIONS: 45 OLR 279, 282, 285; 3 WLJ 280, 382; *21 EL 133 (1991).

**536.310**

CASE CITATIONS: Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Facts relevant to water resources study, 1956-58, p 299; classifying ground water, 1960-62, p 426.

*Right to use water for human and livestock consumption although such use results in reducing stream flow below minimum standards, (1973) Vol 36, p 420; Water Policy Review Board's authority to grant city exemption from minimum perennial streamflow for irrigation, (1980) Vol 40, p 202.

LAW REVIEW CITATIONS: 45 OLR 279, 283; 3 WLJ 280, 384, 387; *21 EL 133 (1991).

**536.320**

CASE CITATIONS: Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Same person serving as member of State Water Resources Board, as manager and secretary of irrigation district and as county judge, 1958-60, p 308.

*Right to use water for human and livestock consumption although such use results in reducing stream flow below minimum standards, (1973) Vol 36, p 420.

**536.330**

CASE CITATIONS: Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Classifying ground water, 1960-62, p 426.

**536.340**

ATTY. GEN. OPINIONS: Facts relevant to water resources study, 1956-58, p 299; classifying ground water, 1960-62, p 426.

*Liability of members of the State Water Resources Board for damages of a party adversely affected by reclassification, (1972) Vol 36, p 250.

**536.350**

ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299.

**536.360**

ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299; classifying ground water, 1960-62, p 426.

**536.370**

ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299; application of Administrative Procedures Act to notice and hearing requirements, 1958-60, p 282; classifying ground water as a restriction to particular uses, 1960-62, p 426.

**536.380**

ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299; application of Administrative Procedures Act to notice and hearing requirements, 1958-60, p 282; classification of ground waters as a restriction to particular uses, 1960-62, p 426.

**536.390**

ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299; classification of ground waters as a restriction to particular uses, 1960-62, p 426.

**536.400**

ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299.

**536.410**

ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299.

LAW REVIEW CITATIONS: 3 WLJ 282; *21 EL 1 (1991).

**536.420**

ATTY. GEN. OPINIONS: Construing proposed Columbia Interstate Compact, 1964-66, p 146.

**536.440**

ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299.

**536.450**

ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299.

**536.470**

ATTY. GEN. OPINIONS: Agreement to hold United States free from damages caused by river construction works as an invalid loan of state credit, 1956-58, p 50.

**536.560**

CASE CITATIONS: Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

# Chapter 537
# Appropriation of Water Generally

**Chapter 537**

NOTES OF DECISIONS

*Water control district, in applying for water appropriation permit for hydroelectric project, was exempt from licensing provisions of ORS 543.010 to 543.620 and needed only to comply with requirements of this Chapter. Steamboaters v. Winchester Water Control Dist., 69 Or App 596, 688 P2d 92 (1984), Sup Ct **review denied**.

CASE CITATIONS: Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819; Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884; Fitzstephens v. Watson, (1959) 218 Or 185, 344 P2d 221.

*ATTY. GEN. OPINIONS: Reservation to state of "all coal and other minerals" in deed of land by state as reservation of geothermal resources, (1980) Vol 41, p 298.

LAW REVIEW CITATIONS: 36 OLR 197, 241; 3 WLJ 295-316; *11 EL 387 (1981); *16 EL 583, 592 (1986); *28 WLR 285 (1992).

**537.010**

CASE CITATIONS: Federal Power Comm. v. Oregon, (1955) 349 US 435, 453, 75 S Ct 832, 843, 99 L Ed 1215, 1229; Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Authority of State Engineer in the prevention of wastage, 1952-54, p 146.

LAW REVIEW CITATIONS: 46 OLR 244.

**537.110 to 537.320**

LAW REVIEW CITATIONS: 3 WLJ 318.

**537.110**

NOTES OF DECISIONS

The water flowing over the public domain is a part thereof, and the general government may grant or otherwise dispose of its riparian interest separate from the rest of the estate. Hough v. Porter, (1909) 51 Or 318, 95 P 732, 98 P 1083, 102 P 728.

This section was not unconstitutional as denying due process of law under U.S. Const. Amend. XIV, §1. Re Hood River, (1925) 114 Or 112, 115, 227 P 1065.

Water escaping from a city reservoir and allowed to find its way to the natural level of the country is subject to appropriation. Vaughan v. Kolb, (1929) 130 Or 506, 280 P 518.

*The exercise of water rights established prior to appropriation under this chapter as between the original grantors of the right and their grantees or as between their respective successors in interest is not unlawful. Jewell v. Kroo, 268 Or 103, 517 P2d 657, 518 P2d 1305 (1973).

FURTHER CITATIONS: Eldredge v. Mill Ditch Co., (1919) 90 Or 590, 598, 177 P 939; California-Ore. Power Co. v. Beaver Portland Cement Co., (1934) 73 F2d 555.

LAW REVIEW CITATIONS: 25 OLR 160; 30 OLR 257; 2 WLJ 345-351; *2 EL 187 (1971); *4 EL 337 (1974).

**537.120**

NOTES OF DECISIONS

**1. In general**

After water has been diverted from a natural stream into ditches or other artificial works, it becomes personal property and cannot be appropriated. Vaughan v. Kolb, (1929) 130 Or 506, 280 P 518.

It is debatable whether, subsequent to 1909, an appropriation can be initiated by adverse use or in any other manner not prescribed by statute. Tudor v. Jaca, (1945) 178 Or 126, 164 P2d 680.

If a prior appropriator desires to enlarge his appropriation, he must make a new appropriation, but such new appropriation will be inferior to all intervening rights. Id.

Subsequent appropriators may insist that prior appropriations are not enlarged, if the enlargement interferes with their rights. Id.

A prior appropriator cannot claim or use more water than is reasonably necessary for the purpose of his appropriation. Id.

Abandonment, as applied to an appropriation, is an intentional relinquishment of a known right. Id.

Forfeiture of a water right is involuntary or forced loss thereof because of appropriator's or owner's failure to perform some act required by statute. Id.

Claims to vested rights are to be adjudicated by the statutory procedure and that adjudication is final, subject to appeal. Calderwood v. Young, (1957) 212 Or 197, 315 P2d 561, 319 P2d 194.

Where water escaped from irrigation district lands to the natural flow of a river, no one could rightfully take the same from the river, except by appropriation. Jones v. Warmsprings Irr. Dist., (1939) 162 Or 186, 91 P2d 542.

Water escaping from a United States irrigation project by deep percolation was of public character even as against the United States. United States v. Warmsprings Irr. Dist., (1941) 38 Fed Supp 239.

**2. Riparian ownership**

A riparian owner's right to the natural flow of the stream substantially undiminished has been abrogated. California-Ore. Power Co. v. Beaver Portland Cement Co., (1934) 73 F2d 555, affirmed (1935) 295 US 142, 55 S Ct 725, 79 L Ed 1356.

There is no such thing as prior riparian ownership so far as distribution of water for irrigation purposes between riparian owners is concerned. Hough v. Porter, (1909) 51 Or 318, 95 P 732, 98 P 1083, 102 P 728.

Conceding that title to bed of stream which is navigable in fact is in riparian owners, they do not own the water itself, but only the use of it as it flows by their property. Guilliams v. Beaver Lake Club, (1918) 90 Or 13, 175 P 437.

Riparian owner of land, abutting on both banks of a slough, is entitled to have water flow as it is naturally accustomed to flow. Stephens v. Eugene, (1918) 90 Or 167, 175 P 855.

Where defendants had made no appropriation of the water in controversy, and all the parties based their rights thereto as riparian owners, the decree was predicated upon that ground. Pacific Livestock Co. v. Davis, (1911) 60 Or 258, 119 P 147.

FURTHER CITATIONS: Re Hood River, (1925) 114 Or 112, 227 P 1065; Re Willow Creek, (1926) 119 Or 155, 236 P 487, 237 P 682, 239 P 123; Staub v. Jensen, (1947) 180 Or 682, 178 P2d 931; Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796; Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

LAW REVIEW CITATIONS: 36 OLR 193, 204, 215, 221, 241; 2 WLJ 345; 3 WLJ 339, 342; *4 EL 332 (1974).

**537.130**

NOTES OF DECISIONS

It is debatable whether, subsequent to 1909, an appropriation of water can be initiated by adverse use, or in any other manner than under the statutory procedure. Tudor v. Jaca, (1945) 178 Or 126, 164 P2d 680.

State Engineer's determination of questions of fact is entitled to great weight on appeal. Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

A dam constructed not for the purpose of impounding waters in Greaser Lake but to reclaim land in south Warner Valley by confining and directing the waters was not a violation of this section. Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

Part of the ownership of defendant's grantor consisted of the riparian right to use the waters in the watercourse flowing from a spring on the land to the extent that use did not conflict with superior rights derived through the water code, and this interest could be conveyed to plaintiff. Fitzstephens v. Watson, (1959) 218 Or 185, 344 P2d 221.

*The exercise of water rights established prior to appropriation under this chapter as between the original grantors of the right and their grantees or as between their respective successors in interest is not unlawful. Jewell v. Kroo, 268 Or 103, 517 P2d 657, 518 P2d 1305 (1973).

FURTHER CITATIONS: Gardner v. Wright, (1907) 49 Or 609, 91 P 286; Watts v. Spencer, (1908) 51 Or 262, 94 P 39; Williams v. Altnow, (1908) 51 Or 275, 95 P 200, 97 P 539; Davis v. Chamberlain, (1908) 51 Or 304, 98 P 154; Hough v. Porter, (1909) 51 Or 318, 95 P 732, 98 P 1083, 102 P 728; Re Hood River, (1924) 114 Or 112, 174, 227 P 1065; California-Ore. Power Co. v. Beaver Portland Cement Co., (1934) 73 F2d 555; Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796; Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819; Day v. Hill, (1965) 241 Or 507, 406 P2d 148; Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

*ATTY. GEN. OPINIONS: Storage rights to store water for later beneficial use are not subordinate to later priority direct use rights unless made so by explicit conditions imposed on storage right, (1989) Vol 46, p 290.

LAW REVIEW CITATIONS: 36 OLR 221, 241; 3 WLJ 342; *16 EL 583, 592 (1986); *21 EL 7 (1991).

**537.140 to 537.240**

*ATTY. GEN. OPINIONS: Storage rights to store water for later beneficial use are not subordinate to later priority direct use rights unless made so by explicit conditions imposed on storage right, (1989) Vol 46, p 290.

**537.140**

NOTES OF DECISIONS

Under a former similar statute, where appropriations and improvements were made in good faith, the fact that the map filed showing the route of the ditch did not show the precise line of the ditch did not destroy its sufficiency. Re Willow Creek, (1915) 74 Or 592, 633, 144 P 505, 146 P 475.

Failure to file map on completion of a pipe line under former similar statute did not defeat appropriation. State v. People's W. Coast Hydro-Elec. Corp., (1929) 129 Or 475, 278 P 583.

A map of record and notice of appropriation for reclamation are notice to subsequent appropriators of the contemplated appropriation. Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049.

Notice and map which an appropriator of water for irrigation is required to file marks the limit of the proposed enterprise. Id.

FURTHER CITATIONS: Phillips v. Gardner, 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Authority of State Engineer to accept and file an application for permit to appropriate water which has been withdrawn from appropriation, 1936-38, p 161; right of alien to secure a permit to appropriate water, 1932-34, p 38; engineer's authority to accept application for permit to appropriate water withdrawn from appropriation by legislative Act, 1936-38, p 161.

**537.141**

*LAW REVIEW CITATIONS: 37 EL 105 (2007).

**537.150**

NOTES OF DECISIONS

The right given by a permit is merely a contingent right which may ripen into a complete appropriation, or may be defeated by the failure of the holder to comply with the terms of the statute. Morse v. Gold Beach Water, Light & Power Co., (1938) 160 Or 301, 84 P2d 113.

FURTHER CITATIONS: Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049; Re White River, (1933) 141 Or 504, 16 P2d 1109.

*LAW REVIEW CITATIONS: 32 WLR 187 (1996); 47 WLR 405 (2011).

**537.153**

*LAW REVIEW CITATIONS: 32 WLR 187 (1996).

**537.160**

**See also** cases under ORS 536.065.

NOTES OF DECISIONS

Where no cause has been shown by an applicant to entitle him to an extension of time, the action of the State Engineer and the circuit court in refusing to grant an extension will be affirmed by the Supreme Court. Re White River, (1936) 155 Or 148, 62 P2d 22.

Commencement of work by the appropriator is the condition on which a permit is issued. If he does not do so, it is fatal to the completion of the appropriation, although reasonable diligence was exercised after the one year period. Morse v. Gold Beach Water, Light & Power Co., (1938) 160 Or 301, 84 P2d 113.

Although the statute does not state the amount of work required within the year following date of approval of application, it is the reasonable intendment of the statute that the construction work must be so substantial in character as to manifest good faith and the intent to exercise reasonable diligence in the completion of the project. Id.

The State Engineer's discretion as to extension of time has no application to the mandatory terms of the statute requiring actual construction work to begin on a project within one year from date of approval of the application for a permit. Id.

Where the plans for defendant's proposed project were approved by the State Engineer, he must have found that the proposed use would not prejudicially affect the public interest. State Game Comm. v. Beaver Portland Cement Co., (1942) 169 Or 1, 124 P2d 524, 126 P2d 1094.

A permit was properly canceled by the State Engineer, where construction work was not seriously commenced within the one year period, and it was shown that the purpose of the permit holder was more to deprive the competitor of water than to obtain water for his own system. Morse v. Gold Beach Water, Light & Power Co., (1938) 160 Or 301, 84 P2d 113.

The State Engineer's approval of plans for reconstruction of a hydroelectric project amounted, in the game commission's suit for injunction, to findings that the reconstruction would not change the use of the water from that set forth in the original applications, that it would not conflict with determined water rights, and would not menace public safety and welfare. The approval did not determine that commercial and game fishing would or would not be affected. State Game Comm. v. Beaver Portland Cement Co., (1942) 169 Or 1, 124 P2d 524, 126 P2d 1094.

FURTHER CITATIONS: Re Hood River, (1925) 114 Or 112, 227 P 1065.

ATTY. GEN. OPINIONS: Duty to hold hearing in approval or rejection of application, 1954-56, p 122.

**537.170**

NOTES OF DECISIONS

*Phrase "impair or be detrimental to public interest" in this section was sufficiently specific that Water Policy Review Board was not required to adopt rules establishing more definite standards before deciding whether to approve application for hydroelectric project. Steamboaters v. Winchester Water Control Dist., 69 Or App 596, 688 P2d 92 (1984), Sup Ct **review denied**.

*Applicant is not exempt from requirement that protest of proposed order must be filed with Water Resources Department before judicial review of order in other than contested case. Lentz v. Water Resources Dept., 154 Or App 217, 962 P2d 41 (1998).

ATTY. GEN. OPINIONS: State game or fish commission filing claims for appropriation of water for propagation and protection of fish, 1940-42, p 58; game commission's remedy where riparian owner attempts to drain lake, 1940-42, p 485.

LAW REVIEW CITATIONS: 46 OLR 245; 3 WLJ 280, 384, 385; *4 EL 332, 333 (1974); *16 EL 583, 592 (1986); *21 EL 11, 133 (1991); *32 WLR 187 (1996).

**537.175**

*LAW REVIEW CITATIONS: 32 WLR 187 (1996).

**537.180**

NOTES OF DECISIONS

Since an appeal was not taken therefrom, the decision of the State Engineer was final. Re Walla Walla River, (1933) 141 Or 492, 502, 16 P2d 939.

FURTHER CITATIONS: Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

ATTY. GEN. OPINIONS: Duty to hold hearing in approval or rejection of application, 1954-56, p 122.

**537.185**

NOTES OF DECISIONS

Under former similar statute failure to appeal from the State Engineer's order made it final. Oakes v. Dickson, (1960) 225 Or 95, 357 P2d 385.

FURTHER CITATIONS: Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819; Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884; Cleaver v. Judd, (1964) 238 Or 266, 393 P2d 193.

ATTY. GEN. OPINIONS: Duty to hold hearing in approval or rejection of application, 1954-56, p 122.

**537.190**

*ATTY. GEN. OPINIONS: Storage rights to store water for later beneficial use are not subordinate to later priority direct use rights unless made so by explicit conditions imposed on storage right, (1989) Vol 46, p 290.

LAW REVIEW CITATIONS: 3 WLJ 282.

**537.210**

ATTY. GEN. OPINIONS: Effect of failure to mail indorsed application to applicant, 1954-56, p 210.

**537.220**

CASE CITATIONS: Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938.

**537.230**

NOTES OF DECISIONS

State Engineer had authority to waive failure to request extension of time for completion of work. Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819.

*Extension of permit to perfect water rights must be conditioned on fish species protection and development of water management and conservation plan. Undeveloped portion of permit that requires extension is measured by reference to maximum rate of water applied to beneficial use before expiration of development deadline in original permit or last-issued extension. WaterWatch of Oregon, Inc. v. Water Resources Dept., 259 Or App 717, 316 P3d 330 (2013).

*'Persistence' as used under this section means that as prerequisite to grant of extension for water diversion, permits are subject to conditions that preserve continued existence or endurance of listed fish species in affected waterway. WaterWatch of Oregon v. Water Resources Department, 268 Or App 187, 342 P3d 712 (2014).

**537.240**

CASE CITATIONS: Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819.

**537.250**

NOTES OF DECISIONS

Where the appropriator has performed all of the acts which are incidental to the acquisition of a water right, the perfected right is considered to have existed from the date of the initial act. Re Hood River, (1925) 114 Or 112, 114, 227 P 1065.

Water or the right thereto is not separated from the land by the making of an application for and obtaining a permit and certificate of water right, even though the water right certificate is recorded separately from the deeds to the land. Skinner v. Silver, (1938) 158 Or 81, 75 P2d 21.

A certificate is conclusive only against a person whose right is "subsequent in priority." Cleaver v. Judd, (1964) 238 Or 266, 393 P2d 193.

Water right certificate, not the permit, even when followed by a beneficial use, marks the point at which a water right becomes vested. Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

FURTHER CITATIONS: Pacific Livestock Co. v. Cochran, (1914) 73 Or 417, 432, 144 P 688; California-Ore. Power Co v. Beaver Portland Cement Co., (1934) 73 F2d 555; Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819; Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

*ATTY. GEN. OPINIONS: Public right to use artificial lake created for recreation on a nonnavigable stream on privately owned land, (1972) Vol 35, p 1202; storage rights to store water for later beneficial use are not subordinate to later priority direct use rights unless made so by explicit conditions imposed on storage right, (1989) Vol 46, p 290.

LAW REVIEW CITATIONS: 3 WLJ 342; *33 EL 1019 (2003); *36 EL 1383 (2006).

**537.260**

NOTES OF DECISIONS

State Engineer had authority to waive failure to request extension of time for completion of work. Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819.

Under this statute the State Engineer is vested with a wide discretion. Id.

A certificate is conclusive only against a person whose right is subsequent in priority. Cleaver v. Judd, (1964) 238 Or 266, 393 P2d 193.

The permit was inchoate and not vested until the permittee fully complied with all the statutory specifications. Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

**537.270**

NOTES OF DECISIONS

A certificate is conclusive only against a person whose right is "subsequent in priority." Cleaver v. Judd, (1964) 238 Or 266, 393 P2d 193.

In an action involving the right to use the waters of a creek, a water right certificate issued pursuant to a decree in a former action adjudicating the rights of predecessors in interest, though entitled to evidentiary effect, was regarded as embodying the conditions and limitations of the decree upon which it was based, and as subject to any modifications which might result from judicial interpretation of such conditions or limitations. Tudor v. Jaca, (1946) 178 Or 126, 164 P2d 770.

*In relation to mistakes of a nonclerical nature, the certificate holder must bring those mistakes to the attention of the state engineer within the three-month period to avoid being bound by the terms of the certificate. Wilber v. Wheeler, 273 Or 855, 543 P2d 1052 (1975).

*Issuance of water right certificate for transferred water right and passage of challenge period terminates ability to challenge new certificate based on abandonment of water right prior to transfer. Kerivan v. Water Resources Commission, 188 Or App 491, 72 P3d 659 (2003), Sup Ct **review denied**.

LAW REVIEW CITATIONS: 3 WLJ 336.

**537.290**

ATTY. GEN. OPINIONS: Authority of State Engineer to issue a certificate to the United States without the 50 years' limitation contained in this section, 1932-34, p 375; authority of State Engineer to eliminate statutory provisions from water right certificates issued to the Federal Government, 1936-38, p 440.

**537.300**

***See** annotations under ORS 537.400.

NOTES OF DECISIONS

The primary reservoir permit contemplates a storage of water in some locality where it can be utilized for irrigation. The secondary permit contemplates that users of the water shall acquire a permanent ownership by agreement with the owner for a specified quantity of the stored water for the needs of and use upon his land. Cookinham v. Lewis, (1911) 58 Or 484, 491, 114 P 88, 115 P 342.

LAW REVIEW CITATIONS: 25 OLR 168; 3 WLJ 324.

**537.310**

LAW REVIEW CITATIONS: 46 OLR 159; 3 WLJ 279.

**537.332 to 537.360**

*LAW REVIEW CITATIONS: 21 EL 1 (1991); 28 WLR 285 (1992); 36 EL 1125, 1237 (2006); 47 WLR 467 (2011).

**537.332**

*LAW REVIEW CITATIONS: 19 EL 494 (1989); 21 EL 13 (1991); 36 EL 1383 (2006).

**537.334**

*LAW REVIEW CITATIONS: 36 EL 1383 (2006).

**537.336**

*LAW REVIEW CITATIONS: 19 EL 493 (1989); 36 EL 1237, 1383 (2006).

**537.341**

*LAW REVIEW CITATIONS: 36 EL 1237 (2006).

**537.345**

**(formerly 537.300)**

***See** annotations under ORS 537.400.

**537.346**

*LAW REVIEW CITATIONS: 36 EL 1237 (2006).

**537.348**

*LAW REVIEW CITATIONS: 26 EL 175 (1996); 36 EL 1125, 1237, 1383 (2006).

**537.350**

*LAW REVIEW CITATIONS: 21 EL 13 (1991).

**537.356**

*LAW REVIEW CITATIONS: 36 EL 1125 (2006).

**537.395**

*LAW REVIEW CITATIONS: 36 EL 1125 (2006).

**537.400**

**(formerly 537.300, then 537.345)**

***See also** annotations under ORS 537.300 in permanent edition.

*ATTY. GEN. OPINIONS: Release of water from Howard Prairie Reservoir to City of Ashland, (1977) Vol 38, p 956.

**537.409**

NOTES OF DECISIONS

*Applicable standard for approval or denial of reservoir permit under this section is whether reservoir poses 'significant detrimental impact' to existing fishery resources. Noble v. Oregon Water Resources Department, 264 Or App 110, 330 P3d 688 (2014), Sup Ct **review denied**.

**537.410**

CASE CITATIONS: Re White River, (1936) 155 Or 148, 62 P2d 22.

**537.420**

CASE CITATIONS: Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819; Cleaver v. Judd, (1964) 238 Or 266, 393 P2d 193.

**537.455 to 537.500**

*LAW REVIEW CITATIONS: 21 EL 1 (1991); 28 WLR 285 (1992); 28 EL 1137 (1998); 36 EL 1125 (2006).

**537.455**

*LAW REVIEW CITATIONS: 19 EL 494 (1989).

**537.460**

*LAW REVIEW CITATIONS: 19 EL 493 (1989).

**537.465**

*LAW REVIEW CITATIONS: 36 EL 1237 (2006).

**537.470**

*LAW REVIEW CITATIONS: 27 EL 151 (1997); 36 EL 1237 (2006).

**537.485**

*LAW REVIEW CITATIONS: 36 EL 1237 (2006).

**537.505 to 537.795**

NOTES OF DECISIONS

*Ground Water Act of 1955, construed together with ORS chapter 536, governing administration of water resources generally, cannot be read as expressly prohibiting local bodies from engaging in regulatory activity consistent with statute or agency regulations. Water Resources Dept. v. City of Klamath Falls, 68 Or App 148, 682 P2d 779 (1984), Sup Ct **review denied**.

ATTY. GEN. OPINIONS: Crediting on new application of fees collected by State Engineer for issuing permit for appropriation of underground waters, 1926-28, p 252; amount of fees to be collected by State Engineer on applications for permits to appropriate underground water, 1930-32, p 61; authority of State Engineer to issue permits for appropriation of underground waters east of Cascade Mountains, 1930-32, p 695; State Engineer's authority to issue permits for appropriation of underground waters, 1940-42, p 635; issuance of certificate if use violated statutes, 1958-60, p 25.

*Requirements for exploring for or production of geothermal or oil or gas resources, (1974) Vol 37, p 68.

LAW REVIEW CITATIONS: 47 OLR 229-236; 3 WLJ 317-335; *4 EL 333 (1974); *47 WLR 405 (2011).

**537.525**

NOTES OF DECISIONS

*Where Water Resources Director finds that public welfare, health and safety require corrective controls and director made findings of fact that satisfied statutory standards which director properly interpreted and applied, director's findings and justification for order establishing Butter Creek Critical Ground Water Area were sufficient. Doherty v. Oregon Water Resources Director, 308 Or 543, 783 P2d 519 (1989).

*Rule of Water Resources Commission that allows phased reduction of water pumpage to levels of sustainable average yields is consistent with statutory policy. Waterwatch of Oregon v. Water Resources Dept., 120 Or App 366, 852 P2d 902 (1993), Sup Ct **review denied**.

CASE CITATIONS: Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

**537.545**

*LAW REVIEW CITATIONS: 40 EL 141 (2010); 47 WLR 405 (2011).

**537.575**

ATTY. GEN. OPINIONS: Approval of applications under former law, 1954-56, p 117.

**537.585**

ATTY. GEN. OPINIONS: Issuance of certificate if use violated statutes, 1958-60, p 25.

**537.595**

ATTY. GEN. OPINIONS: Issuance of certificate if use violated statutes, 1958-60, p 25.

**537.605**

ATTY. GEN. OPINIONS: Persons entitled to certificates of registration, 1958-60, p 25.

**537.615**

NOTES OF DECISIONS

Applicant for water right is charged with the knowledge of the requirements imposed by the statutes in perfecting a water right. Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

**537.620**

ATTY. GEN. OPINIONS: Authority of State Engineer in the prevention of wastage, 1952-54, p 146.

**537.621**

NOTES OF DECISIONS

*Protest of final order must include timely submission of protest fee. Dority v. Water Resources Dept., 149 Or App 124, 942 P2d 292 (1997).

**537.625**

NOTES OF DECISIONS

If the requirements for perfection of an appropriation are not met, the State Engineer may cancel a permit in accordance with the procedure in ORS 537.260. Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

Water right certificate, not the permit, even when followed by a beneficial use, marks the point at which a water right becomes vested. Id.

**537.630**

NOTES OF DECISIONS

Applicant for water right, not the State Engineer, has the duty to see that the requirements for perfecting a water right have been fulfilled. Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

Water right certificate, not the permit, even when followed by a beneficial use, marks the point at which a water right becomes vested. Id.

**537.635**

NOTES OF DECISIONS

Assignee who failed to file assignment with State Engineer could not complain of lack of notice regarding cancellation of permit. Green v. Wheeler, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

**537.665**

ATTY. GEN. OPINIONS: Investigation of underground water supply, 1954-56, p 117.

**537.730**

NOTES OF DECISIONS

*The written notice of hearing required under this section must be sent by registered or certified mail. Campbell Ranch, Inc. v. Water Resources Dept., 28 Or App 243, 558 P2d 1295 (1977).

*Notice of hearing, which did not refer explicitly to water supply in area being or about to be overdrawn, was adequate to advise petitioners of statutory provisions on which director would rely in making critical ground water area determination. Doherty v. Oregon Water Resources Director, 92 Or App 22, 758 P2d 865 (1988), **as modified by** 93 Or App 354, 762 P2d 330, **aff'd** 308 Or 543, 783 P2d 519 (1989).

*Where Water Resources Director finds that public welfare, health and safety require corrective controls and director made findings of fact that satisfied statutory standards which director properly interpreted and applied, director's findings and justification for order establishing Butter Creek Critical Ground Water Area were sufficient. Doherty v. Oregon Water Resources Director, 308 Or 543, 783 P2d 519 (1989).

ATTY. GEN. OPINIONS: Classifying ground water, 1960-62, p 426.

*LAW REVIEW CITATIONS: 21 EL 18 (1991); 40 EL 141 (2010); 47 WLR 405 (2011).

**537.735**

NOTES OF DECISIONS

*This section does not require that critical ground water area contain an entire ground water reservoir; it is sufficient that boundaries of area can be defined and that director indicates which reservoirs are contained within it. Doherty v. Oregon Water Resources Director, 92 Or App 22, 758 P2d 865 (1988), **as modified by** 93 Or App 354, 762 P2d 330, **aff'd** 308 Or 543, 783 P2d 519 (1989).

*Where Water Resources Director finds that public welfare, health and safety require corrective controls and director made findings of fact that satisfied statutory standards which director properly interpreted and applied, director's findings and justification for order establishing Butter Creek Critical Ground Water Area were sufficient. Doherty v. Oregon Water Resources Director, 308 Or 543, 783 P2d 519 (1989).

LAW REVIEW CITATIONS: 3 WLJ 280; *47 WLR 405 (2011).

**537.742**

*LAW REVIEW CITATIONS: 47 WLR 405 (2011).

**537.747 to 537.795**

NOTES OF DECISIONS

*Water Resources Commission implementation and enforcement of state control over inspection and construction of wells is discretionary. Ashland Drilling, Inc. v. Jackson County, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well construction permit, imposing construction permit fees, regulating well location, requiring submission of plot plans, and requiring flow testing are preempted by state law. Ashland Drilling, Inc. v. Jackson County, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well water quality testing, requiring inclusion of notice in deed of inadequate water supply, and regulating subdivision of lands having inadequate water supply are not preempted by state law. Ashland Drilling, Inc. v. Jackson County, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

**537.765**

NOTES OF DECISIONS

*Certified copy of well construction log filed with State Engineer is public record intended as representation to all affected parties. Handy v. Beck, 282 Or 653, 581 P2d 68 (1978).

**537.769**

NOTES OF DECISIONS

*Water Resources Commission implementation and enforcement of state control over inspection and construction of wells is discretionary. Ashland Drilling, Inc. v. Jackson County, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well construction permit, imposing construction permit fees, regulating well location, requiring submission of plot plans, and requiring flow testing are preempted by state law. Ashland Drilling, Inc. v. Jackson County, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well water quality testing, requiring inclusion of notice in deed of inadequate water supply, and regulating subdivision of lands having inadequate water supply are not preempted by state law. Ashland Drilling, Inc. v. Jackson County, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

**537.775**

LAW REVIEW CITATIONS: 46 OLR 245; *40 EL 141 (2010); *47 WLR 405 (2011).

**537.800**

NOTES OF DECISIONS

**1. In general**

This statute, together with Ore. Const. Art. I, §18, had the effect of limiting the common-law riparian rights. Minton v. Coast Property Corp., (1935) 151 Or 208, 46 P2d 1029.

Springs and seepage water therefrom were part and parcel of the land itself. The right, title and interest therein passed by virtue of a mortgage and foreclosure proceedings thereunder. Skinner v. Silver, (1938) 158 Or 81, 75 P2d 21.

**2. Appropriation**

The right of appropriation of the waters of a spring does not differ from the right of appropriation of the waters of a flowing stream. Brosnan v. Harris, (1901) 39 Or 148, 65 P 867.

The prior appropriator of the waters of a spring will be as much protected as the appropriator of the waters of a stream. Brosnan v. Harris, (1901) 39 Or 148, 65 P 867; Hildebrandt v. Montgomery, (1925) 113 Or 687, 234 P 267.

Waters flowing through a gulch, and derived from melting snows and springs, are subject to appropriation. Borman v. Blackmon, (1911) 60 Or 304, 310, 118 P 848.

Waste water escaping from a city reservoir and allowed to find its way to the natural level of the country is subject to appropriation under this section regardless of a contract entered into by the city for disposition thereof. Vaughan v. Kolb, (1929) 130 Or 506, 280 P 518.

**3. Permit to appropriate water**

A person needs no permit to use the seepage water which arises upon his own land. Barker v. Sonner, (1931) 135 Or 75, 294 P 1053.

A permit from the State Engineer to appropriate water does not authorize a trespass upon private land to obtain such water, and a court will not assist the taking of such water and confirm the trespass. Minton v. Coast Property Corp., (1935) 151 Or 208, 46 P2d 1029.

*Permit requirement applies only if spring produces sufficient water to flow, undiverted, off property or into another watercourse. Norden v. Water Resources Dept., 158 Or App 127, 973 P2d 910 (1999), **aff'd** 329 Or 641, 996 P2d 958 (2000).

**4. Landowner's right**

The landowner may prevent spring water from passing off his own land. Morrison v. Officer, (1906) 48 Or 569, 87 P 896.

A spring having no overflow and but little seepage belongs exclusively to the landowner, and other owners have no right to appropriate the water thereof. Henrici v. Paulson, (1929) 128 Or 514, 274 P 314; Henrici v. Paulson, (1930) 134 Or 222, 293 P 424.

The filing upon the water of springs before the State Engineer, and obtaining a permit and certificate, have only the effect of protecting the right of the owner of the land to the water in case there should be an increase of the flow from the springs so as to pass from the land in question to other lands. Skinner v. Silver, (1938) 158 Or 81, 75 P2d 21.

Spring or seepage waters, which are not public waters, may be filed for only by the owner of the land. Id.

The legislature has the power to provide that the person upon whose land the seepage or spring waters first arise has the right to the use of such waters. Id.

Where waters leaving a spring on owner's land flow into a watercourse, which does not leave owner's land before emptying into another watercourse, the waters are subject to appropriation and the owner has no preference over other persons. Fitzstephens v. Watson, (1959) 218 Or 185, 344 P2d 221.

FURTHER CITATIONS: David v. Brokaw, (1927) 121 Or 591, 256 P 186; Klamath Dev. Co. v. Lewis, (1931) 136 Or 445, 299 P 705; Staub v. Jensen, (1947) 180 Or 682, 178 P2d 931.

ATTY. GEN. OPINIONS: Application for appropriation of irrigation district's waste waters, 1940-42, p 153.

LAW REVIEW CITATIONS: 3 WLJ 325, 334, 340.

**537.810 to 537.870**

*LAW REVIEW CITATIONS: 16 EL 963, 965 (1986).

**537.810**

LAW REVIEW CITATIONS: 47 OLR 229-236.

**537.990**

ATTY. GEN. OPINIONS: Authority of State Engineer in the prevention of wastage, 1952-54, p 146; issuance of certificate if use violated statutes, 1958-60, p 25.

# Chapter 538
# Withdrawal of Certain Waters from Appropriation; Special Municipal and County Water Rights

**Chapter 538**

*ATTY. GEN. OPINIONS: Reservation to state of "all coal and other minerals" in deed of land by state as reservation of geothermal resources, (1980) Vol 41, p 298.

LAW REVIEW CITATIONS: 3 WLJ 385.

**538.010 to 538.300**

*LAW REVIEW CITATIONS: 21 EL 12 (1991); 28 WLR 285 (1992).

**538.110 to 538.300**

LAW REVIEW CITATIONS: 3 WLJ 298.

**538.120**

*ATTY. GEN. OPINIONS: Application of withdrawal of water appropriation to entire drainage of Brushes Creek, (1979) Vol 40, p 160.

**538.140**

LAW REVIEW CITATIONS: 3 WLJ 283.

**538.170**

ATTY. GEN. OPINIONS: Authority of game commission to appropriate water from Crystal Springs for experimental studies in fish, 1940-42, p 103.

**538.190**

LAW REVIEW CITATIONS: 3 WLJ 283.

**538.200**

CASE CITATIONS: State v. Hawk, (1922) 105 Or 319, 218 P 709; State v. Peoples Hydro-elec. Corp., (1929) 129 Or 475, 278 P 583; Withers v. Reed, (1952) 194 Or 541, 243 P2d 283.

LAW REVIEW CITATIONS: 3 WLJ 283.

**538.210**

CASE CITATIONS: State v. Mohler, (1925) 115 Or 562, 237 P 690, 239 P 193; Mohler v. Fish Comm., (1929) 129 Or 302, 276 P 691; Withers v. Reed, (1952) 194 Or 541, 243 P2d 283.

**538.270**

ATTY. GEN. OPINIONS: Vested water rights as not affected by subsequent legislation, 1948-50, p 403.

**538.300**

ATTY. GEN. OPINIONS: Determination of meaning of "existing rights," 1954-56, p 210.

**538.410 to 538.450**

LAW REVIEW CITATIONS: 3 WLJ 283, 296, 297, 318, 341.

**538.420**

*LAW REVIEW CITATIONS: 21 EL 144 (1991).

**538.430**

CASE CITATIONS: Rowley v. City of Medford, (1930) 132 Or 405, 285 P 1111.

# Chapter 539
# Determination of Water Rights Initiated Before February 24, 1909; Determination of Water Rights of Federally Recognized Indian Tribes

**Chapter 539**

NOTES OF DECISIONS

When applicant for a permit to construct water reservoirs filed its application and objectors filed protests with State Engineer, hearing was held, order rejecting application made, applicant served notice of appeal and filed transcript with circuit court and State Engineer certified exhibits and transcripts, the procedure was sufficient to give the court jurisdiction to reexamine the issues, subject to certain limitations. Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

FURTHER CITATIONS: Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

LAW REVIEW CITATIONS: 36 OLR 212; 3 WLJ 296, 297, 318.

**539.005 to 539.040**

*LAW REVIEW CITATIONS: 28 WLR 285 (1992).

**539.010**

**See also** cases under ORS 537.110.

NOTES OF DECISIONS

**1. In general**

The statutes providing for the appropriating of surplus waters do not permit any infringement of any water right obtained before their enactment. Pringle Falls Power Co. v. Patterson, (1913) 65 Or 474, 484, 128 P 820, 132 P 527; Re Willow Creek, (1915) 74 Or 592, 602, 144 P 505, 146 P 475.

A vested right could be acquired in waters which seasonally overflow the land. Eastern Ore. Land Co. v. Willow River L. & I. Co., (1912) 119 CCA 437, 201 Fed 203, 215.

Under the preexisting law, notice of an appropriation of water was essential to the acquisition of water rights as against the claims of subsequent appropriators. Re Silvies River, (1925) 115 Or 27, 101, 237 P 322.

A homestead patent from the United States did not carry with it the common-law rights which attach to riparian proprietorship. California Ore. Power Co. v. Beaver Portland Cement Co., (1935) 295 US 142, 55 S Ct 725, 79 L Ed 1356.

The use of waters of a spring conferred upon the user a vested right to the water. Brosnan v. Harris, (1901) 39 Or 148, 65 P 867, 87 Am St Rep 649, 54 LRA 628.

*Extent of vested right is limited to amount actually in beneficial use prior to 1909 date. State ex rel Cox v. Hibbard, 31 Or App 269, 570 P2d 1190 (1977).

**2. Quantity**

Every riparian owner, regardless of the date of settlement, is entitled to the quantity of water reasonably essential to his domestic use and for the watering of his stock, including sufficient supply for the proper irrigation of such garden produce as is essential to the proper sustenance of his family. Hough v. Porter, (1909) 51 Or 318, 95 P 732, 98 P 1083, 102 P 728.

Where a mill company had a right to divert water for power purposes and did not need the water during certain summer months, and had never used it at that time, it had no right to the water during those months. Re North Powder River, (1915) 75 Or 83, 93, 144 P 485, 146 P 475.

Where the deliverable quantity was determined, an irrigation company could not lawfully contract to deliver to the water user a greater amount. Re Willow Creek, (1926) 119 Or 161, 236 P 487, 763, 237 P 682, 239 P 123.

The amount of water to which an appropriator was entitled for irrigation purposes was governed by the amount of water necessary for the land cultivated, not exceeding the amount awarded, and no more. Broughton v. Stricklin, (1934) 146 Or 259, 28 P2d 219, 30 P2d 332.

**3. Time of appropriation**

If the State Engineer denies an application for extension of time, the appropriator may appeal to the circuit court where the matter must be in the form of a justiciable controversy between adverse parties. Broughton's Estate v. Cent. Ore. Irr. Dist., (1940) 165 Or 435, 101 P2d 425, 108 P2d 276.

The State Engineer's order granting an extension of time within which to complete appropriation of water to a beneficial use was a "final order" from which an appeal would lie. Id.

Abandonment does not arise from nonuse while performing necessary work to perfect the right, if the work is commenced within the time required. Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

Subsection (6) cures the defect for failure to file a map as required in 1906. Id.

Where delay was occasioned by injunction, the rights of the irrigation company were not affected. Re Silvies River, (1925) 115 Or 27, 31, 237 P 322.

The provisions of this section regarding the time within which the full amount of water appropriated should be applied to a beneficial use were not applicable to Carey Act land reclaimed under a contract with the state. Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049.

An extension of time to applicants to complete the appropriation of inchoate water rights was properly granted by the State Engineer. Broughton's Estate v. Cent. Ore. lrr. Dist., (1940) 165 Or 435, 101 P2d 425, 108 P2d 276.

The findings of the State Engineer on an application for a time extension were presumed correct. ld.

Although application for an extension of time was unopposed, the State Engineer must examine the facts and grant or deny the application. Id.

The State Engineer did not act arbitrarily in allowing two years' extension in view of the large investment and litigation involved. Id.

Under the circumstances of the times. 1906 to 1910, the appropriator proceeded with reasonable diligence to do the work necessary to perfect his appropriation. Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

**4. Notice**

Subsection (6) applies only where there has been a mistake, and not where the notice expresses the intention. Re Umatilla River, (1918) 88 Or 376, 168 P 922, 172 P 97.

FURTHER CITATIONS: Laurence v. Brown, (1919) 94 Or 387. 185 P 761; Norwood v. Eastern Ore. Land Co., (1924) 112 Or 106, 117, 227 P 1111; Dill v. Killip, (1944) 174 Or 94, 147 P2d 896.

LAW REVIEW CITATIONS: 36 OLR 204, 205, 241; 2 WLJ 345.

**539.020**

***NOTE: Repealed September 27, 1987; ORS 539.021 enacted in lieu.**

***See** annotations under ORS 539.021.

NOTES OF DECISIONS

The water code does not deny due process of law under U.S. Const., Am. 14, §1. Pacific Livestock Co. v. Lewis, (1915) 241 US 440, 36 S Ct 637, 60 L Ed 1084.

The court, in classifying lands according to nature of soil, and ascertaining the amount of water sufficient for various classes of land, may properly treat the matter of seepage and evaporation. Re Umatilla River, (1918) 88 Or 376, 168 P 922, 172 P 97.

Board of Control [now State Engineer] did not have jurisdiction to supervise the distribution of water before priorities had been determined. Wattles v. Baker Co., (1911) 59 Or 255, 117 P 417.

A suit brought in the circuit court to restrain an irrigation district from interfering with the natural flow

of water in a stream was tantamount to a petition addressed directly to the water board [now State Engineer]. Oregon Lbr. Co. v. East Fork Irr. Dist., (1916) 80 Or 568, 572, 157 P 963.

FURTHER CITATIONS: Re Willow Creek, (1915) 74 Or 592, 613, 144 P 505, 146 P 475; Amalgamated Sugar Co. v. Hempe, (1915) 226 Fed 1012; Re Sucker Creek, (1917) 83 Or 228, 163 P 430; Byers v. We-Wa-Ne, (1917) 86 Or 617, 169 P 121; Re Chewaucan River, (1918) 89 Or 659, 669, 171 P 402, 175 P 421; Pacific Livestock Co. v. Balcombe, (1921) 101 Or 233, 199 P 587; Squaw Creek Irr. Dist. v. Mamero, (1923) 107 Or 291, 294, 214 P 889; Re Hood River, (1924) 114 Or 112, 126, 227 P 1065; Hutchinson v. Stricklin, (1934) 146 Or 294, 28 P2d 295; California-Ore. Power Co. v. Beaver Portland Cement Co., (1935) 295 US 142, 55 S Ct 725, 79 L Ed 1356; Dill v. Killip, (1944) 174 Or 94, 147 P2d 896; Beisdel v. Wood, (1947) 182 Or 66, 185 P2d 570; Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796.

ATTY. GEN. OPINIONS: Authority of State Engineer to regulate distribution of water when the rights of users have not been adjudicated, 1948-50, p 378.

LAW REVIEW CITATIONS: 5 OLR 91; 36 OLR 212; 3 WLJ 342.

**539.021**

*__See also__ annotations under ORS 539.020 in permanent edition.

NOTES OF DECISIONS

**Under former similar statute (ORS 539.020)**

*Under this section, Water Resources Director must, after investigation, additionally decide that facts and conditions justify making determination of water rights. U.S. v. Adair, 723 F2d 1394 (1983).

**In general**

*Oregon water right determination procedure is suit within meaning of McCarran Amendment waiver of sovereign immunity for United States and Indian tribes. U.S. v. State of Oregon Water Resources Dept., 44 F3d 758 (9th Cir. 1994).

**539.030**

CASE CITATIONS: Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

**539.040**

NOTES OF DECISIONS

Prescribing notice by registered mail is within the province of the legislature. Re Willow Creek, (1915) 74 Or 592, 620, 144 P 505, 146 P 475.

The notice is sent to the person's post office address. Id.

**539.050**

NOTES OF DECISIONS

Claimant who filed statement was an adverse party to be served with notice of appeal from the decree of the circuit court. Re Chewaucan River, (1918) 89 Or 659, 171 P 402, 175 P 421.

**539.060**

CASE CITATIONS: Re Althouse Creek, (1917) 85 Or 224, 162 P 1072; Re Chewaucan River, (1918) 89 Or 659, 670, 171 P 402, 175 P 421.

**539.080**

NOTES OF DECISIONS

Before the 1947 amendment, in so far as this section exempted from payment claimants having permits issued under Acts of 1909, the law was not discriminatory. Pacific Livestock Co. v. Cochran, (1914) 73 Or 417, 430, 144 P 668.

Payment of fees by claimant under protest, in proceedings instituted in order that he might establish his claim and not suffer a forfeiture thereof, was not voluntary so as to preclude him from subsequently suing to recover the same on the ground that the fees exacted were illegal. Id.

FURTHER CITATIONS: Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049.

ATTY. GEN. OPINIONS: Exaction by State Engineer of fees in advance from the United States, 1926-28, p 135; right of state to tax exercise of right for use of water covered thereby, 1928-30, p 620; recording fees for filing notices of contest of claim with State Engineer relative to rights to waters of streams. 1936-38, p 117; fees for recordation of certificate of water rights, 1948-50, p 330.

**539.081**

NOTES OF DECISIONS

*United States government and Indian tribes are exempt from payment of filing fees assessed for adjudication of water rights. U.S. v. State of Oregon Water Resources Dept., 44 F3d 758 (9th Cir. 1994).

**539.100**

NOTES OF DECISIONS

Failure to contest a claim under this section did not preclude an aggrieved party from filing exceptions. Re North Powder River, (1915) 75 Or 83, 144 P 485, 146 P 475.

**539.120**

CASE CITATIONS: Masterson v. Pac. Livestock Co., (1933) 144 Or 396, 24 P2d 1046; Staub v. Jensen, (1947) 180 Or 682, 178 P2d 931; Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796.

**539.130**

NOTES OF DECISIONS

The decision of the State Engineer, if not appealed from, becomes final. Re Walla Walla River, (1933) 141 Or 492, 502, 16 P2d 939.

The State Engineer's determination of the facts of the extent of the use is entitled to great weight on appeal. Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

FURTHER CITATIONS: Masterson v. Pac. Livestock Co., (1933) 144 Or 396, 24 P2d 1046; Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

**539.140**

NOTES OF DECISIONS

A certificate is conclusive only against a person whose water right is subsequent in priority. Cleaver v. Judd, (1964) 238 Or 266, 393 P2d 193.

FURTHER CITATIONS: Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049; Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819.

ATTY. GEN. OPINIONS: Fees for recordation of certificate of water rights, 1948-50, p 330.

**539.150**

NOTES OF DECISIONS

The procedural provisions of the statute are valid. Pacific Livestock Co. v. Lewis, (1916) 241 US 440, 36 S Ct 637, 60 L Ed 1084.

The appellate court will consider only errors which are shown with reasonable certainty to have been prejudicial. Re Silvies River, (1925) 115 Or 27, 31, 237 P 322.

Where contestants have made no objections to a priority claim, as set out in the amended application of contestees, the court's decree allowing the prior claim cannot be questioned on appeal. Re Owyhee River, (1928) 124 Or 44, 259 P 292.

The circuit court is a court of general jurisdiction, in determining the right to use water of a stream. The proceedings are like those of a suit in equity except that any proceedings including the entry of the decree may be had in vacation with the same force and effect as in term time. Abel v. Mack, (1930) 131 Or 586, 283 P 8.

The function of an adjudication under the Water Code is primarily to allocate definite quantities of water on the basis of a prior or contemplated use. California-Ore. Power Co. v. Beaver Portland Cement Co., (1934) 73 F2d 555.

The circuit court, whether in reviewing the State Engineer's determination or in making an original disposition of the suit, is not acting in an administrative capacity; its determination is res judicata as to all parties and issues properly before it. Id.

The enactment of ORS 19.026 (1) did not result in a repeal of this section by express provision or implication. Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

Motion to dismiss appeal because of omission from the notice of appeal of names of a water users' association was filed too late. Re Willow Creek, (1925) 119 Or 155, 177, 236 P 487, 763, 237 P 682, 239 P 123.

Where no objection was made in the circuit court to showing of priority in amended application claiming water rights, application was to establish prima facie case of the truth of the priority claim. Re Owyhee River, (1928) 124 Or 44, 259 P2d 292.

After obtaining jurisdiction in a suit for application to construct water reservoirs, the circuit court was empowered to exercise the powers of a court of equity in reviewing the determination of the State Engineer, and could reexamine de novo the findings of the State Engineer to the extent there was no usurpation of the legislative function. Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

In exercising his equity powers, a trial judge was privileged to rely on those findings within the State Engineer's special competence. Id.

**539.170**

ATTY. GEN. OPINIONS: The State Engineer's order determining the area of land reclaimed and irrigated as conclusive until modified by a decree of the circuit court, 1940-42 p 8; duty of State Engineer to regulate distribution of water, 1948-50, p 378.

**539.190**

NOTES OF DECISIONS

One who has not appealed from the decree may not invoke the jurisdiction of the Supreme Court by way of a new investigation to revise the decree. Re Umatilla River, (1918) 88 Or 376, 168 P 922, 172 P 97.

A decree entered in the circuit court on mandate from the Supreme Court after appeal is final except as to matters resubmitted under the mandate, subject only to the special statutory provisions authorizing the circuit court on certain applications to grant a rehearing. Re Silvies River, (1927) 122 Or 47, 257 P 693.

An application within six months after determination of an appeal is within time. Oliver v. Jordan Valley Land & Cattle Co., (1931) 137 Or 243, 1 P2d 1097.

A water user is a "party interested" in respect of the right to apply for a rehearing, although not a party to a former appeal from a determination of the right to waters of the stream of which he is a user. Id.

Service of notice, as required by this section, upon the interested parties confers upon the court jurisdiction of the application for rehearing. Id.

All water users are entitled to notice of rehearing where allowance of the petition may affect their rights. Id.

One of the reasons for this section is to correct the descriptions of ditches or clerical errors occurring by an oversight or vagueness of expression. Id.

That the notices were not mailed "forthwith" was not an objection to a rehearing where the time consumed was because of a change in judges and other reasons and where after a rehearing was allowed the claimant acted promptly in sending out notices. Id.

**539.200**

NOTES OF DECISIONS

A 1929 decree adjudicating water rights in Warner Valley subordinated the rights of the lower owner to the rights of the upper owners, although the latter were not parties to the proceeding. Warner Valley Stock Co. v. Lynch, (1959) 215 Or 523, 336 P2d 884.

LAW REVIEW CITATIONS: 3 WLJ 343.

**539.210**

NOTES OF DECISIONS

All controversies on matters which existed before entry of a decree, and were or could have been litigated in an earlier determination are settled and not open to question by any of the parties to the litigation or their privies. Adams v. Perry, (1941) 168 Or 132, 119 P2d 581.

The determination of the State Engineer, as confirmed or modified by the court, is conclusive as to all prior and existing rights. Bull v. Siegrist, (1942) 169 Or 180, 126 P2d 832.

An adjudication under the water code awarding defendants certain water rights did not conclude plaintiff from asserting rights as adverse user where adverse use began prior to the code and plaintiff received no notice of pendency of adjudication, even if she had actual knowledge. Staub v. Jensen, (1947) 180 Or 682, 178 P2d 931.

Filing of an application for permit did not constitute an abandonment of plaintiff's rights by adverse user; the law presumes the contrary. Id.

*"Claimant" means person who claims legal title to water right, not person who asserts equitable or beneficial interest in another person's water right. Klamath Irrigation District v. United States, 348 Or 15, 227 P3d 1145 (2010).

FURTHER CITATIONS: Ebell v. City of Baker, (1931) 137 Or 427, 299 P 313.

ATTY. GEN. OPINIONS: Duty of State Engineer to regulate distribution of water, 1948-50, p 378.

LAW REVIEW CITATIONS: 3 WLJ 343.

**539.240**

NOTES OF DECISIONS

*Registration statements are not part of water right adjudication process and therefore not subject to McCarran Amendment sovereign immunity waiver. U.S. v. State of Oregon Water Resources Dept., 44 F3d 758 (9th Cir. 1994).

# Chapter 540
# Distribution of Water; Watermasters; Change in Use; Transfer or Forfeiture of Water Rights

**Chapter 540**

NOTES OF DECISIONS

When a state agency exercising a power granted to it by the legislature undertakes to appropriate any of the waters of the state it must do so pursuant to the provisions of the water code, and in a controversy with a private owner of water the state is subject to the rules of law that govern the rights of the private litigant. Withers v. Reed, (1952) 194 Or 541, 243 P2d 283.

LAW REVIEW CITATIONS: 3 WLJ 318, 336; *11 EL 390 (1981).

**540.010 to 540.150**

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

**540.010**

CASE CITATIONS: Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796.

**540.020**

CASE CITATIONS: Wattles v. Baker County, (1911) 59 Or 255, 260, 117 P 417; Masterson v. Kennard, (1932) 140 Or 288, 12 P2d 560; State v. Stewart, (1939) 163 Or 585, 96 P2d 220; Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796, Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819.

ATTY. GEN. OPINIONS: Watermaster's status as preventing his owning irrigated land or receiving pecuniary aid from an irrigation company, 1930-32, p 504; appointment of a watermaster as discretionary with State Engineer, 1940-42, p 201.

**540.030**

NOTES OF DECISIONS

The State Engineer has no authority to enter into an agreement whereby he would accept a conveyance of a water right which water right is to be retransferred, if as a result of an investigation he concludes that an irrigation project would not be feasible. Rowley v. City of Medford, (1930) 132 Or 405, 285 P 1111.

The State Engineer properly granted an extension of time to applicants to complete the appropriation of inchoate water rights, where the only opposition was offered by an irrigation district which had hindered the applicants in the development of water rights. Broughton's Estate v. Cent. Ore. Irr. Dist., (1940) 165 Or 435, 101 P2d 425, 108 P2d 276.

FURTHER CITATIONS: Wattles v. Baker County, (1911) 59 Or 255, 117 P 417.

ATTY. GEN. OPINIONS: Authority of State Engineer to make reasonable regulations to secure equal and fair distribution of water, 1922-24, p 672; appointment of watermaster as discretionary with State Engineer, and engineer and assistants as having same authority as watermasters, 1940-42, p 201; duty of State Engineer to regulate distribution of water, 1948-50, p 378.

**540.040**

NOTES OF DECISIONS

**1. In general**

A watermaster must preserve priorities and quantities of irrigation water, consistent with the highest duty of water, as applied to all concerned. Nault v. Palmer, (1920) 96 Or 538, 190 P 346.

For an erroneous construction of a decree determining water rights, a watermaster may not be held liable in damages. Norwood v. E. Ore. Land Co., (1932) 139 Or 25, 5 P2d 1057, 7 P2d 996.

A decree declaring that a certain amount of water shall not be taken as granting that specific amount to any water user, but shall only be taken as a rule and guide for the watermaster in the distribution of a maximum amount to any water user, was improper in view of subsections (1) and (2). Re Umatilla River, (1918) 88 Or 376, 168 P 922, 172 P 97.

The watermaster and an appropriator changing the application or use of water pursuant to an ex parte void order of the State Water Board [now State Engineer] were joint tortfeasors. Norwood v. E. Ore. Land Co., (1932) 139 Or 25, 5 P2d 1057, 7 P2d 996.

Although no statutory provision appeared to authorize the cancellation of a water right certificate and the issuance of a new one where its terms were affected by judicial interpretation of the decree upon which it was based, it was required that the watermaster in regulating the division and use of the waters involved, under the direction of the State Engineer, should be governed by the court's interpretation. Tudor v. Jaca, (1946) 178 Or 126, 165 P2d 770.

**2. Subsection (3)**

Before the 1953 amendment, an adjudication of water rights governed the action of the watermaster. Unless a party could show such a right, he was not protected in diverting or using water by an authorization by the watermaster. Brosnan v. Boggs, (1921) 101 Or 472, 198 P 890.

Before the 1953 amendment, the watermaster was an administrative officer whose duty it was to distribute water according to the decree adjudicating water rights. Norwood v. E. Ore. Land Co., (1932) 139 Or 25, 5 P2d 1057, 7 P2d 996.

Suit for injunction against watermaster was not an appropriate means to quiet title to water rights. Calderwood v. Young, (1957) 212 Or 197, 315 P2d 561, 319 P2d 184.

**3. Subsection (5)**

An unauthorized use of water constitutes waste which the watermaster is authorized to prevent. Squaw Creek Irr. Dist. v. Manero, (1923) 107 Or 291, 214 P 889.

The watermaster is duty bound to prevent unreasonable waste. Bennett v. Salem & Guenther, (1951) 192 Or 531, 235 P2d 772.

To prevent waste of water, the watermaster should have closed the headgates or arranged the apparatus which was in use. Broughton v. Stricklin, (1934) 146 Or 259, 28 P2d 219, 30 P2d 332.

FURTHER CITATIONS: Krebs v. Perry, (1930) 134 Or 290, 292 P 319, 293 P 432; State v. Stewart, (1939) 163 Or 585, 96 P2d 220.

ATTY. GEN. OPINIONS: Duty of State Engineer to regulate distribution of water, 1948-50, p 378.

LAW REVIEW CITATIONS: 46 OLR 245.

**540.045**

NOTES OF DECISIONS

*Watermaster's determination of permit limits constitutes final agency action by Water Resources Department. Teel Irrigation District v. Water Resources Dept., 323 Or 663, 919 P2d 1172 (1996).

**540.060**

CASE CITATIONS: State v. Chandler, (1925) 113 Or 652, 654, 234 P 266.

**540.080**

NOTES OF DECISIONS

An "emergency" within the meaning of this section, entitling a watermaster to claim for services of assistants, was shown. Brewster v. Crook County, (1916) 81 Or 435, 439, 159 P 1031.

**540.140**

NOTES OF DECISIONS

The priorities established by this section were superseded by the adoption of the 1909 Water Act setting forth the doctrine of prior appropriation. Phillips v. Gardner, (1970) 2 Or App 423, 469 P2d 42.

LAW REVIEW CITATIONS: 3 WLJ 279.

**540.210**

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

**540.220**

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

**540.230**

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

**540.310 to 540.440**

LAW REVIEW CITATIONS: 3 WLJ 296.

**540.310**

NOTES OF DECISIONS

*A person can be required to construct a headgate at his diversion point. Vandehey v. Wheeler, 13 Or App 25, 507 P2d 831 (1973), Sup Ct **review denied**.

*A person's "diversion point" is the location set forth in his respective water certificates and the point may be changed only by compliance with ORS 540.520, the statutory procedure for change. Vandehey v. Wheeler, 13 Or App 25, 507 P2d 831 (1973), Sup Ct **review denied**.

**540.320**

NOTES OF DECISIONS

*A person can be required to construct a headgate at his diversion point. Vandehey v. Wheeler, 13 Or App 25, 507 P2d 831 (1973), Sup Ct **review denied**.

**540.350**

ATTY. GEN. OPINIONS: Action against irrigation district for flood damage, 1960-62, p 204.

*Delegation of "engineering work" by a Water Resources Director, (1976) Vol 37, p 1484.

**540.420**

CASE CITATIONS: McPhee v. Kelsey, (1903) 44 Or 193, 74 P 401, 75 P 713; Carnes v. Dalton, (1910) 56 Or 596, 110 P 170; Ison v. Sturgill, (1910) 57 Or 109, 109 P 579, 110 P 535.

**540.505**

*LAW REVIEW CITATIONS: 36 EL 1383 (2006).

**540.510 to 540.550**

NOTES OF DECISIONS

*These sections provide that water right owner shall not change point of diversion unless he files application and complies with statutory procedures. Huff v. Bretz, 285 Or 507, 592 P2d 204 (1979).

*ATTY. GEN. OPINIONS: Right of downstream owners of appropriative water rights to continuation of the flow, (1973) Vol 36, p 318; application of water outside irrigation season or for use not authorized by permit, (1977) Vol 38, p 1045.

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

**540.510**

NOTES OF DECISIONS

Riparian rights were not affected by the adoption of this section. Norwood v. E. Ore. Land Co., (1924) 112 Or 106, 227 P 1111.

Requiring water to remain appurtenant to the land upon which it is used is a valid exercise of the legislative powers to regulate the distribution of the waters of the state. Broughton v. Stricklin, (1934) 146 Or 259, 28 P2d 219, 30 P2d 332.

*Irrigation district in whose name water right certificate is issued is holder of water use subject to transfer and may seek change of diversion point under certificate. Fort Vannoy Irrigation District v. Water Resources Commission, 214 Or App 88, 162 P3d 1066 (2007), **aff'd** 345 Or 56, 188 P3d 277 (2008).

*"Water use subject to transfer" refers to legal right established by water right certificate. Fort Vannoy

Irrigation District v. Water Resources Commission, 345 Or 56, 188 P3d 277 (2008).

FURTHER CITATIONS: Cabell v. Fed. Land Bank, (1943) 173 Or 11, 144 P2d 297, Dill v. Killip, (1944) 174 Or 94, 147 P2d 896.

LAW REVIEW CITATIONS: 46 OLR 245; 3 WLJ 389.

**540.520**

NOTES OF DECISIONS

A water right may be transferred separately from the land to which it is appurtenant. Haney v. Neace-Stark Co., (1923) 109 Or 93, 216 P 757, 219 P 190.

A water right appurtenant to land for irrigation is not inseparable from the land. Re Deschutes R., (1930) 134 Or 623, 286 P 563, 294 P 1049.

This section should be given a reasonable construction. Id.

A change in the place of use of water by an appropriator cannot be made if the change injuriously affects others. Hutchinson v. Stricklin, (1934) 146 Or 285, 28 P2d 225.

Water made appurtenant to one tract cannot be lawfully used on a detached tract, even though owned by the same person, without the approval of the State Engineer. Broughton v. Stricklin, (1934) 146 Or 259, 28 P2d 219, 30 P2d 332.

A person making an appropriation has a vested right and can enjoin another having prior appropriation rights from changing his manner, method and period of appropriation without the consent of the State Engineer. Oliver v. Skinner & Lodge, (1951) 190 Or 423, 226 P2d 507.

Application to the State Engineer was a condition precedent under this statute to the exercise of the right to change the place of the use of water from that specified by the decree in a proceeding for the adjudication of water rights. Broughton v. Stricklin, (1934) 146 Or 259, 28 P2d 219, 30 P2d 332.

An arrangement between a milling company and upper irrigators whereby during the specified period the company would refrain from demanding water to which it was entitled, so as to make it available to the upper irrigators, would result in a change of place of use of the company's water within the meaning of this section. Hutchinson v. Stricklin, (1934) 146 Or 285, 28 P2d 225.

*"Point of diversion" means place designated by permittee in application for water rights and in certificate. Vandehey v. Wheeler, 13 Or App 25, 507 P2d 831 (1973), Sup Ct **review denied**.

ATTY. GEN. OPINIONS: Authority to return filing fee for which no service has been performed and no expense incurred, 1938-40, p 503; application to store instead of using water, 1950-52, p 206.

**540.530**

NOTES OF DECISIONS

An application of an irrigation company for the privilege of transferring its rights to water stored for irrigation to the extent of the amount allowed per acre should be allowed. Re Willow Creek, (1915) 74 Or. 592, 144 P 505, 146 P 475.

*ATTY. GEN. OPINIONS: Storage rights to store water for later beneficial use are not subordinate to later priority direct use rights unless made so by explicit conditions imposed on storage right, (1989) Vol 46, p 290.

**540.610 to 540.650**

LAW REVIEW CITATIONS: 3 WLJ 336-344.

**540.610**

NOTES OF DECISIONS

**1. In general**

Priority of right to water extends only to what is needed for the use for which the water has been appropriated. Re Umatilla R., (1918) 88 Or 376, 168 P 922, 172 P 97; Broughton v. Stricklin, (1934) 146 Or 259, 277, 28 P2d 219, 30 P2d 332.

A decree of the circuit court in proceedings to determine the right to use water of the stream for irrigation purposes is res adjudicata upon the question of abandonment. Abel v. Mack, (1930) 131 Or 586, 283 P 8.

Beneficial use is the limit of the right to the use of water in Oregon. Re Deschutes R., (1934) 148 Or 389, 36 P2d 595.

All wasting of water should be suppressed by the court in adjudicating water rights. Id.

It is the duty of a watermaster, or of those who administer a decree relating to water rights, to allocate the water so there will be no waste thereof. Id.

An appropriator of water shall not divert more water than is actually put to use, reasonable transmission losses excepted. Bennett v. Salem, (1951) 192 Or 531, 235 P2d 772.

Findings of the lower court that plaintiff failed to use the water were approved because plaintiff had no way of diverting water for his use even if it had been available, which he denied. Day v. Hill, (1965) 241 Or 507, 406 P2d 148.

*Water certificate holder who used water only to wet some of her land to assist with plowing did not "irrigate" her land and this was not sufficient "beneficial use" to prevent forfeiture of water right for nonuse. Hennings v. Water Resources Dept., 50 Or App 121, 622 P2d 333 (1981).

*Where water rights certificate authorized use of 40 cubic feet of water per second for power generation purposes, but for more than five consecutive years flow in creek at mill's diversion point was only 22 cubic feet per second, there was evidence to support finding of Director of Water Resources Department that there had been forfeiture of 15.6 cubic feet per second. Crandall v. Water Resources Department, 290 Or 771, 626 P2d 877 (1981).

*Proof that during period of five successive years an average of only 22 cubic feet per second of water was available for use by flour mill having capacity of 24.4 cubic feet per second was not proof that mill never used 24.4 cubic feet per second, so there was no proof that five year period of nonuse necessary for cancellation of water right under this section had run. Crandall v. Water Resources Dept., 290 Or 771, 626 P2d 877 (1981).

*Under this section, proponents of cancellation of water rights have burden to prove by reliable and substantial evidence that holder of water right failed to use appropriated water for period of five successive years. Rencken v. Young, 300 Or 352, 711 P2d 954 (1985).

*This section is a forfeiture statute and no intent to abandon water right is required. Rencken v. Young, 300 Or 352, 711 P2d 954 (1985).

*Where water is drawn from designated source, in designated amount and for beneficial use, unauthorized change in point of diversion does not constitute failure

to use water. Russell-Smith v. Water Resources Dept., 152 Or App 88, 952 P2d 104 (1998), Sup Ct **review denied**.

*Requirement for continuity of beneficial use applies for periods preceding perfection of water right. Hale v. Water Resources Dept., 184 Or App 36, 55 P3d 497 (2002).

*Use of water on land other than land specified in water right certificate constitutes nonuse for purpose of forfeiture. Hannigan v. Hinton, 195 Or App 345, 97 P3d 1256 (2004).

**2. Applicability to state**

In the opening phrase of this section, the legislature declared that this statute was passed for the public good; therefore, the state is not exempt from the provisions of this section under the maxim, nullum tempus. Withers v. Reed, (1952) 194 Or 541, 243 P2d 283.

The state, as the owner of a water right, is referred to in the term "all rights" and is subject to the provisions of this section. Id.

Where land with a water right appurtenant was acquired by the state by default of the mortgagor upon a mortgage to the World War Veterans' State Aid Commission in 1932, the state lost the water right when it failed to use the water during its 13 years of ownership. Id.

The terms of this section constituted a condition of the right held by the state's predecessor in interest, and when the state succeeded to the ownership of the land with its appurtenant water right, it took it burdened with the obligation which this section imposes and subject to the loss of the right should the obligation not be fulfilled. Id.

**3. Applicability to irrigation district**

In determining whether an irrigation district is bound by this section, the maxim, nullum tempus, would not apply. Withers v. Reed, (1952) 194 Or 541, 243 P2d 283.

FURTHER CITATIONS: Smyth v. Jenkins, (1956) 208 Or 92, 299 P2d 819.

LAW REVIEW CITATIONS: 3 WLJ 382, 389; *28 EL 919, 1137 (1998); *36 EL 1383 (2006).

**540.621**

*LAW REVIEW CITATIONS: 36 EL 1383 (2006).

**540.631**

NOTES OF DECISIONS

*Issuance of water right certificate for transferred water right and passage of 15-year period terminates ability to cancel new certificate based on abandonment of water right prior to transfer. Kerivan v. Water Resources Commission, 188 Or App 491, 72 P3d 659 (2003), Sup Ct **review denied**.

**540.710 to 540.750**

LAW REVIEW CITATIONS: 3 WLJ 297.

**540.710**

CASE CITATIONS: Calderwood v. Young, (1957) 212 Or 197, 315 P2d 561, 319 P2d 184.

**540.720**

LAW REVIEW CITATIONS: 46 OLR 245; *27 EL 151 (1997).

**540.740**

NOTES OF DECISIONS

Taking of water under a void order of the State Water Board [now State Engineer] was a continuing trespass, which equity could enjoin under this section. Norwood v. E. Ore. Land Co., (1924) 112 Or 106, 227 P 1111.

Suit for injunction against watermaster was not an appropriate means to quiet title to water rights. Calderwood v. Young, (1957) 212 Or 197, 315 P2d 561, 319 P2d 184.

*Because this section provides adequate state remedy for protection of right to use water, trial court erred in awarding attorney fees for 42 U.S.C. 1983 claims under 42 U.S.C. 1988. Saylor v. Water Resources Dept., 100 Or App 745, 788 P2d 494 (1990), Sup Ct **review denied**.

**540.990**

LAW REVIEW CITATIONS: 40 OLR 37; 3 WLJ 297.

# Chapter 541
# Water Distributors; Water Releases; Conservation and Storage; Water Development Projects; Watershed Management and Enhancement

**541.010**

NOTES OF DECISIONS

A mutual ditch company organized for the sole purpose of transmitting and delivering to appropriators and owners of the water the quantity to which each is entitled is not a "general corporation," a "public service corporation," or a "common carrier." Eldredge v. Mill Ditch Co., (1919) 90 Or 590, 177 P 939.

A corporation organized for profit for the purpose of supplying water to all persons whose lands lie within reach of its ditch is the owner of the use of the water appropriated. A mutual ditch corporation organized for the purpose of carrying water to its stockholders is simply the agent of the appropriator to carry his water to where he makes the beneficial use. Re Walla Walla River, (1933) 141 Or 492, 16 P2d 939.

A private corporation appropriating water for rental or irrigation was not a public utility without some act of dedication of water so appropriated to public use. De Pauw Univ. v. Public Serv. Comm., (1917) 247 Fed 183, (1918) 253 Fed 848.

Irrigation company was not a public utility. Central Ore. Irr. Co. v. Public Serv. Comm., (1921) 101 Or 442, 196 P 832.

Use of water by particular individuals was not a public use. Smith v. Cameron, (1922) 106 Or 1, 210 P 716.

FURTHER CITATIONS: Re Hood River, (1925) 114 Or 112, 227 P 1065; Eastern Ore. Land Co. v. Willow River Land & Irr. Co., (1913) 204 Fed 516; United States v. Humboldt Lovelock Irr. Co., (1938) 97 F2d 38, 44.

LAW REVIEW CITATIONS: 3 WLJ 296.

**541.030**

ATTY. GEN. OPINIONS: Procedure for acquiring right of way for an irrigation ditch over land owned by state, 1924-26, p 537.

**541.050**

NOTES OF DECISIONS

One who charged that seepage from an irrigation company's ditch was injuring his land was required to assume the burden of proving that the water escaped from the defendant's ditch. Taylor v. Farmers' Irr. Co., (1917) 82 Or 701, 162 P 973.

Evidence did not entitle plaintiff to a remedy by way of injunction. Id.

LAW REVIEW CITATIONS: 8 OLR 89; 1 WLJ 346, 348, 351.

**541.080**

NOTES OF DECISIONS

The court, in a suit involving inceptive rights to divert the waters of a river, would only determine the right as between the parties claiming as appropriators; it would not determine the extent of the right that may be obtained. Pringle Falls Power Co. v. Patterson, (1913) 65 Or 474, 483, 128 P 820, 132 P 527.

**541.110**

NOTES OF DECISIONS

Surplus waters of the streams of the state may be utilized by corporations which are engaged in the business of furnishing electrical power. Grand Ronde Elec. Co. v. Drake, (1905) 46 Or 243, 78 P 1031.

The right of a prior appropriator of waters for mining use cannot be encroached upon through the summer season by subsequent appropriation for irrigation purposes. Re Rogue River, (1921) 102 Or 60, 201 P 724.

It is the state's policy to protect migratory fish and also to permit and encourage the use of waters for the development of electric power, neither of which may be disregarded. State Game Comm. v. Beaver Portland Cement Co., (1942) 169 Or 1, 124 P2d 524, 126 P2d 1094.

Where plans for defendant's proposed project were filed with the State Engineer and by him approved, he must have found that the use proposed would not prejudicially affect the public interest. Id.

*Water right for mining is subject to forfeiture for nonuse under ORS 540.610. Hannigan v. Hinton, 195 Or App 345, 97 P3d 1256 (2004).

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

**541.120**

NOTES OF DECISIONS

Use of ditch by city in common with individual members of irrigation district was not illegal. Butler & Thompson Co. v. City of Ashland, (1924) 109 Or 683, 222 P 346.

**541.220 to 541.250**

LAW REVIEW CITATIONS: 3 WLJ 295.

**541.230**

ATTY. GEN. OPINIONS: Transfer of land by State Land Board to United States, 1922-24, p 71, 1956-58, p 252; conveyance by State Land Board of right of way over state land for ditches, canals and reservoir sites for irrigation purposes to the United States, 1922-24, p 662.

LAW REVIEW CITATIONS: 36 OLR 204.

**541.240**

ATTY. GEN. OPINIONS: Transfer by State Land Board to United States, 1956-58, p 252.

**541.310**

CASE CITATIONS: Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796.

LAW REVIEW CITATIONS: 36 OLR 212; 3 WLJ 295.

**541.320**

NOTES OF DECISIONS

Having jurisdiction for one purpose, equity could retain jurisdiction for the determination of all issues involved. Re Willow Creek, (1926) 119 Or 155, 236 P 487, 237 P 682, 239 P 123.

A decree of the circuit court in proceedings to determine the right to use water of the stream for irrigation purposes is res adjudicata upon the question of abandonment. Abel v. Mack, (1930) 131 Or 586, 283 P 8.

Rights which are not involved in the litigation in which the decree is rendered are not affected. Krebs v. Perry, (1930) 134 Or 290, 292 P 319, 293 P 432.

In order to constitute a decree res judicata and to bar a subsequent action, there must be a concurrence of the identity of the right sued for, the identity of the cause of action, and the identity of the parties to the action. Masterson v. Pac. Livestock Co., (1933) 144 Or 396, 24 P2d 1046.

FURTHER CITATIONS: Gardner v. Dollina, (1955) 206 Or 1, 288 P2d 796.

LAW REVIEW CITATIONS: 36 OLR 204, 212; 3 WLJ 295.

**541.351 to 541.395**

*__See__ annotations under ORS 541.890 to 541.969.

**541.370**

*__See__ annotations under ORS 541.926.

**541.410**

NOTES OF DECISIONS

The use of water for lifting water for irrigation and for generating electricity for lifting water for irrigation is a beneficial use. Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049.

Where a water user intended using a waterwheel for irrigation purposes, his notice of appropriation should have included a claim for the quantity of water desired to be appropriated for power purposes, and such appropriation was required to be reasonable. Re Owyhee River, (1928) 124 Or 44, 259 P 292.

**541.540**

ATTY. GEN. OPINIONS: Action against irrigation district for flood damage, 1960-62, p 204.

**541.605 to 541.695**

*See annotations under ORS 196.800 to 196.905.

**541.605**

*See annotations under ORS 196.800.

**541.610**

*See annotations under ORS 196.805.

**541.615**

*See annotations under ORS 196.810.

**541.620**

CASE CITATIONS: State Land Bd. v. Gen. Constr. Co., (1970) 2 Or App 53, 465 P2d 731.

**541.625**

*See annotations under ORS 196.825.

**541.626**

*See annotations under ORS 196.830.

**541.645**

*See annotations under ORS 196.855.

**541.650**

*See annotations under ORS 196.860.

**541.665**

*See annotations under ORS 196.880.

**541.890 to 541.969**
**(formerly 541.351 to 541.395)**

*LAW REVIEW CITATIONS: 26 EL 175 (1996).

**541.926**
**(formerly 541.370)**

*LAW REVIEW CITATIONS: 26 EL 175 (1996).

**541.990**

*LAW REVIEW CITATIONS: 4 EL 351 (1974).

# Chapter 542
# Water Resource Surveys and Projects; Compacts

**542.010**

LAW REVIEW CITATIONS: 3 WLJ 297, 299.

**542.040**

ATTY. GEN. OPINIONS: Repayment of money expended in investigation which disclosed that irrigation project was not feasible, 1928-30, p 392.

**542.110**

LAW REVIEW CITATIONS: 3 WLJ 299, 303, 311.

**542.210**

ATTY. GEN. OPINIONS: Construction of dam across the Rogue River by a corporation having vested water rights, 1948-50, p 403.

**542.620**

CASE CITATIONS: Swanson v. Coos County, (1970) 4 Or App 587, 481 P2d 375.

*ATTY. GEN. OPINIONS: Legal effect of classification of water resources or establishment of minimum flows in Upper Klamath River Basin if contrary to use preferences described in this section, (1979) Vol 39, p 748.

LAW REVIEW CITATIONS: 47 OLR 368; 48 OLR 117.

**542.750**

LAW REVIEW CITATIONS: 47 OLR 53.

# Chapter 543
# Hydroelectric Projects

**Chapter 543**

NOTES OF DECISIONS

The state does not have the power to veto a license granted by the Federal Government to construct a dam across a navigable stream for purposes of generating electricity. State v. Idaho Power Co., (1957) 211 Or 284, 312 P2d 583.

ATTY. GEN. OPINIONS: Authority of State Water Resources Board in reviewing license application for a hydroelectric project, 1960-62, p 274.

LAW REVIEW CITATIONS: 3 WLJ 299, 300, 310, 384; *16 EL 583, 593 (1986).

**543.010 to 543.620**

NOTES OF DECISIONS

*Water control district, in applying for water appropriation permit for hydroelectric project, was exempt from licensing provisions of these sections and needed only to comply with requirements of ORS Chapter 537. Steamboaters v. Winchester Water Control Dist., 69 Or App 596, 688 P2d 92 (1984), Sup Ct **review denied**.

*LAW REVIEW CITATIONS: 16 EL 583, 592 (1986).

**543.010**

ATTY. GEN. OPINIONS: Procedure for approval of the construction of a hydroelectric dam, 1948-50, p 252; constitutionality of legislation to carry out Ore. Const. Art. XI-D, 1954-56, p 96.

**543.017**

*LAW REVIEW CITATIONS: 16 EL 583, 620 (1986).

**543.050**

NOTES OF DECISIONS

State has no power to veto a license granted by Federal Government to construct a dam across a navigable stream for purposes of generating electricity. State v. Idaho Power Co., (1957) 211 Or 284, 312 P2d 583.

Federal Power Commission had exclusive jurisdiction to grant license for water power project on lands in Oregon constituting United States reservation. Federal Power Comm. v. Oregon, (1955) 349 US 435, 444, 75 S Ct 832, 838, 99 L Ed 1215, 1224.

FURTHER CITATIONS: Ollio v. Clatskanie Dist., (1942) 170 Or 173, 132 P2d 416.

ATTY. GEN. OPINIONS: Authority of Hydroelectric Commission to grant applications for permits or licenses on streams withdrawn from appropriations, 1930-32, p 240; procedure for approval of the construction of a hydroelectric dam, 1948-50, p 252.

LAW REVIEW CITATIONS: 25 OLR 160; 3 WLJ 303, 311.

**543.120**

NOTES OF DECISIONS

State has no power to veto a license granted by Federal Government to construct a dam across a navigable stream for purposes of generating electricity. State v. Idaho Power Co., (1957) 211 Or 284, 312 P2d 583.

Federal Power Commission had exclusive jurisdiction to grant license for water power project on lands in Oregon constituting United States reservation. Federal Power Comm. v. Oregon, (1955) 349 US 435, 444, 75 S Ct 832, 838, 99 L Ed 1215, 1224.

ATTY. GEN. OPINIONS: Application of Benton Utility Company for minor hydroelectric project in Benton County, 1936-38, p 29; procedure for approval of the construction of a hydroelectric dam, 1948-50, p 252.

**543.140**

CASE CITATIONS: Federal Power Comm. v. Oregon, (1955) 349 US 435, 451, 75 S Ct 832, 842, 99 L Ed 1215, 1228.

**543.150**

*LAW REVIEW CITATIONS: 16 EL 583, 592 (1986).

**543.210**

ATTY. GEN. OPINIONS: Authority of the game commission as to construction and maintenance of dams, irrigation projects, etc., 1940-42, p 463; procedure for approval of the construction of a hydroelectric dam, 1948-50, p 252.

**543.225**

ATTY. GEN. OPINIONS: Applications to build hydroelectric power dams, 1958-60, p 154; authority of State Water Resources Board in reviewing license application for a hydroelectric project, 1960-62, p 274.

LAW REVIEW CITATIONS: 3 WLJ 303, 308-311.

**543.230**

ATTY. GEN. OPINIONS: Procedure for approval of the construction of a hydroelectric dam, 1948-50, p 252.

LAW REVIEW CITATIONS: 3 WLJ 303, 311.

**543.250**

ATTY. GEN. OPINIONS: Procedure for approval of the construction of a hydroelectric dam, 1948-50, p 252.

**543.260**

ATTY. GEN. OPINIONS: Authority of State Water Resources Board in reviewing license application for a hydroelectric project, 1960-62, p 274.

LAW REVIEW CITATIONS: 3 WLJ 310.

**543.300**

ATTY. GEN. OPINIONS: The authority of the Hydroelectric Commission to waive requirements of the Hydroelectric Act, pursuant to subsection (6) as based upon a conflict between the requirements of the state Act and requirements of a license or permit issued by the Federal Power Commission, 1942-44, p 291; requirements imposed by the Rural Electrification Administration upon an electrical cooperative as "permits or licenses from the United States as a condition precedent to the construction" of an electrification project, 1942-44, p 291; authority of Hydroelectric Commission to determine what is a reasonable rate of return in the instance of every licensee under the Hydroelectric Act and to require all return in excess thereof to be credited to an amortization reserve fund, 1944-46, p 204.

**543.510**

ATTY. GEN. OPINIONS: Duty of the Public Utility Commissioner to determine the rate base and fix retail rates for the service of a public utility that is licensed under the Hydroelectric Act, 1944-46, p 204.

**543.530**

ATTY. GEN. OPINIONS: Duty of applicants for hydroelectric license, who prior to issuance of license constructed projects and incurred indebtedness, to secure the approval of the Hydroelectric Commission prior to or at the time the license is issued, 1942-44, p 196.

LAW REVIEW CITATIONS: 3 WLJ 300.

**543.550**

ATTY. GEN. OPINIONS: Ownership as a requisite to issuance of license, 1930-32, p 717.

**543.610**

NOTES OF DECISIONS

*It is highly doubtful that legislature in enacting statutory scheme relating to water power resources of state intended to include public utility districts within meaning of word "municipality" of this section. Emerald PUD v. PP&L, 76 Or App 583, 711 P2d 179 (1985), Sup Ct **review denied**.

LAW REVIEW CITATIONS: 46 OLR 126.

**543.650**

*LAW REVIEW CITATIONS: 16 EL 583, 592 (1986).

**543.705**

ATTY. GEN. OPINIONS: Abandonment of right to water in excess of amount specified in claim, 1958-60, p 121.

**543.710**

ATTY. GEN. OPINIONS: Authority to collect fees on pending applications to appropriate water, 1924-26, p 225; payment of fee as deferred because owner's husband is reserve officer, 1940-42, p 637; abandonment of right to water in excess of amount specified in claim, 1958-60, p 121.

**543.720**

NOTES OF DECISIONS

State Engineer's determination of questions of fact is entitled to great weight on appeal. Appleton v. Ore. Iron & Steel Co., (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

An application under this section was in substance an application for a permit to use water. Re Hood River, (1924) 114 Or 112, 187, 227 P 1065.

ATTY. GEN. OPINIONS: Preference lien for delinquent license fees required to be paid for water power development as superior to lien of ad valorem taxes on real and personal property, 1942-44, p 156; abandonment of right to water in excess of amount specified in claim, 1958-60, p 121.

**543.730**

ATTY. GEN. OPINIONS: Abandonment of right to water in excess of amount specified in claim, 1958-60, p 121.

**543.990**

LAW REVIEW CITATIONS: 3 WLJ 300.

# Chapter 549
# Drainage and Flood Control Generally

**549.110**

NOTES OF DECISIONS

Jurisdiction is conferred by this section only to locate a ditch where there is none; the existing ditch of a proprietor may not be utilized. Seely v. Sebastian, (1870) 4 Or 25.

A right of way for the construction and maintenance of a drain to carry off the overflow of septic tank and waste water and sewage from a house was not acquired under this section. Laurance v. Tucker, (1939) 160 Or 474, 85 P2d 374.

FURTHER CITATIONS: Harbison v. City of Hillsboro, (1922) 103 Or 257, 204 P 613.

LAW REVIEW CITATIONS: 3 WLJ 296.

**549.180**

NOTES OF DECISIONS

The compensation mentioned in this section is in the nature of a contribution; it is distinct from the damages which the commissioners are authorized to assess for the cutting of a new ditch. Seely v. Sebastian, (1870) 4 Or 25.

FURTHER CITATIONS: Harbison v. City of Hillsboro, (1922) 103 Or 257, 204 P 613.

**549.190**

CASE CITATIONS: Parkersville Drainage Dist. v. Wattier, (1906) 48 Or 332, 86 P 775; Re Hood River, (1914) 114 Or 112, 227 P 1065.

**549.380**

ATTY. GEN. OPINIONS: Power of county to condemn land, 1956-58, p 159.

LAW REVIEW CITATIONS: 46 OLR 131, 132, 134.

**549.390**

LAW REVIEW CITATIONS: 46 OLR 136.

**549.510**

NOTES OF DECISIONS

This section is not unconstitutional as depriving persons of property without due process of law. Waite v. Siuslaw Boom Co., (1925) 115 Or 316, 237 P 664.

Preliminary examination of the dike and notice to the delinquent landowner must be shown by the plaintiff. Id.

The jury properly determines the question as to whether the cost of repair was commensurate with the benefits to the defendant's land. Id.

The amount recovered of the delinquent landowner should not exceed the reasonable cost of repair. Id.

The questions as to reasonable value of labor and material, and as to whether plaintiffs paid therefor, were for the jury. Id.

The questions as to whether the plaintiff did unnecessary work, and as to whether his own dike was in good state of repair, were for the jury's determination. Id.

**549.520**

NOTES OF DECISIONS

Notice by county judge to delinquent landowner was sufficient. Waite v. Siuslaw Boom Co., (1925) 115 Or 316, 237 P 664.

**549.605 to 549.645**

LAW REVIEW CITATIONS: 3 WLJ 313.

**549.645**

LAW REVIEW CITATIONS: 46 OLR 307.

# Chapter 555
# Reclamation Projects; Sand Control

**555.010**

NOTES OF DECISIONS

The purpose of the Carey Act was to aid in the reclamation of desert public lands, and the legislature accepted that Act in 1909 c. 226. Cookinham v. Lewis, (1911) 58 Or 484, 114 P 88, 115 P 342.

FURTHER CITATIONS: State v. Des Chutes land Co., (1913) 64 Or 167, 129 P 764; Central Ore. Irr. Co. v. Young, (1923) 107 Or 39, 213 P 782; United States v. Ide, (1921) 277 Fed 373, 380.

ATTY. GEN. OPINIONS: Authority of state to sell land held under the Carey Act, 1924-26, p 75.

**555.030**

LAW REVIEW CITATIONS: 3 WLJ 303, 311.

**555.040**

NOTES OF DECISIONS

Suit by state to cancel contract for reclamation of desert lands was removable to federal court. State v. Three Sisters Irr. Co., (1907) 158 Fed. 346.

Provisions of contract for reclamation of desert lands was invalid. State v. Des Chutes Land Co., (1913) 64 Or 167, 129 P 764.

**555.060**

ATTY. GEN. OPINIONS: Refund of money deposited with desert land board pursuant to this section, 1926-28, p 213, 1932-34, p 324.

**555.070**

NOTES OF DECISIONS

Bond of contractor afforded protection to state and persons performing services and supplying materials. American Sur. Co. v. State, (1924) 299 Fed 357.

LAW REVIEW CITATIONS: 3 WLJ 303, 311.

**555.090**

CASE CITATIONS: Skinner v. Jordan Valley Irr. Dist., (1931) 137 Or 480, 300 P 499, 3 P2d 534.

**555.100**

CASE CITATIONS: American Sur. Co. v. State, (1924) 299 Fed 357.

**555.120**

NOTES OF DECISIONS

A settler's right to the use of water is contingent on his contract for the purchase of the land. Central Ore. Irr. Co. v. Pub. Serv. Comm., (1921) 101 Or 442, 196 P 832.

**555.130**

CASE CITATIONS: Central Ore. Irr. Co. v. Whited, (1915) 76 Or 255, 142 P 779, 146 P 815.

ATTY. GEN. OPINIONS: In re requirements with which settlers must comply and authority of State Reclamation Commission to convey land to an entryman under the Carey Act, 1934-36, p 688; qualifications of assigner of entryman, 1948-50, p 370.

**555.140**

ATTY. GEN. OPINIONS: Authority to issue deed pursuant to statute to heirs of decedent, 1924-26, p 165; when desert lands under Carey Act and in irrigation districts become subject to taxation, 1924-26, p 646; sufficiency of affidavit to show release of claim in property for which application has been made for a deed, 1934-36, p 168; rights of assignees making application for patent to land segregated under Carey Act, effect of abandonment of land, and right of reclamation commission to issue deed to such land after sale under foreclosure of delinquent tax certificate to county, 1934-36, p 811; rule of reclamation commission as affecting execution of deeds to applicants for land in irrigation projects, 1936-38, p 237; authority of reclamation company to transfer water rights in Carey Act project to land outside the project, 1940-42, p 552; conditions to issuance of deed and rights acquired by purchaser, 1940-42, p 573; cancellation of application for failure to submit proof of reclamation, cultivation and settlement, 1942-44, p 79; delivery of a deed to settler on Carey Act lands, or his successor in title as not denied by reason of loss or destruction of certificate of reclamation, if other proof that the applicant is successor of the original settler is submitted, 1942-44, p 360; power of entryman to sell his interest in reclaimed land before he has paid the amount due to the state, 1948-50, p 370.

**555.150**

ATTY. GEN. OPINIONS: Cancellation of application for failure to submit proof of reclamation, cultivation and settlement, 1942-44, p 79; power of entryman to sell his interest in reclaimed land before he has paid the amount due to the state, 1948-50, p 370.

**555.180**

NOTES OF DECISIONS

Provisions as to time for applying full amount of water to beneficial use did not apply to Carey Act land. Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049.

*This section is not limited to the period of time in which water was distributed on the basis of irrigation contracts with Carey Act developers. Alexander v. Cent. Ore. Irr. Dist., 19 Or App 452, 528 P2d 582 (1974).

*The "price per acre as now set by the State Engineer" was, at the time of enactment, $40 per acre. Alexander v. Cent. Ore. Irr. Dist., 19 Or App 452, 528 P2d 582 (1974).

**555.370**

ATTY. GEN. OPINIONS: Authority of State Reclamation Commission to sign a waiver of all its lien, claim or interest upon the crops to be grown upon lands sold under contract by the state, 1930-32, p 597.

**555.380**

ATTY. GEN. OPINIONS: Crediting of moneys in operation and maintenance fund of irrigation project to project fund for distribution to contract holders, and the disbursement of all moneys in project fund, 1924-26, p 462.

**555.410**

CASE CITATIONS: Mahan v. Olcott, (1913) 65 Or 537, 133 P 836.

# INDEX

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