

Routine Program Change

Updating Oregon's Enforceable Policies Regarding Water Resources Administration

O.R.S. §§ 536.007, 536.022-536.935

July 24, 2014

I. Introduction

The Oregon Coastal Management Program requests that the National Oceanic and Atmospheric Administration (NOAA) Office of Ocean and Coastal Resource Management (OCRM) approve updates to the OCMP to reflect changes to Oregon's statutes regarding water resources administration and the state's water resources policy. Oregon requests concurrence that these updates constitute a Routine Program Change.

Section II.A describes the relevant program in ORS chapter 536 and identifies changes to the statutes since OCRM's previous approvals. Section II.B identifies those sections that state "enforceable policies" that are used in Oregon's federal consistency review determinations. Section II.C shows that the submitted updates are a Routine Program Change under NOAA regulations and guidelines.

II. Analysis of Routine Program Change

A. Discussion of the Program in Chapter 536

The OCMP was initially approved by NOAA in 1977. In 1987, OCRM approved a Routine Program Change that, among other things, incorporated substantial sections of ORS chapter 536, concerning water resources administration, into the OCMP. The sections incorporated were ORS § 536.220 to § 536.360, governing water resources policies, programs, and requirements; § 536.410, governing withdrawal of unappropriated waters; § 536.440, governing studies and surveys; and § 536.700 to § 536.730, governing emergency water shortages.

Oregon now seeks to update and incorporate further sections of ORS chapter 536 to reflect current management policies. The attached table includes the full listing of statutory provisions addressing water resources administration, including those which remain unchanged since prior OCRM approval. This is in order to ensure that the full current program remains part of the OCMP, and establishes the 2013 Edition of the Oregon Revised Statutes as the effective baseline for all of these statutory provisions, should they be further modified in the future. We are also attaching the full current versions of the statutes.

As shown in the attached table, many of the changes to the amended sections since OCRM's previous approval in 1987 are simple grammatical edits, name clarifications, cross-reference revisions, and subsection reordering. Specifically, "which" became "that" in one instance, "the" became "this" in one instance, and "listing of auxiliary lands in ORS 536.007" was replaced with "auxiliary lands described in ORS 536.007." The term "commission" was replaced with "Water Resources Commission" in several

instances and the term “department” with “Water Resources Department” in one instance. Two cross-references to ORS § 536.700 to § 536.730 were changed to § 536.700 to § 536.780 to reflect the expansion of the subchapter. References to subsections (2) through (6) of “this section” in ORS § 536.720 were changed to “ORS 536.780 and subsection (2) of this section” since the procedures for water conservation and curtailment plans were moved to ORS § 536.780.

Beyond these editorial changes, further updates are described below:

General Administration

These general administration sections are being incorporated by this update in order to provide completeness to Oregon’s enforceable policies, and to make references in substantive sections intelligible.

ORS § 536.007. This definitions section was enacted in 1985 and amended in 1989. It defines terms used in this chapter and the other water resources chapters, including chapters 537 to 540, 542, and 543; ORS § 196.600 to § 196.905, ORS § 541.010 to § 541.320, ORS § 541.430 to § 541.545, and ORS § 541.700 to § 541.990.

ORS §§ 536.022–536.039. These administration sections were enacted between 1985 and 1999, except for ORS 536.032, which was first enacted in 1975. They create the Water Resources Commission and identify its composition, how members are appointed and confirmed, the duration of terms, compensation, duties, powers, and the delegation of authority. They also concern the commission’s rulemaking duties and authorities and the applicability of those rules to permit applications. They establish the Water Resources Department under the Water Resources Commission and create the position of Water Resources Director.

ORS §§ 536.040–536.055, 536.080. These sections define administrative requirements, authorize the department to set and collect permitting fees, allow for the electronic submission of documents, identify all records of the department to be public records, and maintain the legal validity of official records and evidence filed with the former State Water Board and State Water Superintendent.

ORS § 536.075. This section, enacted in 1985 and amended in 1999, authorizes a party affected by a final order issued by the commission or department to appeal the order in identified state courts.

ORS § 536.090. This section, enacted in 1977 and amended most recently in 1993, requires the commission to appoint a ground water advisory committee; identifies the roles of that committee; and sets the composition of the committee, the terms of its members, and the compensation policy.

Water Resources Administration

ORS § 536.220. This section, previously incorporated into the OCMP, identifies the policies of the state regarding water resource administration. ORS 536.220, concerning water resources generally, has added since its incorporation into the OCMP in 1987 a subsection (2)(b), requiring the state water resources policy to also prevent contamination of Oregon’s ground water resource; a subsection (3),

regarding the development and implementation of an integrated state water resources strategy implementing state policies and meeting “in-stream and out-of-stream water needs;” and a subsection (4), declaring the authority granted to the Environmental Quality Commission and the Department of Environmental Quality under ORS chapter 468B not to be limited by this section.

ORS § 536.238. This section, enacted in 1993, details the state policy regarding water storage facilities. It declares the development of “environmentally acceptable and financially feasible multipurpose water storage facilities” and enhancement of “watershed storage capacity through natural processes using nonstructural means” to be high priorities of the state.

ORS § 536.241. This section, enacted in 1999, details the state policy on water supply, including ensuring “a water supply sufficient to meet the needs of existing and future beneficial uses of water.”

ORS § 536.295. This section was enacted in 1989. It identifies the conditions under which an application to appropriate water for a use not classified in the applicable basin program may be considered, including whether the proposed use is consistent with the general policies of that program.

ORS § 536.310. This section, previously incorporated into the OCMP, identifies the policies that the commission must consider in formulating the water resources program under ORS 536.300(2). Since incorporation into the OCMP in 1987, the legislature has added to the policy of maintaining minimum streamflow an amount necessary to “maintain recreation values.”

ORS § 536.340. This section, previously incorporated into the OCMP, authorizes the commission to classify and reclassify lakes, streams, underground reservoirs, and other sources of water supply in this state as to the highest and best use and quantities of use thereof. Since its incorporation into the OCMP in 1987, changes to this section have included adding an exception to the restriction on uses and quantities of uses to which a water supply may be put, identifying the breadth of application of restrictions on use and quantities of use resulting from a classification or reclassification, and specifying requirements of the commission in carrying out the authority to classify and reclassify water sources.

ORS §§ 536.370–536.400. These sections were enacted in 1955 and are being added to ensure enforceability of Oregon’s water policies with respect to actions of other state agencies. They prohibit state agencies and public corporations from acting in conflict with the state water resources policy without the approval of the commission, identify the procedures for receiving commission approval, and identify the procedure for procuring a restraining order for any state agency or public corporation violating these sections.

ORS § 536.410. This section, previously incorporated into the OCMP, authorizes the commission to issue a withdrawal order of any unappropriated waters when it determines that it is necessary to insure compliance with the state water resources policy or that it is otherwise necessary to conserve the water resources for the maximum beneficial use and control. Since incorporation into the OCMP in 1987, the legislature has explicitly noted that withdrawal applies even to “exempt uses under ORS 537.545.”

ORS §§ 536.420–536.590. These sections were enacted in 1955. They require the governor to designate an individual to represent the state with regard to formal or informal water compacts. They set obligations and authorities of the commission, including investigating, water resource development planning, requesting information from other agencies, attending conferences, providing information and assistance to others, payment of obligations, and deposit of funds. They clarify that specific statutes are not to be construed to take away or impair water rights vested or inchoate before August 3, 1955 and January 1, 1956.

ORS § 536.595. This section was enacted in 2001. Although it does not create an enforceable policy, it sets specific requirements for the department in the course of discussing with the U.S. Army Corps of Engineers seasonal operations of impoundments within the Willamette Basin reservoir system.

Emergency Water Shortage Powers

ORS §§ 536.700–536.730. These sections, previously incorporated into the OCMP, define “drainage basin,” identify the state policy regarding water management during water shortages, authorize the governor to order water conservation and curtailment plans, and limit the influence of the governor and commission on vested water rights. Since their incorporation into the OCMP in 1987, these sections only have been changed insofar as procedures for and requirements of water conservation and curtailment plans have been removed and an exception to the limitation on affecting vested water rights was added.

ORS §§ 536.740–536.780. These sections were enacted in 1989. They authorize the governor to declare severe, continuing drought; identify the powers of the commission after such a declaration, including the issuance of temporary permits; require cessation of such activities at the end of the drought; and authorize option- and other water use agreements triggered by drought declarations.

Penalties

ORS §§ 536.900–536.935. These sections were enacted in 1989. They authorize the commission to impose civil penalties for, among other things, violating any of the terms or conditions of a permit issued under this chapter. They also identify notice requirements, limit the amount of a civil penalty, allow penalties to be remitted or reduced, identify factors to be considered in imposing a penalty, require all recovered penalties to be paid to the state treasury, and make liable for damages owners and operators who fail to take corrective action required by the commission.

B. Enforceable Policies

OCRM initially approved Oregon’s Coastal Management Program, including entire state statutes as part of the approved program. Subsequently OCRM has requested that states identify enforceable policies within their statutes as updates are submitted. While Oregon seeks to incorporate into the OCMP the entire set of updated statutes implementing the program of ORS Chapter 536, we have identified specific sections that define enforceable policies for federal consistency purposes.

Each of the sections identified specifies a substantive enforceable policy; identifies when a permit is required; or provides enforceable mechanisms for implementation of the substantive provisions. Statutory sections not defined as enforceable are those that are purely procedural, that contain only statements of findings, or that merely grant state officials authority to undertake administrative acts not affecting the potential activities of federal actors or licensees.

Thus, statements of policy, requirements for authorizations, lists of conditions for authorizations, provisions for rules that define regulatory requirements, and definitions that specify the content of obligations and requirements are enforceable policies. The sections in this Routine Program Change stating enforceable policies are: 536.007, 536.027, 536.028, 536.220, 536.235, 536.238, 536.241, 536.295, 536.300, 536.310, 536.340, 536.360, 536.370, 536.400, 536.410, 536.700, 536.710, 536.720, 536.750, 536.900, and 536.930. The attached table identifies these with an X and describes the content of each section.

These policies are rendered enforceable by the permits authorized under 536.750; by the authority of the Water Resources Commission to classify the uses and quantity of uses of each source of water supply in 536.340 and to grant preference of use to rights for human consumption and stock watering during severe, continuing droughts in 536.750; by the authority of the governor to order conservation and curtailment of water during severe, continuing droughts in 536.720; by the duty of the commission in 536.295 to ensure that proposed uses not classified in the applicable basin program are consistent with the general policies of that program; and by prohibited actions in 536.360, 536.370, and 536.410.

Section 536.360 prohibits state agencies and public corporations from interfering with the state water resources policy, that policy being defined in 536.007 to include 536.300 (requiring the commission to develop an integrated program for water use and control) and 536.310 (identifying the policies that the commission must consider in developing the water use and control program); as a result, activities on public lands or that otherwise are subject to state or public corporation review may not contradict the water use and control program and policies reflected therein.

Enforcement implementation includes restraining orders concerning the commission or continuation of violations in 536.400; liability for damages under 536.930; and civil penalties under 536.900.

C. Action as Routine Program Change

Pursuant to CZMA §306(e) and 15 C.F.R. §923.84, this section explains why this update to Oregon's program is a Routine Program Change and does not constitute an amendment. Under 15 C.F.R. §923.80(d), amendments are defined as substantial changes in one or more of five listed coastal management program areas:

- (1) uses subject to management;
- (2) special management areas;
- (3) boundaries;
- (4) authorities and organization; and
- (5) coordination, public involvement and the national interest.

OCRM's 1996 Program Change guidance states that a "substantial change" is a high threshold requiring case-by-case determination. Statutory changes are identified in the attached table. The table relates each change to Oregon's authority as previously approved as part of the OCMP in 1987. Each change is described in detail in the right-hand column of the table.

1. Uses subject to management.

This submittal does not identify new uses subject to management.

2. Special management areas.

This submittal does not designate or change special management areas. It does not establish new criteria for special management areas.

3. Boundaries.

This submittal does not change the boundaries of Oregon's coastal zone.

4. Authorities and organization.

This submittal does not change Oregon's administration of the OCMP. The same authorities as approved in the 1987 RPC continue to apply these programs.

5. Coordination, public involvement, and the national interest.

This submittal does not change any coordination, public involvement, or national interest provisions of the OCMP.

Accordingly, this submittal is a Routine Program Change, and Oregon requests OCRM concurrence.

Water Resources Administration

Changes to Statutes in the Program since Last OCRM Approval

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
WATER RESOURCES ADMINISTRATION						
536.220	Policy on water resources generally; integrated state water resources strategy	Declares the importance of maintaining, for the economic and general welfare, the proper utilization and control of the water resources of the state, and directs the Water Resources Department to develop an integrated state water resources strategy to implement the state water resources policy, to be developed in consultation with other state, local and federal agencies; other states; Indian tribes; stakeholders; and the public, and lays out the general requirements of such a plan	X	1987	1989 2009 2013	<ul style="list-style-type: none"> • Split subsection (2), with 2(a) beginning after the phrase” The Legislative Assembly, therefore, finds that:” • Added subsection 2(b), which declares that the water resources policy shall be consistent with the goal set forth in ORS 468B.115 • Added subsection (3), directing the Department to develop the integrated state water resources strategy • Added subsection (4), declaring the authority granted to the Environmental Quality Commission and the Department of Environmental Quality under ORS chapter 468B not to be limited by this section • Changed “single state agency <i>which</i>,

¹ Oregon is seeking to establish the 2013 Edition of the Oregon Revised Statutes and the 2014 Oregon Laws supplement as the effective baseline for the statutory provisions incorporated into the Oregon Coastal Management Program (OCMP). The year in the “updates adopted and effective” column refers to the year(s) during which the Oregon legislature adopted changes to the statutory provisions incorporated into the OCMP.

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
						in carrying out its functions” to “single state agency <i>that</i> , in carrying out its functions” in 2(a) (emphasis added)
536.231	Commission to devise plans and programs for development of water resources	The commission shall devise plans and programs for the development of the water resources of the state to encourage, promote and secure the maximum beneficial use and control of water.			1955	<ul style="list-style-type: none"> Enacted in 1955 Moved from 536.430 in 2013
536.235	Policy on minimum streamflows	Establishes minimum perennial streamflows as a high priority of the Water Resources Commission and the Water Resources Department.	X	1987	1983 1985	<ul style="list-style-type: none"> None
536.300	Formulation of state water resources program; public hearing in affected river basin	Provides that the commission performs enumerated studies, get input from various agencies, and forms a water use program for state water resources. The commission may adopt or amend a basin program only after holding at least one public hearing.	X	1987	1955 1965 1985	<ul style="list-style-type: none"> None
536.310	Purposes and policies to be considered in formulating state water resources	The commission is to consider purposes and declarations enumerated in ORS 536.220 and additional policies listed in this Statute in formulating the water	X	1987	1987	<ul style="list-style-type: none"> Replaced “commission” with “Water Resources Commission” in the first sentence “sufficient to support aquatic life, to minimize pollution <i>and to maintain</i>

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
	program	resources program.				<i>recreation values shall be fostered</i> ” replaced “sufficient to support aquatic life and to minimize pollution shall be fostered” in Section (7) (emphasis added)
536.315	Designation of exact land areas included within auxiliary lands	The commission may designate the exact land areas included within the auxiliary lands described in ORS 536.007 as part of water resources program.		1987	1987	<ul style="list-style-type: none"> Replaced “listing of auxiliary lands in ORS 536.007” with “auxiliary lands described in ORS 536.007”
536.320	Limitation of powers of commission	The commission has no power to interfere with internal affairs of any state agency or public corporation, modify or set aside existing water rights or their assigner priority, or modify or amend any standard or policy prescribed in the statute nor to adopt any rule or regulation in conflict therewith.		1987	1955	<ul style="list-style-type: none"> Replaced “commission” with “Water Resources Commission”
536.330	Water Resources Act as supplemental to and including existing statutes	The Water Resources Act is supplemental to existing statutes and not in lieu thereof except to the extent that existing statutes are expressly amended or repealed by the Act.		1987	1985	<ul style="list-style-type: none"> Replaced “commission” with “Water Resources Commission” Replaced “department” with “Water Resources Department”
536.340	Classification of water as to highest and best use and quantity of use;	Water Resources Commission may classify and reclassify the lakes, streams, underground reservoirs or other sources of	X	1987	1989(2x) 1997 2011	<ul style="list-style-type: none"> Added “(1)” to the opening clause Replaced “commission” with “Water Resources Commission” in the first clause

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
	enforcement of laws concerning loss of water rights; prescribing preferences for future uses	water supply in this state as to the highest and best use and quantities of use thereof through a resources statement for an integrated and balanced program. The commission shall comply with the Water Resources Department coordination program in making the classification or reclassification.				<ul style="list-style-type: none"> • Renumbered (1), (2), and (3) to (a), (b), and (c) respectively • Replaced “the” in the phrase “Classification or reclassification of sources of water supply as provided in <i>the</i>” with “this” in the new subsection (a) (emphasis added) • Added “or as accepted by the commission under ORS 536.295” to the exception to the restriction on uses and quantities of uses to which a water supply may be put. • Added to the end of (1)(a) “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” • Added Section (2), which sets requirements for the commission in classifying, reclassifying, and prescribing preferences for water supplies • Added Section (3), which sets

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
						requirements for the commission in acting in accordance with subsection (2) in a way that would limit new groundwater uses exempt under ORS 537.545
536.350	Delivery of water resources statement to certain public bodies; effect	The commission shall deliver a copy of each water resources statement to each state agency or public corporation of the state which may be concerned with or which may carry on activities likely to affect the use or control of the water resources.		1987	1985	<ul style="list-style-type: none"> • None
536.360	State agencies and public corporations to conform to statement of state water resources policy	Every state agency or public corporation of the State shall conform with the statements of the commission. The actions of agencies derogating from or interfering with the state water resources policy shall be lawful.	X	1987	1955	<ul style="list-style-type: none"> • Replaced “commission” with “Water Resources Commission”
536.410	Withdrawal of unappropriated waters from appropriation by commission order	The commission may issue a withdrawal order of any unappropriated waters when it determines that it is necessary to insure compliance with the state water resources policy or that it is otherwise necessary to conserve the water resources for the maximum beneficial use and control.	X	1987	1989	<ul style="list-style-type: none"> • Added “including exempt uses under ORS 537.545” after “be withdrawn from appropriation for all or any uses”

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
536.440	Investigations and studies	The commission, by itself or in conjunction with any person, committee or association, or a state agency or public corporation, any interstate agency or any agency of the federal government, may conduct investigations, surveys or studies relating to the water resources for carrying out the commission's functions.		1987	1955	<ul style="list-style-type: none"> Replaced "commission" with "Water Resources Commission"
EMERGENCY WATER SHORTAGE POWERS						
536.700	"Drainage basin" defined	Defines "drainage basin" as one of the 18 Oregon drainage basins identified by the department on maps published in January 1976.	X	1987	1977	<ul style="list-style-type: none"> Changed the range of sections this definition applies to from 536.700-536.730 to 536.700-536.780
536.710	Policy	The Legislative Assembly may find emergency due to a severe, continuing drought and can promote water conservation and to provide an orderly procedure to assure equitable curtailment, adjustment, allocation or regulation of water resources for users.	X	1987	1977	<ul style="list-style-type: none"> None
536.720	Declaration of state authority; Governor's power to order water	Declares water resource conservation in time of severe, continuing drought as the exercise of state authority till the	X	1987	1989	<ul style="list-style-type: none"> Removed subsections (2) through (5), which concerned procedures for and requirements of water conservation and curtailment plans

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ¹	Changes Since Last Approval
	conservation or curtailment plan	declaration is in effect. This allows Governor to order individual state agencies and political subdivisions within any drainage basin or sub-basin to implement a water conservation or curtailment plan or both.				<ul style="list-style-type: none"> • Renumbered subsections (6), (7), (8), and (9) to (2), (3), (4), and (5), respectively • Changed crossreferences to subsection (6) to reference subsection (2) in newly renumbered subsections (3) and (4) • Replaced “pursuant to this section” with “under ORS 536.780” at the end of the new subsection (2)(a) • Changed “pursuant to subsections (2) to (6) of this section” to “pursuant to ORS 536.780 and subsection (2) of this section”
536.730	Effect of emergency powers on vested water rights	Except when specifically mentioned, nothing in ORS 536.700 to 536.780 is intended to permit the Governor or the commission to hinder the ability of any holder of a vested water right to obtain and use legally assured benefits of that right.		1987	1989	<ul style="list-style-type: none"> • Added “Except as provided in ORS 536.740 and 536.750” at the start of the section • Changed the range of sections referenced from 536.700-536.730 to 536.700-536.780

Statutes to Be Incorporated into the Program

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
GENERAL PROVISIONS						
536.007	Definitions	Definitions for ORS 536.007 to 536.935 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	X		1985 1989	<ul style="list-style-type: none"> • Enacted in 1985, amended in 1989
WATER RESOURCES COMMISSION						
536.022	Water Resources Commission; members; terms; confirmation; compensation and expenses	Creates a Water Resources Commission comprised of seven members appointed by the Governor. Appointed members will be confirmed by Senate and have a term of four years. Also provides for the composition criteria for the members, their compensation and expenses.			1985 1995	<ul style="list-style-type: none"> • Enacted in 1985, amended in 1995
536.025	Duty of commission; delegation to Water	Identifies the duties of the commission, including to establish policies for the			1985	<ul style="list-style-type: none"> • Enacted in 1985

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ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
	Resources Director; exception	operation of the Water Resources Department; provides for the delegation of duties to the Water Resources Director and exceptions to that delegation authority.				
536.026	Powers of Water Resources Commission	Describes powers of the commission as conducting public hearings, issuing subpoenas, administering oath, take or cause deposition etc.			1985 1989 1999	<ul style="list-style-type: none"> Enacted as 536.029 in 1985, amended in 1989, renumbered in 1999
536.027	Rules and standards	Requires the commission to adopt rules and standards to perform its functions, and also to conduct public hearing for proposed rules and standards.	X		1985	<ul style="list-style-type: none"> Enacted in 1985
536.028	Rules pertaining to human or livestock consumption uses within or above scenic waterway	Gives the commission power to adopt rules necessary to administer the provisions pertaining to the issuance of a water right within or above a scenic waterway.	X		1993 1995	<ul style="list-style-type: none"> Enacted in 1993, amended in 1995
536.031	Applicability of rules to completed application for permit	Notes that the Water Resources Department may apply only the rules that are in effect on the date that a completed application is made for a permit in deciding whether to approve, deny or impose conditions on the permit.			1999	<ul style="list-style-type: none"> Enacted in 1999

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
WATER RESOURCES DIRECTOR						
536.032	Water Resources Director; term; qualifications	Requires the Director to be an individual qualified by training and experience, appointed by Governor and confirmed by Senate for term of four years.			1975 1985 2009	<ul style="list-style-type: none"> Enacted in 1975, amended in 1985, 2009
536.037	Functions of director	Provides the functions of Director (includes administering rules, prescribing internal policies, representing OR in forums regarding water resources etc.) that are subject to policy direction from the commission.			1985 1987	<ul style="list-style-type: none"> Enacted in 1985, amended in 1987
536.039	Water Resources Department	Establishes the Water Resources Department, including a director and personnel employees, under the Water Resources Commission.			1985	<ul style="list-style-type: none"> Enacted in 1985
536.040	Public records; copies as evidence	Establishes all records of the department as public record and establishes copies with the department as admissible evidence, requiring their preservation.			1975 1991	<ul style="list-style-type: none"> Enacted in 1975, amended in 1991
536.045	Sending or receipt of documents in electronic form; rules; fees	Allows for the electronic submission of the documents to the department in lieu of submission by mailing or in			2011	<ul style="list-style-type: none"> Enacted in 2011

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		written form, and identifies means to verify such electronic documents, fees involved, method to calculate timeliness of electronic documents.				
536.050	Fees; rules; refunds; waiver and reduction of certain fees	Allows the department to collect fees to examine application for permit, permits issuance, and other kinds of fees in advance.			1961 1967 1973 1975 1981 1983 1985 1987 1989 (4x) 1991 (2x) 1995 (2x) 1997 (2x) 1999 (4x) 2003 (x3) 2005 2007 (x2) 2009 2013	<ul style="list-style-type: none"> Unclear when enacted, amended in 1961, 1967, 1973, 1975, 1981, 1983, 1985, 1987, 1989 (4x), 1991 (2x), 1995 (2x), 1997 (2x), 1999 (4x), 2003 (x3), 2005, 2007 (x2), 2009
536.055	Agreements to expedite processing and review of applications, permits and other administrative matters; fees	Provides that the department can set fees to enable the department to expedite or enhance the regulatory process to provide services (that are within the department's authority) voluntarily requested under the			2003	<ul style="list-style-type: none"> Enacted in 2003

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		agreement.				
536.075	Judicial review of final order of commission or department; stay of order; scope of review	A party affected by a final order other than contested case issued by the commission or the department may appeal the order in 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.			1985 1999	<ul style="list-style-type: none"> Enacted in 1985, amended in 1999
536.080	Effect of records of former State Water Board and State Water Superintendent	Provides that the transfer of functions from the former State Water Board and State Water Superintendent to the State Engineer will not impair the legal force and effect of the official records or any evidence filed with the former Board and Superintendent.				<ul style="list-style-type: none"> Unclear history
536.090	Ground water advisory committee; duties; qualification; term; expenses	The commission to appoint a nine-member ground water advisory committee. The statute also provides the composition and duties of the committee.			1977 1981 1985 1991 1993	<ul style="list-style-type: none"> Enacted in 1977, amended in 1981, 1985, 1991, 1993
WATER RESOURCES ADMINISTRATION						
536.238	Policy on water storage facilities	Ensuring adequate planning for water resources for in-stream and out-of-stream uses in the	X		1993	<ul style="list-style-type: none"> Enacted in 1993

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		future through environmentally acceptable and financially feasible multipurpose water storage facilities and enhancing watershed storage capacity through natural processes using nonstructural means.				
536.241	Policy on water supply	Recognizing that ensuring adequate existing and future water supply needs planning and management of the water resources in a consistent and coordinated manner.	X		1999	<ul style="list-style-type: none"> Enacted in 1999
536.295	Conditions for consideration of application for use not classified in basin program; rules	Lists the conditions that the commission should consider for an application to appropriate water for a use not classified in the applicable basin program if the proposed use is consistent with the general policies of the program.	X		1989 1993 1999	<ul style="list-style-type: none"> Enacted in 1989, amended in 1993, 1999
536.370	Exercise of power in conflict with state water resources policy not effective until approved by commission	Any state agency or public corporation that received a copy of a state water resources statement cannot act in conflict with the state water resources policy without the approval of the commission.	X		1955	<ul style="list-style-type: none"> Enacted in 1955
536.380	Notification to commission of	Notify the commission of the proposed exercise in detail when			1955	<ul style="list-style-type: none"> Enacted in 1955

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
	proposed exercise of power involving water resources required; review and determination by commission	a state agency or public corporation exercises the power in conflict with state water resources policy. The commission shall notify applicant of its approval within 30 days of receiving the notification, or a protest against the action within 25 days after the filing of the notification. The commission then conducts a review with reasonable diligence and delivers a notice of the determination to the state agency or public corporation.				
536.390	Approval without filing notification	The commission can enter into agreements or provide orders, rules or regulations to approve the exercise of any one or more of the powers, duties or privileges by a state agency or public corporation which received a copy of a state water resources statement.			1955	<ul style="list-style-type: none"> Enacted in 1955
536.400	Application to court to compel compliance with state water resources policy	If any state agency or public corporation takes an action in conflict with the state water resources statement, without the approval of the commission, the commission, may apply to the	X		1955	<ul style="list-style-type: none"> Enacted in 1955

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		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.				
536.420	Representation of state in carrying out compacts and agreements with other governmental agencies regarding water resources	The Governor shall designate the Water Resources Director or a member/ members of the 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 the state.			1955 1961 1975 1999	<ul style="list-style-type: none"> Enacted in 1955, amended in 1961, 1975, 1999
[536.430]	Commission to devise plans and programs for development of water resources	The commission shall devise plans and programs for the development of the water resources of the state to encourage, promote and secure the maximum beneficial use and control of water.			1955	<ul style="list-style-type: none"> Enacted in 1955 Moved to 536.231 in 2013
536.450	Assistance by commission to other	The commission may make available technical advice and			1955	<ul style="list-style-type: none"> Enacted in 1955

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
	persons and agencies	information for the purpose of assisting any persons and local, state or federal agencies/corporations/committees for the use or control of the water resources according to the state water resources policy or securing the maximum beneficial use and control of the water resources.				
536.460	Preparation and submission of information or recommendations to other persons or agencies	The commission may prepare and submit information or proposals and recommendations relating to the water resources of the state or the functions of the commission as provided by law.			1955	<ul style="list-style-type: none"> Enacted in 1955
536.470	Coordination of local, state, interstate and federal programs	The commission may consult and cooperate with an agency or public corporation of Oregon or any other state or any interstate or federal agency for the purpose of promoting coordination between local, state, interstate and federal plans, programs and projects or to facilitate and assist the commission in carrying out its functions.			1955	<ul style="list-style-type: none"> Enacted in 1955
536.480	Making available information	The commission, insofar as practicable, shall make			1955	<ul style="list-style-type: none"> Enacted in 1955

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
	concerning water resources	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 the state or the functions of the commission.				
536.490	Attendance at conferences and meetings	The commission or a designated person may attend and participate in any public conference, meeting or hearing for the purpose of considering water resources problems.			1955	<ul style="list-style-type: none"> Enacted in 1955
536.500	Acceptance and expenditure of moneys from public and private sources	The commission may accept and expend moneys from any public or private source, including the federal government, made available for the purpose of promoting the maximum beneficial use and control of the water resources of this state or to facilitate and assist in carrying out its functions. All such moneys received shall be deposited in the state treasury and kept in a separate account in the General Fund, unless otherwise prescribed by the			1955	<ul style="list-style-type: none"> Enacted in 1955

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		source, and shall be expended in accordance with the appropriate terms and conditions.				
536.520	State agencies and public corporations furnishing information and services to commission	The commission may, to carry out its functions, 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; have access to the records, facilities or projects of the agencies concerning the water resources; solicit and utilize the services, records and other facilities of state agencies or public corporations, as well as the their employees.			1955	<ul style="list-style-type: none"> Enacted in 1955
536.540	Approval of voucher claims	All voucher claims for indebtedness or expenses authorized and incurred by the commission in carrying out its functions shall be approved by the commission or as provided in the statute.			1955	<ul style="list-style-type: none"> Enacted in 1955
MISCELLANEOUS PROVISIONS						
536.570	Moneys and securities of irrigation districts in	Authorizes the commission to deposit with the state treasurer all money and securities that			1957 1985	<ul style="list-style-type: none"> Unclear when enacted as 544.050; unclear when renumbered, amended in 1957, 1985

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
	possession of Water Resources Commission; deposit with State Treasurer	come into the commission's possession due to reorganization, retirement or settlement of the bonds, warrants or other evidences of indebtedness of any irrigation district.				
536.580	Rights acquired prior to August 3, 1955, not affected	The sections listed in the statute do not 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 1973 1985 2001	<ul style="list-style-type: none"> Enacted in 1955, amended in 1973, 1985, 2001
536.590	Rights acquired prior to January 1, 1956, not affected	The sections listed in the statute do not take away or impair any right to any waters or to the use of any waters vested and inchoate prior to January 1, 1956.			1955 1969 1985	<ul style="list-style-type: none"> Enacted in 1955, amended in 1969, 1985
536.595	Department discussions with Corps of Engineers over operation of Detroit Lake	The department shall inform the USACOE in their discussions of seasonal operations of Detroit Lake, as assigning the Lake with the highest priority recreational use. If USACOE does not agree with this use assignment, the department shall notify and hold public meetings for the affected communities.			2001	<ul style="list-style-type: none"> Enacted in 2001

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
EMERGENCY WATER SHORTAGE POWERS						
536.740	Governor's authority to declare drought	Upon finding that a need exists for statewide coordination of water resource conservation measures, the Governor may declare that a severe, continuing drought exists or is likely to exist.			1989	<ul style="list-style-type: none"> Enacted in 1989
536.750	Powers of commission after declaration of drought; rules	After declaring drought, the commission gets many powers including granting a temporary permit for an emergency use of water without a hearing; allowing a temporary change in use, place of use or point of diversion of water without complying with the notice and waiting requirements; grant preference of use to rights for human consumption or stock watering use etc.	X		1989 1999 2001	<ul style="list-style-type: none"> Enacted in 1989, amended in 1999, 2001
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			1989	<ul style="list-style-type: none"> Enacted in 1989

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		537.110 to 537.252, 537.505 to 537.795 and 537.992 or 540.520 and 540.530.				
536.770	Purchase of option or agreement for use of water permit or right during declared drought; application; fee	The commission or a local government, public corporation or water right holder may purchase an option or enter an agreement for fees to use an existing permit or water right during the time in which a severe, continuing drought is declared to exist. After application approval, the option or agreement user is allowed to use water any time after approval, but with certain conditions.			1989 1993 1997 2001	<ul style="list-style-type: none"> Enacted in 1989, amended in 1993, 1997, 2001
536.780	Water conservation or curtailment plan; contents; review; effect of failure to file or implement	Upon a finding of a severe or continuing drought, the commission may order individual state agencies and political subdivisions within any drainage basin or subbasin to develop and file with the commission, within 30 days (or more if allowed) following the order, a water conservation or curtailment plan or both for approval. The water conservation plan and the water			1989	<ul style="list-style-type: none"> Enacted in 1989

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		curtailment plan shall specify efforts to be made. The curtailment plan ensures necessary water for human and livestock consumption during a severe and continuing drought.				
PENALTIES						
536.900	Civil penalties; imposition	In addition to any other liability or penalty provided by law, the commission may impose a civil penalty on a person for various violations of any of the terms or conditions of a permit, certificate or license issued; violations of several state statutes, and any rule or order of the commission. A civil penalty will not be imposed until the commission prescribes a reasonable time to eliminate the violation.	X		1989 1991 1993 1999 2001 2003 2009	<ul style="list-style-type: none"> Enacted in 1989, amended in 1991, 1993, 1999, 2001, 2003, 2009
536.905	Notice; application for hearing	The person to whom the notice of civil penalty 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 1991	<ul style="list-style-type: none"> Enacted in 1989, amended in 1991
536.910	Amount of penalty; rules	After public hearing, the commission by rule shall adopt			1989	<ul style="list-style-type: none"> Enacted in 1989

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
		a schedule establishing the civil penalty (not exceeding \$5,000 for each violation) that may be imposed and the time allowed to correct each violation.				
536.915	Remission or reduction of penalty	A civil penalty imposed may be remitted or reduced upon such terms and conditions as the commission considers proper and consistent with the public health and safety and protection of the public interest in the waters of the state.			1989	<ul style="list-style-type: none"> Enacted in 1989
536.920	Factors to be considered in imposition of penalty	The commission shall consider factors such as the past history of the person incurring a penalty in taking all feasible steps to correct violation, any prior violations of water use, the economic and financial conditions of the person incurring the penalty, and 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	<ul style="list-style-type: none"> Enacted in 1989
536.930	Consequence of failure to follow	An owner or operator who fails to take corrective action per	X		1989 1991	<ul style="list-style-type: none"> Enacted in 1989, amended in 1991

ORS Section	Current Title	Description	Enf. Policy	Last OCRM Approval	Updates Adopted & Effective ²	Statutory History
	order	order of the Water Resources Commission without a sufficient shall be liable for damages not exceeding the expenses incurred by the Water Resources Department in enforcement.				
536.935	Disposition of penalties; appropriation	All penalties recovered under above shall be paid into the state treasury and credited to an account of the Water Resources Department for the department to carry out the provisions of the statutes.			1989 1999	<ul style="list-style-type: none"> Enacted in 1989, amended in 1999

Statutes that Were in the Program but Have Been Repealed since Last OCRM Approval

ORS Section	Title at Last Approval	Description	Last OCRM Approval	Changes Since Last Approval
WATER RESOURCES ADMINISTRATION				
[536.325]	Establishment of minimum streamflows; application for minimum stream flow by state agencies; action on application; time limit; findings	Authorizes the commission to establish or modify minimum perennial streamflows; sets the conditions for doing so without adopting a new basin program or a comprehensive update of an existing basin program; identifies the priority dates for minimum perennial streamflows; sets a timeline for reviewing applications; and identifies the role of the governor in this process	1987	<ul style="list-style-type: none"> • Repealed in 1997

Text of ORS Chapter 536 Statutes Included in the July 24, 2014 RPC
2013 Edition Oregon Revised Statutes

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]

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]

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 DIRECTOR

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]

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.

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 ADMINISTRATION

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]

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]

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]

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 ordinance 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]

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]

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 appropriations 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]

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, including 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]

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 plans; 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 conservation 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]

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]

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]

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]

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]

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]

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]