

OWRD ENFORCEABLE  
POLICIES

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Generally Implemented by:

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## WATER RESOURCES POLICIES AND PROGRAMS

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

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

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

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

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

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and

that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency that, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

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

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

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

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

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

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

(B) Objectives of the strategy.

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

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

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

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

(G) Public policy options and recommendations.

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

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

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

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

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

## 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]

## APPROPRIATION OF WATER GENERALLY

### WATER LAWS

### GENERAL PROVISIONS

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

### APPROPRIATION UNDER 1909 ACT; LIMITED LICENSES

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

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

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

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

(3) The department may not issue a permit without notifying the owner, as identified in the application, of any land to be crossed by the proposed ditch, canal or other work as set forth in the application filed pursuant to ORS 537.140. The department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(4) If more than 25 persons are identified in the application as required under subsection (3) of this section, the department may provide the notice required under subsection (3) of this section by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least two successive weeks. The cost of the publication shall be paid by the applicant in advance to the department. [Amended by 1985 c.310 §3; 1985 c.673 §25; 1989 c.509 §3; 1991 c.370 §4; 1995 c.365 §1; 1995 c.416 §2a; 2005 c.14 §2; 2011 c.52 §2]

**537.135 Permit required to appropriate water for recharging ground water sources; minimum perennial streamflow required for permit; exception.** (1) The appropriation of water for the purpose of recharging ground water basins or reservoirs is declared to be for a beneficial purpose. Permits for such appropriation may be granted by the Water Resources Department on application made therefor. Any such application shall substantially comply with ORS 537.140 and shall be subject to the provisions of ORS 537.150 to 537.230, as are other applications and permits to appropriate water.

(2) Any person proposing to apply to a beneficial use the water stored artificially in any such ground water basin or reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.230. The application shall refer to the artificially recharged ground water basin or reservoir as a supply of water and shall include the written consent of the holder of the recharge permit or certificate to appropriate the artificially recharged water.

(3) The Water Resources Commission shall develop standards that an applicant must meet before the department approves a permit to appropriate water for the purpose of recharging ground water.

(4) Before issuing a permit for the purpose of recharging ground water, the department shall determine, under ORS 537.170, whether the proposed ground water recharge project would impair or be detrimental to the public interest.

(5) The department shall not issue a ground water recharge permit unless the supplying stream has a minimum perennial streamflow established for the protection of aquatic and fish life. The State Department of Fish and Wildlife may waive this prerequisite if a minimum perennial streamflow for protection of aquatic and fish life is not required for the supplying stream. [1961 c.402 §1; 1985 c.673 §26; 1987 c.499 §1; 1995 c.416 §3]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. In addition, the department shall accept locational coordinate information, including latitude and longitude as established by a global positioning system. If the application is for a water right for a municipal use, the map need not identify the proposed place of use by tax lot.

(5) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050 (1).

(6) If the proposed use of the water is for operation of a mining operation as defined in ORS 517.952, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

(7) Notwithstanding any provision of ORS chapter 183, an application for a permit to appropriate water shall be processed in the manner set forth in ORS 537.120 to 537.360. Nothing in ORS chapter 183 shall be construed to allow additional persons to participate in the process. To the

extent that any provision in ORS chapter 183 conflicts with a provision set forth in ORS 537.120 to 537.360, the provisions in ORS 537.120 to 537.360 shall control. [Amended by 1985 c.673 §27; 1987 c.542 §5; 1989 c.509 §4; 1991 c.735 §32; 1991 c.869 §6; 1993 c.557 §1; 1993 c.591 §2; 1995 c.365 §3; 1995 c.416 §5; 1997 c.446 §1; 1997 c.587 §4; 2013 c.371 §31]

**537.150 Filing of application; determination of completeness; initial review; preliminary determination; notice; public comments; fees. (1)**

Within 15 days after receiving an application, the Water Resources Department shall determine whether the application contains the information listed under ORS 537.140 (1) and is complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the department determines that the application is incomplete or defective or that not all fees have been paid, the department shall return the fees paid and the application.

(2) Upon determining that an application contains the information listed under ORS 537.140 (1) and is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

(3) If an application is complete and not defective, the department shall determine whether the proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter 538, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake an initial review of the application and make a preliminary determination of:

- (a) Whether the proposed use is restricted or limited by statute or rule;
- (b) The extent to which water is available from the proposed source during the times and in the amounts requested; and
- (c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of \$260. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1). [Amended by 1985 c.673 §28; 1993 c.557 §2; 1995 c.416 §9; 2007 c.267 §2; 2009 c.819 §§6,13; 2013 c.644 §§3,4; 2017 c.571 §§3,4]

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

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

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

**537.170 Contested case hearing on application; final order; appeal.** (1) Within 45 days after the Water Resources Director schedules a contested case hearing under ORS 537.153 (8), the Water Resources Department shall hold the contested case hearing. The issues to be considered in the contested case hearing shall be limited to issues identified by the administrative law judge.

(2) Notwithstanding the provisions of ORS chapter 183 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this section shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under ORS 537.153 (5) and who requests to intervene in the contested case hearing prior to the start of the proceeding.

(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS chapter 183 except:

(a) As provided in subsections (1) and (2) of this section; and

(b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

(4) If applicable, an application to appropriate water for the generation of electricity submitted under ORS 537.140 shall be included in the consolidated review and hearings process under ORS 543.255.

(5) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Water Resources Department an opportunity to respond to the issue precludes judicial review based on that issue.

(6) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the director shall issue a final order rejecting the application or modifying the proposed final order to conform to the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use would not impair or be detrimental to the public interest, the director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

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

(a) Where the final order modifies the proposed final order, the applicant may request and the department shall schedule a contested case hearing as provided under subsection (3) of this section by submitting the information required for a protest under ORS 537.153 (6) within 14 days after the director issues the final order. However, the issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.

(b) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS chapter 183 for appeal of order other than contested cases.

(8) If the presumption of public interest under ORS 537.153 (2) is overcome, then before issuing a final order, the director or the commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

(9) Upon issuing a final order, the director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050 (1)(p). [Amended by 1955 c.707 §36; 1961 c.224 §12; 1963 c.378 §1; 1975 c.581 §26; 1985 c.569 §19; 1985 c.673 §30; 1995 c.416 §13; 1997 c.587 §6; 2003 c.75 §96]

**537.240 Federal permit; time for obtaining; cancellation; time for beginning and completing work.** (1) In any case where a permit from the Federal Energy Regulatory Commission is or shall be required in connection with the development of the applicant's proposed project, the applicant shall make application for the necessary federal permit or license within six months, or, if the applicant is a municipal corporation, within 10 years, from the date of filing application for appropriation of water with the Water Resources Department.

(2) Upon failure of the applicant to file with the department, within 30 days after the expiration of the period above prescribed, satisfactory proof that application for the federal permit or license has been duly made, the application to appropriate water shall be terminated and become void.

(3) Where the application for the necessary permit or license from the Federal Energy Regulatory Commission is finally rejected or disallowed, or if after being granted, the permit or license is revoked or forfeited because of failure to begin or carry on the construction work when and as required by the permit or license, then the department shall, upon the filing in the Water Resources Department of satisfactory proof of such fact,

revoke and cancel any permit issued by the department for appropriation of water for use in the project for which the federal permit or license was required.

(4) In case of any permit issued for the appropriation of water for the utilization of which a permit or license from the Federal Energy Regulatory Commission is necessary, the time to be allowed for the beginning and completion of construction under the permit from the department shall be made to conform to the time fixed for such beginning and completion in the permit or license, and in any extension thereof, issued for the project by the Federal Energy Regulatory Commission. [Amended by 1985 c.673 §36; 1995 c.416 §36]

## IN-STREAM WATER RIGHTS

**537.332 Definitions for ORS 537.332 to 537.360.** As used in ORS 537.332 to 537.360:

(1) "In-stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(2) "In-stream flow" means the minimum quantity of water necessary to support the public use requested by an agency.

(3) "In-stream water right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use. An in-stream water right does not require a diversion or any other means of physical control over the water.

(4) "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(5) "Public use" includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation. [1987 c.859 §2; 1995 c.416 §32]

**537.334 Findings.** The people of the State of Oregon find and declare that:

(1) Public uses are beneficial uses.

(2) The recognition of an in-stream water right under ORS 537.336 to 537.348 shall not diminish the public's rights in the ownership and control of the waters of this state or the public trust therein. The establishment of an in-stream water right under the provisions of ORS 537.332 to 537.360 shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established pursuant to the provisions of ORS 537.332 to 537.360. [1987 c.859 §3]

**537.336 State agencies authorized to request in-stream water rights; agreement required when supply is stored water.** (1) The State Department of Fish and Wildlife may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Department of Fish and Wildlife.

(2) The Department of Environmental Quality may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state to protect and maintain water quality standards established by the Environmental Quality Commission under ORS 468B.048. The request shall be for the quantity of water necessary for pollution abatement as recommended by the Department of Environmental Quality.

(3) The State Parks and Recreation Department may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to recreation and scenic attraction. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Parks and Recreation Department.

(4) Any request for an in-stream water right to be supplied from stored water shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the request. [1987 c.859 §4; 1989 c.904 §68; 1995 c.673 §1]

**537.341 Certificate for in-stream water right.** Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. A certificate for an in-stream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336. [1987 c.859 §6; 1995 c.673 §2]

**537.343 Proposed final order; conditions.** (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

- (a) Approve the in-stream water right for the quantity of water requested;
- (b) Approve the requested in-stream water right for a lesser quantity of water; or
- (c) Reject the requested in-stream water right.

(2) If the director reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the director shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The director shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(3) After the director issues a final order approving an in-stream water right, the Water Resources Department shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7; 1995 c.416 §20]

**537.346 Conversion of minimum perennial streamflows to in-stream water rights; special provisions for Willamette Basin.** (1) All minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and the Water Resources Department issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow.

(2) The priority date for that portion of an in-stream water right that uses the stored water component of a minimum perennial streamflow in the Willamette Basin shall be the date the commission or its predecessor adopted the minimum perennial streamflow containing the stored water component.

(3) Notwithstanding the priority date established under subsection (2) of this section, until the state enters into a contract that meets the criteria set forth in subsection (4) of this section with the owner of the storage facility to release the stored water for the purpose of satisfying the in-stream water right, for that portion of an in-stream water right in the Willamette Basin converted from the stored water component of a minimum perennial streamflow, the department:

(a) May not require the release of the stored water; and

(b) Shall not regulate the use of water to provide water for the portion of the in-stream water right using stored water.

(4) A contract for the release of stored water to satisfy an in-stream water right shall:

(a) Include as parties to the contract the State of Oregon and the owner of the storage facility;

(b) Specifically allow the state to obtain the release of stored water to satisfy an in-stream water right; and

(c) Identify a method to determine the specific quantity of water released from storage to satisfy the stored water component of the in-stream water right.

(5) If the federal government does not release water to satisfy a stored water component of an in-stream water right pursuant to a contract that satisfies the criteria set forth in subsection (4) of this section, the department may not regulate the use of water by other water right holders to satisfy the stored water component of an in-stream water right or take any other action that impairs the rights of any person under a valid contract for the use of the stored water. [1987 c.859 §8; 1995 c.72 §1; 1997 c.212 §3; 1999 c.59 §170; 2001 c.104 §227]

**537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates; split use.** (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to (6) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to (6) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed. However, the total period for which a water right may be leased for split use as described in subsection (3) of this section may not exceed 10 years regardless of the number of leases or renewals of leases issued for the water right.

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream water right during the same calendar year, provided:

(a) The uses of the existing water right and the in-stream water right are not concurrent; and

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right.

(4) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(5) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights. If the lease is for the split use of water between the existing water right and the in-stream water right during the same calendar year, the conditions imposed in the order approving the request must include, but need not be limited to, compliance with subsection (3) of this section.

(6) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right. [1987 c.859 §9; 2001 c.205 §§1,2; 2013 c.165 §1]

**Note:** The amendments to 537.348 by section 2, chapter 165, Oregon Laws 2013, become operative January 2, 2024. See section 3, chapter 165, Oregon Laws 2013. The text that is operative on and after January 2, 2024, is set forth for the user's convenience.

**537.348.** (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. Except as provided in subsections (2) to (5) of this section, a person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.505 to 540.585.

(2) Subject to subsections (3) to (5) of this section, any person who has an existing water right may lease all or a portion of the existing water right for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of the lease, the use of the water right as an in-stream water right shall be considered a beneficial use. The term of the lease may not exceed five years. There is no limitation on the number of times that the lease may be renewed.

(3) A person who has an existing water right and wishes to lease the water right as described in subsection (2) of this section must file a request and obtain department approval of the lease. Upon receipt of the request, the department shall provide notice of the request by inclusion in the weekly notice published by the department. Any allegation of injury must be delivered to the department no later than 21 days after publication of the request in the weekly notice.

(4) After publishing notice of a request made under subsection (2) of this section and allowing time for the delivery of allegations of injury, the department shall issue an order approving the request if the department finds that the leasing of the water right for in-stream use can be effected without injury to other existing water rights or can be conditioned to prevent injury to other existing water rights.

(5) The department at any time may revoke or modify an order issued for a lease under subsection (2) of this section if the department determines that the use of the water right for in-stream use under the lease has resulted in or may result in injury to an existing water right.

**Note:** Section 5 (2), chapter 165, Oregon Laws 2013, provides:

**Sec. 5. (2)** Notwithstanding the amendments to ORS 537.348 by section 2 of this 2013 Act, any lease or lease renewal allowing the split use of water between an existing water right and an in-stream water right during the same calendar year and having a term that began before the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act [January 2, 2024] may continue in effect until the earlier of the expiration of the term or five years after the operative date of the amendments to ORS 537.348 by section 2 of this 2013 Act. This subsection does not allow the total period for which a water right may be leased for the split use of water during the same calendar year to exceed 10 years. [2013 c.165 §5(2)]

**537.349 Processing request for in-stream water right.** Except as provided in ORS 537.343, the Water Resources Department shall process a request received under ORS 537.336 for a certificate for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.252. [1995 c.416 §19]

**537.350 Legal status of in-stream water right.** (1) After the Water Resources Commission issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water right shall have the same legal status as any other water right for which a certificate has been issued.

(2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650. [1987 c.859 §10]

**537.352 Precedence of uses.** Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the use of the waters of this state for a project for multipurpose storage or municipal uses or by a municipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall take precedence over an in-stream water right when the Water Resources Department conducts a review of the proposed project in accordance with ORS 537.170. The precedence given under this section shall not apply if the in-stream water right was established pursuant to ORS 537.346 or 537.348. [1987 c.859 §11; 1995 c.416 §42]

## PONDS AND RESERVOIRS

**537.400 Reservoir permits.** (1) All applications for reservoir permits shall be subject to the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed to be irrigated under the Water Rights Act shall not be required in the primary permit. But the party proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a sufficient interest in the reservoir to impound enough water for the purposes set forth in the application, that the applicant has provided notice of the application to the operator of the reservoir and, if applicable, that an agreement has been entered into with the entity delivering the stored water. When beneficial use has been completed and perfected under the secondary permit, the Water Resources Department shall take the proof of the water user under the permit. The final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit.

(2) Whenever application is made for permit to store water in a reservoir or pond for any beneficial use which does not contemplate future diversion of the stored water except by livestock drinking from stock water ponds, the extent of utilization thereof may be included in the reservoir permit and no secondary permit shall be required. However, in cases where water from a stream is required to maintain a reservoir or pond by replacing evaporation and seepage losses, or is required to maintain suitable fresh water conditions for the proposed use and to prevent stagnation, the applicant for permit to store water in such reservoir or pond shall also file an application for permit to appropriate the waters of the stream.

(3) An application submitted to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height need not be accompanied by a map prepared by a water right examiner certified under ORS 537.798 as required by ORS 537.140 (4). The map submitted with the application shall comply with standards established by the Water Resources Commission. The survey required under ORS 537.230 shall be prepared by a water right examiner certified under ORS 537.798 and shall be submitted to the department before the department issues the water right certificate.

(4) If a dam safety review is required under ORS 540.350, the department may issue a final order approving an application on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission's approval of final plans, specifications and supporting information under ORS 540.350 before the permit is issued.

(5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an application for a reservoir permit for which a dam safety review is required under ORS 540.350 and issue a permit, subject to the condition that before the reservoir may be filled, the permittee shall submit to the department evidence that the permittee owns, or has written authorization or an easement permitting access to, all lands to be inundated by the reservoir. [Formerly 537.300; and then 537.345; 1993 c.557 §3; 1993 c.595 §9; 1995 c.365 §6; 2005 c.37 §3]

#### CANCELLATION OF PERMIT FOR APPROPRIATION

**537.410 Failure to commence or complete work, or to properly apply water, as grounds for cancellation of permit; irrigation districts, municipalities and public utilities excepted.** (1) Whenever the owner of a permit to appropriate the public waters of Oregon fails to commence actual construction work within the time required by law, or having commenced construction work as required by law, fails or neglects to prosecute the construction work with reasonable diligence, or fails to complete the construction work within the time required by law, or as fixed in the permit, or within such further time as may be allowed under ORS 537.230, or having completed construction work, fails or neglects to apply the water to beneficial use within the time fixed in the permit, the Water Resources Commission may cancel the permit on the records in the Water Resources Department as provided in ORS 537.410 to 537.450.

(2) However, permits issued by the commission to irrigation districts for reclamation purposes under the irrigation district laws of this state, to municipal corporations for municipal uses or purposes or to public utilities complying with subsection (3) of this section for an energy facility granted a site certificate by the Energy Facility Siting Council, are not subject to cancellation under the provisions of ORS 537.410 to 537.450.

(3) For a public utility to qualify under subsection (2) of this section:

(a) The energy facility of the public utility must not be a facility required to be licensed under ORS chapter 543; and

(b) The public utility must supply information every two years that demonstrates to the satisfaction of the commission that the conditions in the site certificate issued by the Energy Facility Siting Council contemplate the future use of the remaining portion of the water applied for in the original permit application. [Amended by 1985 c.673 §41; 1995 c.372 §1]

**537.420 Notice of hearing.** Whenever a permit holder fails to comply with the laws of the state and the requirements of the permit as to the commencement of work with due diligence, completion of the work of construction or the application of the water for a beneficial use, and the permit is subject to cancellation as provided in ORS 537.410 to 537.450, the Water Resources Commission shall, not less than 30 nor more than 60 days prior to the hearing provided for in ORS 537.445, notify each person who, according to Water Resources Department records, is the holder of a water right permit or certificate whose right may be injured by the proposed cancellation. The notice shall require the holder of the permit to appear before the commission at the time and place designated in the notice, and show cause why the permit described in the notice should not be canceled for the reasons therein specified. The notice shall contain a brief statement of the grounds for cancellation and shall be served in accordance with ORS 183.415. [Amended by 1983 c.740 §212; 1985 c.673 §42; 1991 c.103 §1]

**537.440 Cancellation of permit; priorities of other permits.** If the decision of the Water Resources Commission requires the cancellation of a permit, then the commission shall at once cancel, or have canceled, the permit. Thereafter the permit shall be of no further force or effect, and shall not be recognized or admitted as evidence of any right or interest in or to the waters covered by it in any proceeding in the courts or before other tribunals of the state. Permits having subsequent priority shall upon such cancellation have priority in the order of the filing of the applications upon which subsequent permits are based, as if the canceled permit, or the application upon which it was based, had never existed. [Amended by 1985 c.673 §43]

**537.445 Hearing upon proposal to cancel permit or appropriation; cancellation suspended pending review.** (1) If the Water Resources Commission proposes to cancel a permit or appropriation under ORS 537.410 to 537.450, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) If a petition for review of an order canceling a permit or appropriation is filed under ORS 536.075, the commission shall not cancel the permit or appropriation under ORS 537.440 until the petitioner's right of review is exhausted and the order is finally approved. [1971 c.734 §82; 1985 c.673 §44]

**537.450 Rules for proof as to work and use of water under permits; noncompliance as evidence in cancellation proceedings.** The Water Resources Commission may by rule provide that the owners of permits shall submit or furnish proofs of commencement of work, prosecution of work with due diligence, completion of work, and of the application of water to a beneficial use under the permits. Failure to comply with the commission's rules in respect to the proofs shall be considered prima facie evidence of failure to commence work, prosecute work with due diligence, complete work, or apply water to the beneficial use contemplated by the permit in proceedings under ORS 537.410 to 537.440 for the cancellation of permits. [Amended by 1985 c.673 §45]

## GROUND WATER

(Generally)

**537.505 Short title.** ORS 537.505 to 537.795 and 537.992 shall be known as the "Ground Water Act of 1955." [1955 c.708 §1; 1963 c.293 §1]

**537.510** [Repealed by 1955 c.708 §38]

**537.515 Definitions for ORS 537.505 to 537.795 and 537.992.** As used in ORS 537.505 to 537.795 and 537.992, unless the context requires otherwise:

(1) “Altering” a well means the deepening, recasing, perforating, reperforming, the installation of packers or seals and other material changes in the design of the well.

(2) “Constructing” a well includes boring, digging, drilling or excavating and installing casing or well screens.

(3) “Converting” a well means changing the use of an existing well or hole not previously used to withdraw water such that the well or hole can be used to seek or withdraw water.

(4) “Geothermal fluid” means any ground water used for its thermal characteristics that is encountered in a well with a bottom hole temperature of less than 250 degrees Fahrenheit or any other fluid that is circulated within a well with a bottom hole temperature of less than 250 degrees Fahrenheit and used for its acquired thermal characteristics.

(5) “Ground water” means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(6) “Ground water reservoir” means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(7) “Pollution” of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(8) “Public agency” means the United States or any agency thereof, the State of Oregon or any agency thereof or any county, city, district organized for public purposes or other public corporation or political subdivision of this state.

(9) “Well” means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn. “Well” does not include a temporary hole drilled for the purpose of gathering geotechnical ground water quality or ground water level information, a natural spring or a hole drilled for the purpose of:

(a) Prospecting, exploration or production of oil or gas;

(b) Prospecting or exploration for geothermal resources, as defined in ORS 522.005;

(c) Production of geothermal resources, as defined in ORS 522.005, derived from a depth of greater than 2,000 feet; or

(d) Exploration for minerals as defined in ORS 517.750 and 517.910.

(10) “Well drilling machine” means any power driven percussion, rotary, boring, digging or augering machine used in the construction of water wells. [1959 c.708 §3; 1961 c.334 §6; 1975 c.552 §35; 1989 c.201 §1; 1989 c.939 §1; 1991 c.200 §1; 1995 c.79 §302; 1999 c.293 §1]

**537.525 Policy.** The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

(11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS 468B.155. [1955 c.708 §2; 1985 c.673 §46; 1989 c.201 §2; 1989 c.833 §56]

#### (Appropriation of Ground Water)

**537.535 Unlawful use or appropriation of ground water, including well construction and operation.** (1) No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992.

(2) Except for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water. [1955 c.708 §4; 1957 c.341 §5; subsection (2) enacted as 1961 c.668 §2; 1985 c.673 §47]

**537.545 Exempt uses; map; filing of use; fee; rules.** (1) No registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is required for the use of ground water for:

(a) Stockwatering purposes;

- (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;
- (c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;
- (d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;
- (e) Down-hole heat exchange purposes;
- (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day; or
- (g) Land application, so long as the ground water:
  - (A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;
  - (B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and
  - (C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.
- (2) A ground water use for a purpose that is exempt under subsection (1) of this section, to the extent that the use is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700.
- (3) Except for the use of water under subsection (1)(g) of this section, the Water Resources Commission by rule may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof. For a use of water described in subsection (1)(g) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.
- (4) If it is necessary for the Water Resources Department to regulate the use or distribution of ground water, including uses for purposes that are exempt under subsection (1) of this section, the department shall use as a priority date for the exempt uses the date indicated in the log for the well filed with the department under ORS 537.765 or other documentation provided by the well owner showing when water use began.
- (5) The owner of land on which a well is drilled to allow ground water use for a purpose that is exempt under subsection (1) of this section shall provide the Water Resources Department with a map showing the exact location of the well on the tax lot. The landowner shall provide a map required by this subsection to the department no later than 30 days after the well is completed. The map must be prepared in accordance with standards established by the department.
- (6) The owner of land on which a well described in subsection (5) of this section is located shall file the exempt ground water use with the Water Resources Department for recording. The filing must be accompanied by the fee described in subsection (7) of this section. The filing must be received by the department no later than 30 days after the well is completed.
- (7) The Water Resources Department shall collect a fee of \$300 for recording an exempt ground water use under subsection (6) of this section. Moneys from fees collected under this subsection shall be deposited to the credit of the Water Resources Department Water Right Operating Fund. Notwithstanding ORS 536.009, moneys deposited to the fund under this subsection shall be used for the purposes of evaluating ground water supplies, conducting ground water studies, carrying out ground water monitoring, processing ground water data and the administration and enforcement of this subsection and subsections (3), (5), (6) and (8) of this section.

(8) The Water Resources Commission shall adopt rules to implement, administer and enforce subsections (5) to (7) of this section. [1955 c.708 §5; 1983 c.372 §1; 1983 c.698 §1; 1985 c.673 §48; 1989 c.99 §1; 1989 c.833 §57; 1997 c.244 §3; 2001 c.248 §12; 2003 c.594 §2; 2009 c.819 §1]

**537.575 Permits granted, approved or pending under former law.** Any permit granted or application for a permit approved under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to and still valid and in effect on August 3, 1955, is considered to be a permit issued under ORS 537.625. Any application for a permit under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to, pending and not yet approved on August 3, 1955, shall be governed as an application for a permit under ORS 537.615, 537.620, 537.621, 537.622 and 537.625. [1955 c.708 §6(1); 1999 c.59 §171]

**537.585 Beneficial use of ground water prior to August 3, 1955, recognized as right to appropriate water when registered.** Except as otherwise provided in ORS 537.545 or 537.575 or 537.595 and subject to determination under ORS 537.670 to 537.695, actual and lawful application of ground water to beneficial use prior to August 3, 1955, by or under the authority of any person or public agency or by or under the authority of a predecessor in interest of such person or public agency, when registered under ORS 537.605 and 537.610, is recognized as a right to appropriate ground water to the extent of the maximum beneficial use thereof at any time within two years prior to August 3, 1955. [1955 c.708 §6(2)]

**537.595 Construction or alteration of well commenced prior to August 3, 1955, recognized as right to appropriate water when registered.** Except as otherwise provided in ORS 537.545 or 537.575 or 537.585 and subject to determination under ORS 537.670 to 537.695, when any person or public agency on August 3, 1955, is lawfully engaged in good faith in such construction, alteration or extension of a well for the application of ground water to beneficial use, the right to appropriate such ground water, upon completion of such construction, alteration or extension and application of the ground water to beneficial use within a reasonable time fixed by the Water Resources Commission, when registered under ORS 537.605 and 537.610, is recognized to the extent of the beneficial use of the ground water. [1955 c.708 §6(3); 1985 c.673 §49]

**537.605 Registration of right to appropriate ground water claimed under ORS 537.585 or 537.595; registration statement.** (1) Any person or public agency claiming any right to appropriate ground water under ORS 537.585 or 537.595, except for any purpose exempt under ORS 537.545, is entitled to receive from the Water Resources Commission within three years after August 3, 1955, a certificate of registration as evidence of a right to appropriate ground water as provided in ORS 537.585 or 537.595. Failure of such person or public agency to file a registration statement within such period creates a presumption that any such claim has been abandoned.

(2) Upon receipt of a request for registration by any person or public agency referred to in subsection (1) of this section within the period specified, the commission shall provide such person or public agency with a separate registration statement for each well, which shall be completed and returned to the commission.

(3) Each registration statement shall be in a form prescribed by the commission, shall be under oath and shall contain:

(a) The name and post-office address of the registrant.

(b) The nature of the use by the registrant of the ground water upon which the claim of the registrant is based.

(c) The dates when the ground water was or will be first applied to beneficial use and the dates when construction of the well was begun and completed.

(d) The amount of ground water claimed.

(e) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision, the dates of reclamation of each such legal subdivision and the date when the ground water was or will be completely applied.

(f) The depth to the water table.

(g) The location of the well with reference to government survey corners or monuments or corners of recorded plats.

(h) The depth, diameter and type of the well, and the kind and amount of the casing.

(i) The capacity of the well and well pump in gallons per minute, and the horsepower of the well pump motor.

(j) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the commission may prescribe.

(k) The amount of ground water pumped or otherwise taken from the well each year.

(L) A copy of the log of the completed well, if such log is available.

(m) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certification or adjudicated right to appropriate water made or held by the registrant.

(n) Such other information as the commission considers necessary.

(4) Each registration statement shall be accompanied by maps, drawings and other data as the commission considers necessary.

(5) The commission may require that any registration statement be supplemented after any well is fully completed by a statement containing such additional information as the commission considers necessary.

(6) Any person or public agency who failed to file a registration statement within the period set forth in subsection (1) of this section may file within one year after May 29, 1961, a petition with the commission requesting that the person be given an opportunity to rebut the presumption that the person has abandoned the claim. Upon the filing of such a petition the commission may schedule a hearing to take testimony and evidence on the date of well construction and the use of ground water or the commission may accept sworn statements in writing in support of such petition. No petition shall be denied without a public hearing. If it appears after hearing or from such sworn statements, that the person or public agency has a use of ground water that would be subject to determination under ORS 537.670 to 537.695 as defined in ORS 537.585 and 537.595, the commission shall issue an order authorizing the petitioner to file a registration statement as described under subsection (3) of this section. Upon receipt of the completed registration statement the commission shall issue to the registrant a certificate of registration, as provided in ORS 537.610. [1955 c.708 §7; 1957 c.341 §6; 1961 c.668 §3; 1985 c.673 §50]

**537.610 Recording registration statement; issuing certificate of registration; effect of certificate; rules; fees.** (1) The Water Resources Commission shall accept all registration statements referred to in ORS 537.605 completed and returned to the commission in proper form, endorse on the registration statement the date of the return and record each statement. Upon recording the statement, the commission shall issue to the registrant a certificate as evidence that the registration is completed.

(2) The issuance of the certificate of registration serves as prima facie evidence that the registrant is entitled to a right to appropriate ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and in the certificate of registration.

(3) A certificate of registration issued under this section may not be construed as a final determination of any matter stated in the certificate of registration. The right of the registrant to appropriate ground water under a certificate of registration is subject to determination under ORS

537.670 to 537.695, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate ground water under a certificate of registration has a tentative priority from the date when the construction of the well was begun.

(4) The commission shall adopt by rule the process and standards by which the commission will recognize changes in the place of use, type of use or point of appropriation for claims to appropriate ground water registered under this section. The commission shall adopt fees not to exceed \$1,450 for actions taken to modify a certificate of registration. [1955 c.708 §8; 1985 c.673 §51; 2005 c.614 §1; 2009 c.819 §§8,15; 2013 c.644 §§6,7; 2017 c.571 §§5,6]

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

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

(a) The name and post-office address of the applicant.

(b) The nature of the use by the applicant of the ground water for which the application is made.

(c) The dates of the beginning and completion of the construction of any well or other means of developing and securing the ground water.

(d) The date when the ground water will be completely applied to the proposed beneficial use.

(e) The amount of ground water claimed.

(f) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.

(g) The depth to the water table, if known.

(h) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.

(j) The estimated capacity of each well and each well pump in gallons per minute, and the horsepower of each well pump motor.

(k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the Water Resources Commission may prescribe.

(L) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant.

(m) Any other information as the department considers necessary to evaluate the application.

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

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. In addition, the department shall accept locational coordinate information, including latitude and longitude as established by a global positioning system. If the application is for a water right for a municipal use, the map need not identify the proposed place of use by tax lot.

(5) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050 (1).

(6) If the proposed use of the water is for a mining operation as defined in ORS 517.952, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

(7) Notwithstanding any provision of ORS chapter 183, an application for a permit to appropriate ground water shall be processed in the manner set forth in ORS 537.505 to 537.795. Nothing in ORS chapter 183 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS chapter 183 conflicts with a provision set forth in ORS 537.505 to 537.795, the provisions in ORS 537.505 to 537.795 shall control. [1955 c.708 §9; 1959 c.437 §3; 1985 c.673 §54; 1987 c.542 §7; 1991 c.735 §34; 1993 c.557 §4; 1995 c.416 §22; 1997 c.446 §6; 1997 c.587 §8; 2013 c.371 §33]

**537.620 Determination of completeness of application; initial review; preliminary determination; notice; public comments.** (1) The Water Resources Department shall accept all applications for permits submitted under ORS 537.615 in proper form.

(2) Within 15 days after receiving the application, the department shall determine whether the application contains the information listed under ORS 537.615 (2) and is complete and not defective, including the payment of all fees required under ORS 537.615 (5). If the department determines that the application is incomplete or defective or that not all fees have been paid, the department shall return the fees paid and the application to the applicant to remedy the defect. If an application is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application.

(3) Upon determining that an application is complete and not defective, the department shall determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by statute, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by statute, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule or because the proposed use is located within a designated critical ground water area;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (2) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all fees paid in excess of \$260. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the

fee required under ORS 536.050 (1)(p). [1955 c.708 §10; 1981 c.589 §4; 1985 c.673 §55; 1989 c.201 §3; 1991 c.102 §2; 1991 c.400 §3; 1991 c.735 §35; 1993 c.557 §5; 1995 c.416 §23; 1997 c.587 §9; 2007 c.267 §3; 2009 c.819 §§9,16; 2013 c.644 §§8,9; 2017 c.571 §§7,8]

**537.625 Final order; appeal; contents of permit.** (1) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Water Resources Director determines that the proposed use does not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the director shall issue a final order rejecting the application or modifying the proposed final order as necessary to ensure the preservation of the public welfare, safety and health as described in ORS 537.525. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project.

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

(a) Where the final order modifies the proposed final order, the applicant may request and the Water Resources Department shall schedule a contested case hearing as provided under ORS 537.622 (3) by submitting the information required for a protest under ORS 537.621 (7) within 14 days after the director issues the final order. However, the issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.

(b) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS chapter 183 for appeal of order other than contested cases.

(3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome, then before issuing a final order, the director or the Water Resources Commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would preserve the public welfare, safety and health as described in ORS 537.525 by considering:

(a) The conservation of the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

(g) The state water resources policy.

(4) Upon issuing a final order, the Water Resources Department shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050 (1)(p).

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

(6) If the use of water under the permit is for operation of a mining operation as defined in ORS 517.952:

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

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

(c) The permit shall include a condition that additional conditions may be added to the use of water when a water right certificate is issued, or when the use of water is changed pursuant to ORS 540.520 and 540.530 to use for a mining operation. [1955 c.708 §11; 1959 c.437 §4; 1981 c.61 §3; 1985 c.673 §57; 1995 c.416 §28; 1997 c.587 §11; 2013 c.371 §34]

**537.630 Time allowed for construction work under permit; extension; certificate of completion; survey; ground water right certificate; requirements for supplemental water right.** (1) As used in this section, "undeveloped portion" means the difference between the maximum rate or duty specified in a water right permit and the maximum rate or duty appropriated as of the later of:

(a) June 29, 2005;

(b) The time specified in the permit to perfect the water right; or

(c) The time specified in the last-approved extension of time to perfect the water right.

(2) Except for the holder of a permit for municipal use, the holder of a permit issued pursuant to ORS 537.625 shall prosecute the construction of a well or other means of developing and securing the ground water with reasonable diligence and complete the construction within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. However, the department, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, for the completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

(3) The holder of a permit for municipal use shall commence and complete the construction of any proposed works within 20 years from the date on which the permit for municipal use is issued under ORS 537.625. The construction must proceed with reasonable diligence and be completed within the time specified in the permit, not to exceed 20 years. However, the department may order and allow an extension of time to complete construction or to perfect a water right beyond the time specified in the permit under the following conditions:

(a) The holder shows good cause. In determining the extension, the department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right;

(b) The extension of time is conditioned to require that the holder submit and obtain department approval of a water management and conservation plan;

(c) The extension of time is conditioned to provide that the holder may appropriate the undeveloped portion of the permit only upon approval by the department of a water management and conservation plan; and

(d) For the first extension issued after June 29, 2005, for a permit for municipal use issued before November 2, 1998, the department finds that the undeveloped portion of the permit is conditioned to maintain, in the portions of waterways affected by water use under the permit, the persistence of fish species listed as sensitive, threatened or endangered under state or federal law. The department shall base its finding on

existing data and upon the advice of the State Department of Fish and Wildlife. An existing fish protection agreement between the permit holder and a state or federal agency that includes conditions to maintain the persistence of any listed fish species in the affected portion of the waterway is conclusive for purposes of the finding.

(4) If the construction of any well or other means of developing and securing the ground water is completed after the date of approval of the application for a permit under ORS 537.625, within 30 days after the completion, or if the construction is completed before the date of approval, within 30 days after the date of approval, the permit holder shall file a certificate of completion with the Water Resources Department, disclosing:

- (a) The depth to the water table;
- (b) The depth, diameter and type of each well, and the kind and amount of the casing;
- (c) The capacity of the well pump in gallons per minute and the drawdown thereof;
- (d) The identity of the record owner of any property that was described in the application for a permit under ORS 537.625 but is not included in the certificate of completion; and
- (e) Any other information the department considers necessary.

(5) Upon completion of beneficial use necessary to secure the ground water as required under this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after applying the water to beneficial use or the beneficial use date allowed in the permit, the permit holder shall submit the survey as required by the Water Resources Department to the department along with the certificate of completion required under subsection (4) of this section. If any property described in the permit is not included in the request for a water right certificate, the holder of the permit shall state the identity of the record owner of that property.

(6) After the department has received a certificate of completion and a copy of the survey as required by subsections (4) and (5) of this section that show, to the satisfaction of the department, that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795 and 537.992, except as provided in subsection (7) of this section, the department shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certificate shall be recorded and transmitted to the applicant as provided in ORS 537.700.

(7) The department may not issue a water right certificate for municipal use under this section if:

- (a) An extension of time is required; and
  - (b) The order approving the extension of time has not become final by operation of law or on appeal.
- (8) The procedure for cancellation of a permit shall be as provided in ORS 537.260.

(9) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under subsection (6) of this section for a supplemental water right, the holder of a permit shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the holder is not required to have actually used water from the supplemental source if:

- (a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or
- (b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions. [1955 c.708 §12; 1959 c.437 §5; 1985 c.617 §2; 1985 c.673 §202; 1987 c.542 §8; 1995 c.367 §3; 1995 c.416 §34; 1997 c.446 §8; 1999 c.453 §2; 2005 c.410 §2; 2017 c.704 §4]

**537.635 Assignment of application, certificate of registration or permit.** (1) Any certificate of registration issued under ORS 537.610 or permit issued under ORS 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department.

(2) An assignment of an application filed under ORS 537.615 or a permit issued under ORS 537.625 and filed for record with the Water Resources Department shall identify the current record owners of all property described in the application or permit. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [1955 c.708 §13; 1985 c.673 §59; 1995 c.367 §4]

**537.680 Taking testimony; inspecting evidence; contesting claim.** Testimony shall be taken, evidence shall be open to inspection and claims shall be subject to contest in a proceeding to determine rights to appropriate the ground water of any ground water reservoir initiated under ORS 537.670 as nearly as possible in the same manner as provided in ORS 539.070, 539.090, 539.100 and 539.110 for the determination of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §17]

**537.685 Findings of fact and order of determination.** As soon as practicable after compilation of the evidence obtained in proceedings under ORS 537.665 to 537.680, the Water Resources Director shall make and cause to be entered of record in the Water Resources Department findings of fact and an order of determination, determining and establishing the several rights to appropriate the ground water of the ground water reservoir. The findings of fact and order of determination shall also include:

- (1) The boundaries and depth of each ground water reservoir.
- (2) The lowest permissible water level in each ground water reservoir.
- (3) The location, extent, quality and other pertinent characteristics of the ground water supply.
- (4) The serviceable methods of withdrawal of the ground water from each ground water reservoir.
- (5) Rules for controlling the use of the ground water from each ground water reservoir.
- (6) Such general or special rules or restrictions with respect to the construction, operation and protection of wells and the withdrawal of ground water thereby as in the judgment of the director the public welfare, health and safety may require.
- (7) The name and post-office address of each claimant.
- (8) The nature of the use of the ground water allowed for each well, together with the maximum permissible use of the ground water, the place of use of the ground water and the date of priority of each use.
- (9) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision.
- (10) The location of each well with reference to government survey corners or monuments or corners of recorded plats.
- (11) The depth, diameter and type of each well, the kind and amount of the casing, the capacity of each well in gallons per minute and such other information concerning each well as in the opinion of the director may be pertinent. [1955 c.708 §18; 1991 c.102 §4]

**537.690 Filing evidence, findings and determinations; court proceedings.** The evidence relied upon by the Water Resources Director in the entry of the findings of fact and order of determination under ORS 537.685, together with a copy of such findings and order, shall be certified to by the director and filed with the clerk of the circuit court wherein the determination is to be heard, which shall be the circuit court of any county in

which the ground water reservoir or any part thereof is located. A certified copy of the findings of fact and the order of determination shall also be filed with the county clerk of every other county in which the ground water reservoir or any part thereof is located. Thereafter, proceedings shall be had as nearly as possible in the same manner as provided in ORS 539.130 (2), (3) and (4), 539.150, 539.160, 539.170, 539.180, 539.190 and 539.210 for the final adjudication of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §19]

**537.695 Conclusive adjudication.** The determination of the Water Resources Director under ORS 537.685, as confirmed or modified by the circuit court or Supreme Court, shall be a conclusive adjudication as to all claimants of rights to appropriate the ground water of each ground water reservoir included within the order of determination. [1955 c.708 §20]

**537.705 Ground water appurtenant; change in use, place of use or point of appropriation.** All ground water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any ground water for any purpose may be made without compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530. However, the owner of any ground water right may, upon compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530, change the use and place of use, the point of appropriation or the use theretofore made of the ground water in all cases without losing priority of the right theretofore established. [1955 c.708 §22]

**537.730 Designation of critical ground water area; rules; notice.** (1) The Water Resources Commission by rule may designate an area of the state a critical ground water area if:

- (a) Ground water levels in the area in question are declining or have declined excessively;
- (b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;
- (c) The department finds a pattern of interference or potential interference between wells of ground water claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;
- (d) The department finds a pattern of substantial interference between wells within the area in question and:
  - (A) An appropriator of surface water whose water right has an earlier priority date; or
  - (B) A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the ground water appropriation;
- (e) The available ground water supply in the area in question is being or is about to be overdrawn;
- (f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or
- (g) Ground water temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(2) The proceeding to designate a critical ground water area shall be conducted according to the provisions under ORS chapter 183 applicable to the adoption of rules by an agency, except that a hearing on a critical ground water declaration shall occur at least 60 days after notice has been given.

(3) In addition to the notice requirements under ORS 183.335, the department shall give notice by regular mail to:

- (a) The owners of record of all ground water registrations, permits and certificates for water use within the affected area; and
- (b) Each water well constructor licensed under ORS 537.747.

(4) If the department satisfies the notice requirements under ORS 183.335 and subsection (3) of this section, a person shall not contest a critical ground water area designation on grounds of failure to receive notice by regular mail. [1955 c.708 §26; 1957 c.341 §8; 1981 c.589 §5; 1985 c.673 §62; 1987 c.442 §1; 1989 c.201 §4; 1991 c.400 §4]

**537.780 Powers of Water Resources Commission; rules; limitations on authority.** (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may:

- (a) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.
- (b) Enforce:
  - (A) General standards for the construction and maintenance of wells and their casings, fittings, valves, pumps and back-siphoning prevention devices; and
  - (B) Special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.
- (c)(A) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or
  - (B) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.
- (d) Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.
- (e) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps, measuring devices and back-siphoning prevention devices.
- (f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.
- (g) Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.
- (h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and 537.992 including but not limited to rules governing:
  - (A) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;
  - (B) Procedure in hearings held by the commission; and
  - (C) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.
- (i) In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753.
- (2) Notwithstanding any provision of subsection (1) of this section, in administering the provisions of ORS 537.505 to 537.795 and 537.992, the commission may not:

(a) Adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions.

(b) Make any determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source unless the determination is based on substantial evidence. Such evidence may include reports or studies prepared with relation to the specific use or may be based on the application of generally accepted hydrogeological principles to the specific use.

(3) At least once every three years, the commission shall review any rule adopted under subsection (2) of this section that restricts ground water use in an area. The review process shall include public notice and an opportunity to comment on the rule. [1955 c.708 §32; 1981 c.416 §7; 1985 c.673 §73; 1989 c.833 §60; 1995 c.549 §2]

**537.795 ORS 537.505 to 537.795 supplementary.** ORS 537.505 to 537.795 and 537.992 are intended to be supplementary and in addition to and are not intended to repeal any law relating to the surface waters of this state. [1955 c.708 §35]

## HYDROELECTRIC PROJECTS

### WATER LAWS

#### GENERAL PROVISIONS

**543.012 Applicability of chapter to reauthorization of existing hydroelectric project.** (1) Except for the provisions of ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990, nothing in this chapter shall apply to the reauthorization of an existing project.

(2) All references in ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990 to a license or a license issued under ORS 543.010 to 543.610 also shall be considered a reference to a water right issued under ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A. [1997 c.449 §42]

**543.014** [2007 c.212 §2; 2009 c.405 §§1,2; **repealed by 2015 c.386 §15**]

**543.015 Policy.** The Legislative Assembly declares that it is the policy of the State of Oregon:

(1) To protect the natural resources of this state from possible adverse impacts caused by the use of the waters of this state for the development of hydroelectric power.

(2) To permit siting of hydroelectric projects subject to strict standards established to protect the natural resources of Oregon.

(3) To require the Water Resources Commission, the Energy Facility Siting Council, the Department of Environmental Quality and other affected state agencies to participate to the fullest extent in any local, state or federal proceedings related to hydroelectric power development in order to protect the natural resources of Oregon. [1985 c.569 §2]

**543.017 Minimum standards for development of hydroelectric power; public interest considerations; rules.** (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Water Resources Commission relating to the development of hydroelectric power in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commission shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the commission may allow mitigation if the commission finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation that may result in a wild game fish population, or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities that, in the judgment of the commission, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity, including water quality, wildlife, scenic and aesthetic values, and historic, cultural and archaeological sites, shall be maintained or enhanced. No activity may be approved that, in the judgment of the commission after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the commission may consider mitigation if the commission determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable, the commission shall consult with appropriate state, federal and local agencies.

(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section.

(3) Nothing in this section limits the authority of any state agency to make recommendations regarding appropriate license conditions during the consideration of the issuance of a license or permit for an existing hydroelectric project. [1985 c.569 §3; 1993 c.544 §6; 1995 c.229 §2; 2007 c.71 §176]

**543.060 Investigations; access to project, maps, books and other project data.** The Water Resources Commission, the Water Resources Director or any employee of the Water Resources Department, at all reasonable times, shall have free access to any project, addition or betterment during or after construction or acquisition, and to all maps, plans, profiles, estimates, engineers' reports, books, accounts, records and other data relating to the project. [1985 c.673 §142]

#### APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW

**543.110 Appropriation and use of water for power is governed by this chapter.** After February 26, 1931, no right to appropriate or to use the waters of the lakes, rivers, streams or other bodies of water within this state, including water over which this state has concurrent jurisdiction, in connection with the development of any water power project for the generation of electricity, shall be initiated, perfected, acquired or held, except for and during the periods or extensions thereof stated in ORS 543.010 to 543.610, and pursuant to the provisions thereof.

**543.120 Water power projects to be in conformity with this chapter.** After February 26, 1931, no water power project involving the use of the waters of lakes, rivers, streams or other bodies of water within this state, including waters over which this state has concurrent jurisdiction, for the generation of electricity, shall be begun or constructed except in conformity with the provisions of ORS 543.010 to 543.610.

**543.140 Projects or developments constructed by federal government excepted from law.** The provisions of ORS 543.010 to 543.610 shall not apply to any water power project or development constructed by the United States.

**543.150 Municipal corporations and utility districts; applicability of laws; powers of commission respecting districts.** The provisions of ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to 543.610 shall not apply to cities, towns or other municipal corporations of this state, including utility districts organized under section 12, Article XI, Oregon Constitution, and legislation enacted thereunder; saving, however, to such cities, towns and other municipal corporations the rights and preferences specified in ORS 543.260, 543.270 and 543.610. The Water Resources Commission shall exercise the powers in relation to utility districts as may be conferred upon the commission by any legislation providing for the creation of such utility districts. [Amended by 1985 c.673 §144; 1991 c.869 §7]

#### PRELIMINARY PERMITS; LICENSES

**543.210 Preliminary permits; application; contents; fee.** (1) Any person who proposes to operate a hydroelectric project in Oregon shall apply for a state preliminary permit. Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. The Water Resources Commission may issue a preliminary permit to any person possessing the qualifications of a licensee as specified in ORS 543.010 to 543.610.

(2) The application for a preliminary permit shall set forth:

- (a) The name and post-office address of the applicant;
- (b) The approximate site of any proposed dam or diversion;
- (c) The amount of water in cubic feet per second;
- (d) The theoretical horsepower; and

(e) Any other data the commission may by rule require.

(3) Upon receipt of an application for a preliminary permit the commission shall indorse on the application the date of receipt, and keep a record of the receipt of the application. The date so indorsed shall determine the priority of the use of water initiated under the provisions of ORS 543.010 to 543.610.

(4) At the time of filing application for preliminary permit the applicant shall pay to the state the portion of the total project fee required in ORS 543.280, to cover costs of recording, publishing notices and making investigations necessary to determine whether or not a preliminary permit should be granted. [Amended by 1961 c.224 §15; 1985 c.673 §147; 1991 c.869 §8]

**543.225 Hearing on application; notice; policy.** (1) The Water Resources Commission shall conduct a public hearing on any application or amended application for a preliminary permit or for a license for a major project of more than 100 theoretical horsepower and an application for preliminary permit or license for a minor project of less than 100 theoretical horsepower if the commission concludes it is in the public interest to do so.

(2) The commission shall give proper notice of the public hearing on an application under subsection (1) of this section, to the applicant and to each protestant, if any. After the hearing, if the commission determines that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the commission under ORS 543.017, or would otherwise impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned, it shall enter an order rejecting the application or requiring its modification to conform to the public interest, to the end that the highest public benefit may result from the proposed project. The order may set forth any or all of the provisions or restrictions to be included in a preliminary permit or license concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(3) In determining whether the proposed project would impair or be detrimental to the public interest, the commission shall have due regard for:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

(4) After the entry of the order specified in subsection (2) of this section, the application for a preliminary permit or for a license shall be referred to the Water Resources Director for further proceedings consistent with the commission's order. [1955 c.707 §42; 1961 c.224 §17; 1975 c.581 §28; 1985 c.569 §20; 1985 c.673 §148]

**543.250 Permit; duration; transfer; cancellation; priority; terms and conditions; denial.** A preliminary permit may be issued for a period not exceeding a total of three years. It shall not be transferable except upon written approval of the Water Resources Commission, and may be canceled by order of the commission at any time upon proof to the commission's satisfaction, after hearing, that the holder is not in good faith

complying with the provisions of the permit. The holder of a preliminary permit which has not been canceled shall have priority of right to make application for a license covering the project for which the preliminary permit was issued, within the term of the permit or any lawful extension thereof. Except as otherwise specified in ORS 543.010 to 543.610, the commission may fix the terms and conditions of any preliminary permit issued thereunder, and each preliminary permit issued shall set forth all the terms and conditions. The commission may decline to grant any application for a preliminary permit. [Amended by 1985 c.673 §149; 1993 c.63 §1]

**543.255 Determination of cumulative impacts of proposed hydroelectric power projects; consolidated review; applicability.** (1) Whenever the Water Resources Department receives an application to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.610, the department shall determine whether the impacts of the project would be cumulative with:

- (a) Impacts of other proposed hydroelectric projects for which an application is pending before the department; or
- (b) Existing hydroelectric projects in the same river basin.

(2) If the department determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the Water Resources Director shall issue an order setting forth the department's determination that there are no cumulative effects and the department's decision that consolidated review is not required.

(3) If the department determines that pending applications or existing projects may have cumulative effects, the Water Resources Commission shall conduct a consolidated review before approving any application in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS chapter 183 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the department and existing hydroelectric projects. In its final order on an application, the commission or the department shall include its findings on cumulative impacts. The findings of the commission or department under this section must be sufficient to support the department's decision to approve or deny an application.

(4) Any application for a project in the same river basin filed after the commission begins a consolidated review contested case hearing shall not be reviewed until the commission has issued final findings on cumulative effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a permit to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.610, the commission may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section. [1985 c.569 §10; 1985 c.673 §193; 1993 c.544 §8; 1995 c.229 §4; 1995 c.416 §39]

**543.260 Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district.** (1) A license may be issued by the Water Resources Commission to any qualified person for a period not exceeding 50 years. If the project is subject to regulation by the Federal Energy Regulatory Commission, the term shall be concurrent with and expire upon expiration of the federal license for the project. Each license shall be conditioned upon acceptance by the licensee of all the terms and conditions of ORS 543.010 to 543.610, and such further terms and conditions as the commission may prescribe, not inconsistent with those sections. All such terms and conditions, and their acceptance by the licensee, shall be expressed in the license. A license may be terminated for the reasons and in the manner provided in ORS 543.010 to 543.610. The form of license containing all the terms and conditions may be set forth in the preliminary permit.

(2) The commission may deny any application for a license if it appears that the applicant has failed to comply substantially with the terms and conditions of the preliminary permit or, notwithstanding the commission has issued a preliminary permit, if in the judgment of the commission the project is unfeasible or the public interest requires the denial thereof.

(3) A municipal corporation or people's utility district shall be given preference on any project in the issuance of a license, upon condition that the municipal corporation or people's utility district exercising such preference right shall be required to reimburse the holder of a preliminary permit for all reasonable actual expenditures made by the holder upon the project described or referred to therein. [Amended by 1983 c.740 §214b; 1985 c.673 §150; 1995 c.229 §5]

**543.265 Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost.** The Water Resources Department shall impose as a condition to any water right permit to appropriate water for hydroelectric purposes granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the hydroelectric project shall, during the operational lifetime of the project, perform or allow the State Department of Fish and Wildlife to perform, any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish. The scope and cost of these studies will be negotiated between the State Department of Fish and Wildlife and the operator. [1985 c.674 §6; 1987 c.158 §116; 1995 c.416 §40]

**543.270 Preference in granting permit or license; municipal use.** In issuing preliminary permits, and in issuing licenses where no preliminary permit is held by an applicant for a license, preference shall be given to the application which appears to the Water Resources Commission to be best adapted to conserve and utilize the water power involved. However, any application for the use of water made by any municipal corporation of this state under any law of the state, before a preliminary permit is issued, or before a license is issued when no preliminary permit upon the proposed project has been issued, shall always have preference. [Amended by 1985 c.673 §151]

**543.280 Fee payments by licensee.** (1) Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. An applicant for a state preliminary permit for a new hydroelectric project shall submit to the Water Resources Commission a complete copy of any application for the project filed with the Federal Energy Regulatory Commission or other federal agency. For preliminary permits, if the copy of the federal application is filed with the commission at the same time it is filed with the federal agency, at the commission's discretion, such copy may fulfill the requirements of ORS 543.210, except for the fee requirement in ORS 543.210 (4).

(2) An applicant for a preliminary permit or license for a project or for a permit to appropriate water for power purposes shall pay to the state a project fee based on the capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a permit should be granted.

(3) The amount of the total project fee required under subsection (2) of this section shall be:

(a) For a project of less than 100 theoretical horsepower, \$1,000.

(b) For any project of 100 theoretical horsepower or more, an amount equal to \$5,000 plus \$1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of \$100,000.

(4) Except for projects of less than 100 theoretical horsepower, the project fee required under subsection (2) of this section shall be payable in advance before each of four stages of project review as established by rule by the Water Resources Commission. The payment schedule shall not

require the applicant to pay more than \$2,500 of the project fee at the first stage of project review or more than 50 percent of the total project fee in the first two stages of the project review. For a project of less than 100 theoretical horsepower, the applicant shall pay 50 percent of the fee at the time of filing the application for a preliminary permit or application for a permit to appropriate water for power purposes and the remaining 50 percent before the commission issues a license or a water right permit. A person may withdraw an application for a hydroelectric project after any stage of project review without further payment of fees under this section.

(5) In addition to the project fee required under subsection (2) of this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.

(6) The commission shall provide an applicant a statement itemizing the staff time, resources and costs expended to review the application at each project stage. The statement shall include the costs expended by the State Department of Fish and Wildlife and the Water Resources Department specific to the project. [Amended by 1957 c.581 §1; 1985 c.673 §152; 1991 c.869 §9]

**543.290 Filing of maps, plans, estimates and other materials; incorporation as part of license; alteration; further statements and data.** The applicant for a license shall submit to and file with the Water Resources Commission:

(1) All maps, plans, specifications and cost estimates as may be required by the commission for a full understanding of the proposed project. The maps, plans and specifications, when approved by the commission, shall become a part of the license, if one is issued upon the application, and thereafter no change shall be made in any such maps, plans and specifications until the proposed change has been approved by the commission. When a proposed change is approved by the commission, the changes shall become a part of the license.

(2) Any further statements and data as may be required by the commission concerning the proposed project, the market to be served, the financial responsibility of the applicant, the plan of financing and any other matters deemed material by the commission. [Amended by 1985 c.673 §153]

**543.300 Conditions governing license; fees; waiver of conditions.** Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall be on, the following conditions:

(1) That the proposed project shall be such as, in the judgment of the Water Resources Commission, is well adapted to the development and utilization of the water power involved.

(2) That the licensee shall construct and build the project according to the maps, plans and specifications filed with and approved by the commission, and within the time fixed by the license or by any lawful extension thereof.

(3) The operations of the licensee so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules as the commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe.

(4) That the licensee will maintain the project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the project, and all parts thereof, conformably to the rules of the commission not inconsistent with ORS 543.010 to 543.610.

(5) That the licensee will pay to the state annually not more than \$1 for each horsepower covered by the license. This sum shall constitute a first lien upon the project, which lien may be enforced by suit in equity or other appropriate proceeding, or payment thereof may be enforced by the state in an action for debt. Payment of such license fees may be waived by the commission during all or any part of the period of construction. The fees need not be uniform throughout the entire period of the license, but may be for different amounts for different periods. The amount of the license fees, within the minimum and maximum limits herein specified, shall be determined by the commission and expressed in the license.

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the commission may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the commission may waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period for which a license may be issued, and the annual charge as determined by the commission under subsection (5) of this section. In issuing licenses for projects in excess of 100 horsepower for which the applicants are required to secure permits and licenses from the United States as a condition precedent to the construction of the projects, the commission may waive and modify such of the terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a license may be issued and the annual charge as determined by the commission under subsection (5) of this section, as the commission, by order, after full investigation and public hearing, shall find to make impracticable the construction of such projects. During the time that a licensee is not a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt against the licensee's plant, the commission may waive the accounting and amortization requirements of ORS 543.010 to 543.610, even where the project involved exceeds 100 horsepower.

(8) Subsection (5) of this section does not apply to a water right reauthorized pursuant to ORS chapter 543A. [Amended by 1959 c.560 §1; 1961 c.224 §19; 1985 c.673 §154; 1999 c.873 §23]

#### TIME FOR CONSTRUCTION; TERMINATION, REVOCATION OR TRANSFER OF LICENSE

**543.410 Construction of project; time for commencement and completion; supply of service; extension of time; nonperformance; termination of license.** (1) The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall, within the time fixed in the license, complete and put into operation such part of the ultimate development as the Water Resources Commission considers necessary to supply the reasonable needs of the then available market, and shall, from time to time thereafter construct such portion of the balance of the development as the commission directs, so as to supply adequately the reasonable market demands until development is completed.

(2) The period for commencement of construction may be extended once but not longer than two additional years, and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests.

(3) If the licensee does not commence actual construction of the project works or of any specified part of the project works, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to the project works or part of the project works, be terminated upon written order of the commission. [Amended by 1985 c.673 §155]

**543.440 Transfer of license, rights or property; effect.** No voluntary transfer of any license or any rights under a license or of any property acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.610 shall be made without written approval of the Water Resources Commission. Any successor or assignee of any licensee under any project acquired, constructed or operated by licensee, whether by

voluntary transfer approved by the commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate. [Amended by 1985 c.673 §158]

#### ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY

**543.610 Acquisition of project by state or municipality.** (1) Upon not less than two years' notice in writing the state, or any municipality thereof, shall have the right at any time to take over and thereafter to maintain and operate any project constructed under a license pursuant to ORS 543.010 to 543.610, upon payment of just compensation, including such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the license, not taken over, as may be caused by the severance therefrom of the property taken, and shall assume all contracts entered into by the licensee which are required to have and do have the express approval of the Water Resources Commission. If the sum to be paid cannot be agreed upon by the holder of the license and the municipality or the state, as the case may be, it shall be determined in a proceeding in equity instituted by the state or municipality, as the case may be, in the circuit court of the county in which the major part of the project is located.

(2) There is also expressly reserved to the state, and any municipality thereof, the right to take over all or any part of any project by condemnation proceedings as may be provided by the laws of Oregon or the charter of any such municipality. [Amended by 1983 c.799 §8]

#### USE OF EXISTING WATER RIGHT FOR HYDROELECTRIC PURPOSES

**543.760 Definition of water right.** As used in ORS 543.765, "water right" means a water use established by an adjudication under ORS chapter 539 as evidenced by a court decree or a certificated ground water or surface water right that is issued for some use other than for hydroelectric power and that serves as the underlying water right for an application to use water for hydroelectric purposes. [2007 c.657 §1]

**Note:** 543.760 and 543.765 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**543.765 Certificate to use water for hydroelectric purposes within artificial delivery system; expedited application process; certificate conditions; annual payments; fees.** (1) Notwithstanding ORS 537.145 and ORS chapter 543, the holder of a water right may apply to the Water Resources Department for a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right. If the proposed hydroelectric project meets the applicable capacity limitation under this subsection and meets either the qualifications for a Federal Energy Regulatory Commission exemption from licensing or similar qualifications of another federal agency responsible for authorizing the project, the applicant may use the expedited application process under this section regardless of which federal agency issues the authorization. To qualify under this subsection:

(a) For a project that is to be built as part of an existing dam, the capacity may not exceed five megawatts. Subsection (5)(b) of this section does not apply to a project described in this paragraph.

(b) For in-conduit projects, the capacity may not exceed 15 megawatts for a nonmunicipal facility or 40 megawatts for a municipal facility. Projects described in this paragraph must comply with subsection (5)(b) of this section.

(2) An application, which shall be on a form provided by the Water Resources Department, for a hydroelectric certificate under this section must include:

(a) The certificate number, or decree reference if no confirming certificate has been issued, of the applicant's existing water right associated with the proposed hydroelectric project.

(b) A copy of either a Federal Energy Regulatory Commission exemption application or a similar application submitted to the federal agency responsible for authorizing the project, if applicable.

(c) A proposed schedule of annual water use and an estimate of the maximum power generation of the proposed hydroelectric project.

(d) A statement by the applicant that the amount of water used by the proposed hydroelectric project will not exceed the amount authorized and used under the applicant's existing water right for beneficial use without waste.

(e) A statement that the applicant owns or otherwise controls the water conveyance system.

(f) An application processing fee of \$500. The department shall deposit fees collected under this section into the Water Resources Department Hydroelectric Fund established pursuant to ORS 536.015.

(g) A map or drawing and all other data concerning the proposed hydroelectric project, as may be prescribed by the department. The map or drawing must be of sufficient quality and scale to establish the location of the existing point of diversion and the proposed location of the hydroelectric project.

(h) If the water to be used for the proposed hydroelectric project is delivered by a public entity other than the applicant for a certificate under this section, a statement from that entity that the entity will be able to deliver water as described in the application.

(i) Evidence that the water has been used over the past five years according to the terms and conditions of the applicant's existing water right described in paragraph (a) of this subsection.

(3) If an applicant provides the information required by subsection (2) of this section:

(a) The Water Resources Department shall provide notice to both the State Department of Fish and Wildlife and the public, and provide a 30-day period for public comment.

(b) The Water Resources Department may issue a final order and certificate to use water for hydroelectric purposes upon making a final determination that the proposed hydroelectric use does not impair, or is not detrimental to, the public interest in the manner provided in ORS 537.170 (8).

(4) If the Water Resources Department determines that public interest issues have been identified, the department shall issue a final order denying the application. The department shall also issue a final order denying the application if the department identifies issues related to the public interest. If the applicant does not appeal the final order as provided in ORS chapter 183 and, within one year of the department's final order denying the applicant's application, files an application with the department for a preliminary permit to operate a hydroelectric project as provided in ORS 537.130 and 543.210, the applicant shall receive a credit toward the applicant's application fees in the amount of \$500.

(5) At a minimum, a certificate issued under this section must contain the following conditions:

(a) Except as provided in paragraph (b) of this subsection, fish screens, by-pass devices and fish passages as required by the State Department of Fish and Wildlife.

(b) If the application is for a hydroelectric project that is to be installed in or on a conduit delivery system, the certificate does not need to include a requirement for fish passage at the diversion point for the conduit delivery system if:

(A) The hydroelectric generating equipment for the project is not located on a dam;

(B) The hydroelectric generating equipment for the project is installed within or at the end of a conduit delivery system;

(C) The conduit delivery system is operated for the distribution of water for agricultural, municipal or industrial consumption; and

(D) Except as provided in subsection (15) of this section, the certificate includes a condition for the making of annual payments under subsection (14) of this section.

(c) That use of water be limited to periods when the applicant's existing water right is put to beneficial use without waste and that the amount used is not greater than the quantity of water diverted to satisfy the authorized specific use under the existing water right described in subsection (2)(a) of this section.

(d) That use of water be limited by rate, duty, season and any other limitations of the applicant's existing water right described in subsection (2)(a) of this section.

(e) That the applicant measure and report the quantity of water diverted.

(f) That the restrictions established in ORS 543.660 shall apply as conditions of use to a certificate issued under this section to a district as defined in ORS 543.655.

(g) That a certificate issued under this section shall be invalidated upon a change in the point of diversion of the existing water right described in subsection (2)(a) of this section.

(h) That the right to use water under a certificate issued under this section is invalidated if the federal exemption or authorization related to the certificate is canceled or invalidated.

(i) Any other conditions the Water Resources Department deems necessary to protect the public interest.

(6) The Water Resources Department shall conduct a review of certificates issued under this section and shall issue a final order and a superseding certificate that corresponds to any changes or adjustments made to the applicant's existing water right described in subsection (2)(a) of this section.

(7) Subsection (5)(b) of this section does not affect any requirement for fish passage applicable to a project that is otherwise required by law.

(8) Upon request, the State Department of Fish and Wildlife and the Water Resources Department shall arrange a preapplication meeting with a person to discuss the requirements associated with the installation of a hydroelectric project in an artificial delivery system.

(9) A certificate issued under this section may not have its own priority date. The Water Resources Department may not regulate for or against any certificate issued under this section based on the priority date of the certificate.

(10) A certificate issued under this section does not grant a right to divert water for hydroelectric purposes.

(11) A certificate issued under this section may not be included in the determination of injury to other water rights pursuant to ORS chapter 540.

(12) A certificate issued under this section is subject to review 50 years after the date of issuance and pursuant to the terms described in this section.

(13) Failure to fully develop and put to use a certificate issued under this section within five years of issuance invalidates the hydroelectric certificate.

(14)(a) If a certificate contains a condition described in subsection (5)(b) of this section for annual payments, the payment shall be collected as provided in paragraph (c) of this subsection. Except as provided in paragraph (b) of this subsection, the annual payment amount must be:

(A) Except as provided in subparagraph (D) of this paragraph, for the first five years, four times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(B) Except as provided in subparagraph (D) of this paragraph, for the 6th through 10th years, eight times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(C) Except as provided in subparagraph (D) of this paragraph, after the 10th year, 15 times the base hydropower fee amount assessed for the project under ORS 543.078 for the year.

(D) \$100 for any year in which the base hydropower fee amount assessed for the project under ORS 543.078 is less than \$100.

(b) If the certificate is for a hydroelectric project that will operate on a partial-year basis, the fee shall be three-fifths of the amount established in paragraph (a) of this subsection.

(c) The Water Resources Department shall collect the fee on behalf of the State Department of Fish and Wildlife and forward the fee moneys for crediting to the Fish Passage Restoration Subaccount created under ORS 497.141.

(15)(a) Notwithstanding subsection (14) of this section, a certificate for a project to install hydroelectric generating equipment as described in subsection (5)(b) of this section may provide for the termination of annual payments being made under subsection (14) of this section if, after the date the project commences operation:

(A) The project provides for fish passages;

(B) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for fish passages associated with the project; or

(C) A waiver or exemption has been issued under ORS 509.585 for the project.

(b) A certificate for a project to install hydroelectric generating equipment as described in subsection (5)(b) of this section does not need to include a condition for the making of annual payments under subsection (14) of this section if:

(A) There is an agreement between the applicant and the State Department of Fish and Wildlife providing for the conduit delivery system to have fish passages associated with the project; or

(B) A waiver or exemption has been issued under ORS 509.585 for the project.

(16) If a certificate under this section is issued, the certificate holder must pay fees consistent with the fees described in ORS 543.078. Failure to pay a required fee invalidates a certificate issued under this section.

(17) The Water Resources Department shall issue invoices for fees required under this section, and the state shall have a preference lien for delinquent fees, as provided in ORS 543.082.

(18) An applicant for a certificate issued under this section must provide evidence of a Federal Energy Regulatory Commission exemption or approval under a similar process by the federal agency responsible for authorizing the project before a certificate can be issued, if applicable.

(19) Nothing in this section shall alter the preference of municipalities in ORS 543.260 (3) and 543.270. [2007 c.657 §2; 2013 c.674 §4]

**Note:** See note under 543.760.

**Note:** Section 3, chapter 674, Oregon Laws 2013, provides:

**Sec. 3.** (1) The Water Resources Department and the State Department of Fish and Wildlife shall jointly review the adequacy of the amount and structure of the annual fee described in ORS 543.765 (14) in achieving the dual in-conduit energy development and fish passage restoration objectives of ORS 543.765 and review the functionality of the Fish Passage Restoration Subaccount and expenditures made from the subaccount. The departments shall consult with relevant interested parties in conducting the review.

(2) The departments shall commence the review described in subsection (1) of this section five years after the effective date of this 2013 Act [July 25, 2013]. Upon completing the review, the departments shall report any findings and recommendations regarding the adequacy of the fee amount and structure or the functionality of the subaccount or expenditures made from the subaccount, including any recommendations for legislation, to an interim committee of the Legislative Assembly dealing with natural resources no later than October 1, 2018. [2013 c.674 §3]