

TITLE 45

WATER RESOURCES: IRRIGATION, DRAINAGE, FLOOD CONTROL, RECLAMATION

- Chapter 536. Water Resources Department; Water Policy Review Board; Water Resources Director
537. Appropriation of Water Generally
538. Withdrawal of Certain Waters from Appropriation; Special Municipal and County Water Rights
539. Determination of Water Rights Initiated before February 24, 1909
540. Distribution of Water; Watermasters; Change in Use, Transfer or Abandonment of Water Rights
541. Miscellaneous Provisions on Water Rights, Uses, and Protection
542. Water Resource Surveys and Projects; Compacts
543. Hydroelectric Power Projects
545. Irrigation Districts
547. Drainage Districts
548. Provisions Applicable Both to Drainage Districts and to Irrigation Districts
549. Drainage and Flood Control Generally
551. Diking Districts
552. Water Improvement Districts
553. Water Control Districts
554. Corporations for Irrigation, Drainage, Water Supply or Flood Control
555. Reclamation Projects
558. Weather Modification

Chapter 536

1977 REPLACEMENT PART

Water Resources Department; Water Policy Review Board; Water Resources Director

GENERAL PROVISIONS

536.005 Definitions

WATER RESOURCES DEPARTMENT

536.008 Water Resources Department

- WATER POLICY REVIEW BOARD**
- 536.014 Water Policy Review Board; members; terms; confirmation; compensation and expenses
- 536.018 Board officers; quorum; meetings
- WATER RESOURCES DIRECTOR**
- 536.032 Water Resources Director; term; qualifications; duties and powers; compensation and expenses
- 536.040 Public records; copies as evidence
- 536.050 Fees
- 536.065 Judicial review of orders or regulations
- 536.070 Legal advice and services
- 536.080 Effect of records of former State Water Board and State Water Superintendent
- 536.090 Advisory committee on ground water and well operation; qualification of members; term; members to serve without compensation or expenses
- WATER RESOURCES ADMINISTRATION**
- 536.210 Definitions for ORS 536.210 to 536.550
- 536.220 Policy
- 536.265 Designation of board member for federal river basin commission
- 536.300 Formulation of state water resources policy
- 536.310 Purposes and policies to be considered in formulating state water resources policy
- 536.315 Designation of exact land areas included within auxiliary lands
- 536.320 Limitation of powers of board
- 536.330 Water resources Act as supplemental to and including existing statutes
- 536.340 Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses
- 536.350 Delivery of water resources policy statement to certain public bodies; effect
- 536.360 State agencies and public corporations to conform to statement of state water resources policy
- 536.370 Exercise of power in conflict with state water resources policy not effective until approved by board
- 536.380 Notification to board of proposed exercise of power involving water resources required; review and determination by board
- 536.390 Approval without filing notification
- 536.400 Application to court to compel compliance with state water resources policy
- 536.410 Withdrawal of unappropriated waters from appropriation by board order
- 536.420 Representation of state in carrying out compacts and agreements with other governmental agencies regarding water resources
- 536.430 Board to devise plans and programs for development of water resources
- 536.440 Investigations and studies
- 536.450 Assistance by board to other persons and agencies
- 536.460 Preparation and submission of information or recommendations to other persons or agencies
- 536.470 Coordination of local, state, interstate and federal programs
- 536.480 Making available information concerning water resources
- 536.490 Attendance at conferences and meetings
- 536.500 Acceptance and expenditure of moneys from public and private sources
- 536.510 Conduct of board hearings
- 536.520 State agencies and public corporations furnishing information and services to board
- 536.540 Approval of voucher claims
- 536.550 Rules and regulations
- 536.560 Appeal from order, rule or regulation of board
- MISCELLANEOUS PROVISIONS**
- 536.570 Moneys and securities of irrigation districts in possession of Water Resources Director; deposit with State Treasurer
- 536.580 Rights acquired prior to August 3, 1955, not affected
- 536.590 Rights acquired prior to January 1, 1956, not affected
- EMERGENCY WATER SHORTAGE POWERS**
- 536.700 "Drainage basin" defined
- 536.710 Policy
- 536.720 Water conservation and curtailment plans; contents; plan review and implementation; effect of failure to file or implement plan
- 536.730 Effect of emergency powers on vested water rights

CROSS REFERENCES

- Administrative procedures and rules of state agencies, Ch. 183
- Coastal zone, comprehensive land use planning study, 191.110 to 191.180
- Duties of Water Resources Director regarding geothermal resources, Ch. 522
- Environmental Quality Commission, water quality standards, consistency with board policies required, 468.735
- Hydroelectric projects, Ch 543
- WATER POLICY REVIEW BOARD**
- Fishway or hatchery facilities, review of requirement of, 509.645
- Open space lands, special assessment for ad valorem taxation, 308.740
- 536.014
Traveling expenses, 292.210 to 292.288
- 536.032
Drainage and irrigation district dissolution proceedings, 548.940, 548.955
Klamath River Basin Compact, duties of director in connection with, 542.620, 542.630
Outdoor recreation resources, policy of state, 390.010
Release of water from impoundment or diversion structures, 541.510 to 541.545

- Soil and water conservation districts, water conservation, 568 552
Traveling expenses, 292 210 to 292 288
Water well contractors and operators, licensing, 537 747 to 537.759
Watermasters, 540.071
Watershed protection and flood prevention projects, cooperative studies, 542 750
- 536.040**
- Report of well driller before commencing construction, confidentiality, 537 762
- 536.050**
- Fees to be paid into State Treasury promptly, 293.265
Watermasters, handling funds collected for, 540 135
- 536.220**
- Policy with reference to ground water, 537 525
State and local parks and recreation programs, Ch. 390
Water improvement, water diversion, bank protection works and dredging facilities; construction and use on scenic waterways, 390.835
Willamette River Greenway, 390 310 to 390.368
- 536.300**
- Coordination of research on power, 184 170
Klamath River Basin Compact, 542.620
- Protecting water resources when material removed, 541 605 to 541 665
Test stream and watershed study by Agricultural Experiment Station of Oregon State University, 542.710
- 536.310**
- Water improvement, water diversion, bank protection works and dredging facilities; construction and use on scenic waterways, 390.835
Willamette River Greenway, 390.310 to 390.368
- 536.340**
- Cancellation of abandoned water right by Water Resources Director, 540.631, 543.730
- 536.380**
- Fishway or hatchery facilities, approval, 509 645
- 536.420**
- Goose Lake Interstate Compact, 542.520
Klamath River Basin Compact, Water Resources Director as representative, 542.630
- 536.570**
- Depository of moneys and securities of irrigation districts, Water Resources Director to act as, 545 332, 548 400
Surrender of securities, payment of money deposited with Water Resources Director, 548.405 to 548.415

GENERAL PROVISIONS

536.005 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Board" means the Water Policy Review Board established pursuant to ORS 536.014.

(2) "Department" means the Water Resources Department created by ORS 536.008.

(3) "Director" means the Water Resources Director appointed pursuant to ORS 536.032. [1975 c.581 §13]

WATER RESOURCES DEPARTMENT

536.008 Water Resources Department. The Water Resources Department is established. The department shall consist of the Water Policy Review Board, the Water Resources Director and all their employes or assistants. [1975 c.581 §14]

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

WATER POLICY REVIEW BOARD

536.014 Water Policy Review Board; members; terms; confirmation; compensation and expenses. (1) There is established the Water Policy Review Board consisting of seven members appointed by the Governor, one of whom he shall designate as chairman. One member of the board shall be appointed from each of the congressional districts referred to in ORS 250.295 (1973 Replacement Part), and three members from the state at large.

(2) The term of office of each member is four years. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(4) A member of the board is entitled to compensation and expenses as provided in ORS 292.495. [1975 c.581 §15]

536.018 Board officers; quorum; meetings. (1) Members of the board shall select a vice chairman to serve in the absence of the chairman. The chairman and the vice chairman shall have such duties and powers necessary for the performance of the functions of such offices as the board determines appropriate.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

(3) The board shall meet at least once every three months, and at such other times and places as may be specified by the call of the chairman or of a majority of the members of the board. [1975 c.581 §16]

536.020 [Repealed by 1955 c.707 §75]

536.030 [Repealed by 1975 c.581 §29]

WATER RESOURCES DIRECTOR

536.032 Water Resources Director; term; qualifications; duties and powers; compensation and expenses. (1) Subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570, the Governor shall appoint as Water Resources Director an individual qualified by training and experience, who has the recommendation of the Water Policy Review Board, and who shall serve for a term of four years unless sooner removed by the Governor. Either the director or his deputy or principal assistant must be a hydraulic engineer.

(2) The director shall be the chief administrative officer of the Water Resources Department and shall be responsible to the Water Policy Review Board for the administration of all duties, functions and powers imposed by law upon the board. The board may delegate to the director any of the duties, functions or powers imposed by law upon the board. The director shall perform duties, functions and powers delegated to him by the board subject to policy direction by the board.

(3) Appeals from determinations of the director with respect to duties, functions and powers assigned to the director by statute shall be in the manner provided by law.

(4) The director shall appoint all subordinate officers and employes of the department and shall prescribe their duties and fix their compensation.

(5) Unless otherwise provided by law, the director shall receive a salary prescribed by the Governor. In addition to his salary and subject to any applicable law regulating travel and other expenses of state officers and employees, the director shall be reimbursed for actual and necessary travel and other expenses incurred by him in the performance of his official duties.

(6) The director and his employees and assistants may enter upon any private property in the performance of their official duties, doing no unnecessary injury thereto.

[1975 c 581 §18]

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

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

[Amended by 1975 c.581 §20]

536.050 Fees. The following fees shall be collected by the director in advance, and paid into the General Fund of the State Treasury:

(1) For examining an application for permit to appropriate water, \$20.

(2) For filing and recording permit to appropriate water:

(a) For irrigation purposes, \$10 for the first 30 acres, or fraction thereof, to be irrigated and 30 cents for each acre in excess of 30 acres.

(b) For power purposes, \$1 for each theoretical horsepower to be developed up to and including 100 and 20 cents for each horsepower in excess of 100.

(c) For storage, a minimum fee of \$10 for the first 100 acre-feet and one cent for each acre-foot in excess of 100.

(d) For any other purpose, \$15 for the first second-foot or fraction thereof and \$2 for each additional second-foot.

(3) For filing or recording any other water right instrument, \$2 for each page.

(4) For making copy of records in the department, a reasonable sum to cover the actual cost of preparing the copy.

(5) For certifying to copies, documents, records, or maps, \$1 for each certificate.

(6) For blueprint copy of any map or drawing, 10 cents per square foot or fraction thereof. For such other work as may be required of the department, actual cost of the work.

(7) For examining an application for approval of a change in point of diversion, or a change in place of use or change in use of water, \$20.

(8) For filing each application to transfer water rights for irrigation from one tract of land to another or to transfer to irrigation use from any other use, a minimum fee of \$10 for the first 30 acres or fraction thereof and 25 cents for each acre in excess of 30 acres, such fees to be based upon the number of acres to which the water right is transferred.

(9) For filing each application for change in point of diversion, \$15.

(10) For filing each application for a change in the use or place of use theretofore made of the water where the use is other than irrigation, \$15.

(11) For filing any protest with the director, \$10.

(12) For filing an application for extension of time within which irrigation or other works shall be completed or the right perfected, \$10.

[Amended by 1961 c 187 §3, 1967 c 36 §1; 1973 c 163 §4, 1975 c.581 §21]

536.060 [Repealed by 1971 c.734 §21]

536.065 Judicial review of orders or regulations. Judicial review of orders or regulations of the Water Resources Director shall be as provided in ORS 183.310 to 183.500.

[1971 c.734 §77]

536.070 Legal advice and services. The Attorney General, and the district attorney of the county in which legal questions arise, shall be the legal advisors of the board and the director, and shall perform all legal duties necessary in connection with his work, without other compensation than their salaries as fixed by law.

[Amended by 1975 c.581 §21a]

536.080 Effect of records of former State Water Board and State Water Superintendent. The transfer of functions from the former State Water Board and State Water Superintendent to the State Engineer, effected by chapter 283, Oregon Laws 1923, shall not impair the legal force and effect in any

water right adjudication, suit, action or other proceeding before the State Engineer, or in the courts or other tribunals of the state, of the official records of, or any evidence filed with, said State Water Board or State Water Superintendent.

536.090 Advisory committee on ground water and well operation; qualification of members; term; members to serve without compensation or expenses.

(1) In carrying out the duties, functions and powers prescribed by law, the director shall appoint an advisory committee to advise the director on all matters relating to:

(a) Rules for the development, securing, use and protection of groundwater; and

(b) Licensing of water well contractors and well drilling machine operators, including the examination of such persons for license.

(2) The committee shall consist of five members, two of whom shall be individuals actively engaged in some aspect of the water well drilling industry, two of whom shall be groundwater geologists or hydrologists, and one of whom shall represent the public at large. Members shall serve for such terms as the director may specify. The committee shall meet at least once every three months and at such other times and at such places as the director may specify.

(3) A member of the committee shall receive neither compensation nor expenses in the performance of his duties as a member.

[1977 c.749 §2]

WATER RESOURCES ADMINISTRATION

536.210 Definitions for ORS 536.210 to 536.550. As used in ORS 536.210 to 536.550, unless the context requires otherwise:

(1) "Board" means the Water Policy Review Board created by ORS 536.014.

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

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

(4) "State water resources policy" means the water resources policy provided for in ORS 536.300 to 536.350 and 537.505 to 537.525.

(5) "Waters of this state" means any surface or ground waters located within or

without this state and over which this state has sole or concurrent jurisdiction.

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

(a) Potential reservoir sites.

(b) Flood-plain areas forming the predictable channels of flood-water drainage of rivers and streams.

(7) "Existing rights" or "vested rights" or words of similar import include inchoate rights to the use of water to the fullest extent that the same are recognized, defined or declared by any court within this state or by the director.

[1955 c.707 §2; 1965 c.355 §1; 1975 c.581 §22]

536.220 Policy. (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 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 which, 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.

[1955 c.707 §1]

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

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

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

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

536.265 Designation of board member for federal river basin commission. The Governor shall designate a representative from the State of Oregon on the river basin commission established under section 202(c) of the Act of July 22, 1965, P.L. 89-80 (42 U.S.C. 1962b-1), of which this state is a member, to act in accordance with the powers and duties conferred upon him by law.

[1967 c.157 §2; 1975 c.581 §23]

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

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

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

536.300 Formulation of state water resources policy. (1) The board shall proceed as rapidly as possible to study: Existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, flood plains and reservoir sites.

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

[1955 c.707 §10(1), (2); 1965 c.355 §2]

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

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

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

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

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

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

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

(7) The maintenance of minimum perennial stream flows sufficient to support aquatic life and to minimize pollution shall be fos-

tered and encouraged if existing rights and priorities under existing laws will permit;

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

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

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

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

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

[1955 c.707 §10(3)]

Note: The Legislative Counsel has not, pursuant to ORS 173.160, undertaken to substitute specific ORS references for the words "this Act" in ORS chapter 536 Chapter 707, Oregon Laws 1955, enacted into law and amended the ORS sections which may be found by referring to the 1955 Comparative Section Table located following the Index in volume 6 of Oregon Revised Statutes.

536.315 Designation of exact land areas included within auxiliary lands. As part of the water resources policy statement authorized under ORS 536.300, the Water Policy Review Board may designate the exact land areas included within the listing of auxiliary lands in subsection (6) of ORS 536.210.

[1965 c.355 §4]

536.320 Limitation of powers of board. The board shall not have power:

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

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

(3) To modify or amend any standard or policy as prescribed in ORS 536.310 nor to adopt any rule or regulation in conflict therewith.

[1955 c.707 §10(4)]

536.330 Water resources Act as supplemental to and including existing statutes. Chapter 707, Oregon Laws 1955, shall be construed by the board as supplemental to existing statutes and not in lieu thereof except to the extent that existing statutes are expressly amended or repealed by chapter 707, Oregon Laws 1955. ORS 536.210 to 536.560 and the authority of the department thereunder shall include all laws now existing or hereinafter enacted that relate to or affect the use and control of the water resources of this state.

[1955 c.707 §10(5), 1963 c.415 §1, 1975 c.581 §24]

Note: See note under 536.310.

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

(1) May, by a water resources statement referred to in subsection (2) of ORS 536.300, classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole. The board may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in the subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the board under ORS 536.370 to 536.390.

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

(3) May, by a water resources statement referred to in subsection (2) of ORS 536.300 and subject to the preferential uses named in

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

[1955 c.707 §10(6); 1963 c.414 §1]

536.350 Delivery of water resources policy statement to certain public bodies; effect. The board shall deliver a copy of each water resources statement referred to in subsection (2) of ORS 536.300 to each state agency or public corporation of this state which may be concerned with or which may carry on activities likely to affect the use or control of the water resources of this state in any particular. Each state agency or public corporation of this state which receives from the board a copy of a water resources statement shall give to the board a receipt therefor. A copy of any such statement duly certified by the director of the board to be a full, true and correct copy shall be received in evidence in any court in the state and if the certificate of the director shall recite that a copy thereof was delivered to a particular state agency or public corporation of this state, it shall be presumed that the same was actually delivered as stated in said certificate.

[1955 c 707 §10(7)]

536.360 State agencies and public corporations to conform to statement of state water resources policy. In the exercise of any power, duty or privilege affecting the water resources of this state, every state agency or public corporation of this state shall give due regard to the statements of the board and shall conform thereto. No exercise of any such power, duty or privilege by any such state agency or public corporation which would tend to derogate from or interfere with the state water resources policy shall be lawful.

[1955 c 707 §11]

536.370 Exercise of power in conflict with state water resources policy not effective until approved by board. (1) No exercise by any state agency or public corpora-

tion of this state which has received a copy of a state water resources statement as provided in ORS 536.350, of any power, duty or privilege, including the promulgating or undertaking of any order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy as set forth in the statement, shall be effective or enforceable until approved by the board as provided in subsection (2) of this section.

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

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

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

(c) The board grants its approval as provided in subsection (4) of ORS 536.380.

[1955 c 707 §12]

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

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

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

(b) A protest against the proposed exercise is filed with the board within 25 days after the filing of the notification as provided in subsection (1) of this section by any person,

state agency or public corporation of this state or agency of the Federal Government.

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

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

[1955 c.707 §14]

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

require to insure the accomplishment of the purposes of the state water resources policy.

[1955 c.707 §13]

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

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

[1955 c 707 §15]

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

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

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

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

(5) While the order of withdrawal is in effect, no application for a permit to appropriate the waters withdrawn for the uses specified in the order and no application for a preliminary permit or license involving appropriations of such waters shall be received for filing by the Water Resources Director.

[1955 c.707 §16; 1961 c.224 §11]

536.420 Representation of state in carrying out compacts and agreements with other governmental agencies regarding water resources. (1) The Governor shall designate the director, or a member or members of the board as a party on behalf of and represent the state in the formulation, entering into and carrying out of any formal or informal compact or other agreement authorized by the Legislative Assembly concerning the use and control of the water resources of this state, between this state or any state agency or public corporation thereof and any other state, any state agency or public corporation thereof or the Federal Government or any agency thereof.

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

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

(4) Any state agency or public corporation of this state required or permitted by law to formulate, enter into or carry out any compact or other agreement referred to in subsection (1) of this section shall give timely and adequate notice to the board before it undertakes any action under such requirement or permission.

[1955 c.707 §17; 1961 c.298 §1, 1975 c.581 §25]

536.430 Board to devise plans and programs for development of water resources. The board shall devise plans and programs for the development of the water resources of this state in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof.

[1955 c.707 §18]

536.440 Investigations and studies.

The board, by itself or in conjunction with any person, local voluntary committee or association, state agency or public corporation of this or any other state, any interstate agency or any agency of the Federal Government, may conduct such investigations, surveys or studies, including the holding of public hearings, relating to the water resources of this state as it deems necessary to facilitate and assist in carrying out its functions as provided by law.

[1955 c.707 §20]

536.450 Assistance by board to other persons and agencies. The board may make available technical advice and information for the purpose of assisting any person, local voluntary committee or association, state agency or public corporation of this state, any interstate agency or any agency of the Federal Government in the preparation, carrying into effect and properly sustaining any plan, program or project concerning the use or control of the water resources of this state in harmony with the state water resources policy or otherwise with the public interest in encouraging, promoting and securing the maximum beneficial use and control of the water resources of this state.

[1955 c.707 §19]

536.460 Preparation and submission of information or recommendations to other persons or agencies. The board may prepare and submit information or proposals and recommendations relating to the water resources of this state or the functions of the board as provided by law to any person, local voluntary committee or association, state agency or public corporation of this or any other state, any interstate agency, any agency of the Federal Government or any committee of the legislature of this or any other state or of the Congress of the United States.

[1955 c.707 §22]

536.470 Coordination of local, state, interstate and federal programs. The board may consult and cooperate with any state agency or public corporation of this or any other state, any interstate agency or any agency of the Federal Government for the

purpose of promoting coordination between local, state, interstate and federal plans, programs and projects for the use or control of the water resources of this state or to facilitate and assist the board in carrying out its functions as provided by law.

[1955 c 707 §21]

536.480 Making available information concerning water resources. The board, in so far as practicable, shall make available, free or at cost, to the public and to any state agency or public corporation of this or any other state, any interstate agency or any agency of the Federal Government, information concerning the water resources of this state or the functions of the board as provided by law, including information relating to the state water resources policy, to any plan or program devised by the board for the development of the water resources of this state, to the results of any investigation, survey or study conducted by the board and to the results of any hearing held by the board.

[1955 c 707 §23]

536.490 Attendance at conferences and meetings. The board, or any member thereof or any other person designated by the board, may attend and participate in any public conference, meeting or hearing held within or without this state for the purpose of considering water resources problems.

[1955 c 707 §24]

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

[1955 c 707 §25]

536.510 Conduct of board hearings.

(1) The board may designate any one or more of its members or may appoint any other person as hearing officer to conduct and preside over any hearing which the board is required or permitted by law to hold.

(2) In conducting and presiding over any hearing which the board is required or permitted by law to hold, the board, any member thereof or a hearing officer appointed under subsection (1) of this section may:

(a) Take such evidence as may be necessary to a clear understanding of all matters involved but any order of the board shall be based upon competent evidence.

(b) Administer oaths, issue subpoenas signed by any member of the board or the hearing officer, compel the attendance of and the testifying and giving of evidence by witnesses and compel the production of documentary evidence.

(c) Order the taking of depositions and issue commissions therefor.

(d) Adjourn the hearing from time to time on reasonable notice.

(3) In case of failure on the part of any person to comply with any subpoena or order issued under paragraph (b) of subsection (2) of this section, or the refusal of any witness to testify to any matter regarding which he lawfully may be interrogated in hearings before the board, any member thereof or a hearing officer appointed under subsection (1) of this section, the circuit court of the county in which the hearing is held, or any judge thereof, upon application by the board, any member thereof or the hearing officer, shall issue attachment proceedings for contempt, as in the case of failure to comply with a subpoena or order issued from such court or a refusal to testify therein.

(4) Witnesses in hearings before the board, any member thereof or a hearing officer appointed under subsection (1) of this section shall receive fees as in civil cases, to be paid by the party calling them, except that witnesses who appear voluntarily and give testimony upon their own initiative shall receive no fees therefor.

(5) All proceedings in such a hearing shall be reported and one transcript thereof shall be furnished at cost to any interested person.

[1955 c 707 §26]

536.520 State agencies and public corporations furnishing information and services to board. (1) In order to facilitate

and assist in carrying out its functions as provided by law, the board may:

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

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

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

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

(3) Upon receipt and approval by the board of approved claims therefor, any special or extraordinary expense incurred by any state agency or public corporation of this state in cooperating with the board under this section shall be paid by the board.

[1955 c.707 §27, 28]

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

536.540 Approval of voucher claims.

All voucher claims for indebtedness or expenses authorized and incurred by the board in carrying out its functions as provided by law shall be approved by the board or as provided in ORS 293.330.

[1955 c.707 §31]

536.550 Rules and regulations. The board may promulgate, and from time to time modify or rescind, such rules and regulations as it deems necessary to facilitate, assist and attain maximum efficiency in carrying out its functions as provided by law. The board may prepare and distribute, free or at cost, periodic compilations of its rules and regulations.

[1955 c.707 §30]

536.560 Appeal from order, rule or regulation of board. Any person, public corporation or state agency who deems himself aggrieved by any order, rule or regulation of the Water Policy Review Board under chapter 707, Oregon Laws 1955, may appeal from the same to the circuit court of the

county in which the property affected by such order, rule or regulation or any part of such property is situated. The appeal may be carried from the circuit court to the Supreme Court, and shall be governed by the practice in suits in equity.

[1955 c.707 §76]

Note: See note under 536.310

MISCELLANEOUS PROVISIONS

536.570 Moneys and securities of irrigation districts in possession of Water Resources Director; deposit with State Treasurer. The Water Resources Director may deposit with the State Treasurer for safekeeping all moneys and securities which he has or which may come into his possession in connection with the reorganization, retirement or settlement of the bonds, warrants or other evidences of indebtedness of any irrigation district within the state. When so deposited with the State Treasurer he shall safely keep the same subject to call of the Water Resources Director.

[Formerly 544.050; amended by 1957 c.351 §3]

536.580 Rights acquired prior to August 3, 1955, not affected. Nothing in ORS 509.645, 536.210 to 536.550 or 543.225, as enacted by chapter 707, Oregon Laws 1955, nor in the amendments made by chapter 707, Oregon Laws 1955, to ORS 225.290, 225.300, 261.325, 261.330, 509.605, 509.610, 509.625, 509.640, 537.170, 537.200, 543.050 or 543.230, nor in sections 38, 41, 43, 45 or 50 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested and inchoate prior to August 3, 1955.

[1955 c.707 §55; 1973 c.723 §125]

536.590 Rights acquired prior to January 1, 1956, not affected. Nothing in ORS 536.560, as enacted by chapter 707, Oregon Laws 1955, nor in the amendments made by chapter 707, Oregon Laws 1955, to ORS 182.410, 536.010, 542.110, 548.365, 555.030 or 555.070, nor in sections 58 to 65, 70 or 75 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested or inchoate prior to January 1, 1956.

[1955 c.707 §77; 1969 c.168 §2]

ENERGY WATER SHORTAGE POWERS

536.700 "Drainage basin" defined. As used in ORS 536.700 to 536.730, "drainage basin" means one of the 18 Oregon drainage basins identified by the Water Resources Department as shown on maps published by that department dated January 1976.

[1977 c.541 §3]

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

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

[1977 c.541 §1]

536.720 Water conservation and curtailment plans; contents; plan review and implementation; effect of failure to file or implement plan. (1) Because municipal and other political subdivision boundaries do not conform with the geographic boundaries of the 18 major drainage basins, or associated subbasins in the state, and because problems caused by a severe continuing drought may exceed local ability to control, the Legislative Assembly declares that water resource conservation in time of severe, continuing drought requires the exercise of state authority.

(2) The Water Resources Director may order individual state agencies and political subdivisions within any drainage basin or subbasin to develop and file with the director, within 30 days following the order, a water conservation or curtailment plan or both.

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

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

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

(C) To establish programs consistent with law designed to promote conservation, preven-

tion of waste, salvage and reuse of water resources.

(b) When a state agency or political subdivision files a water conservation plan with the Water Resources Director, the director shall review the plan and approve it if the director finds that the plan satisfactorily promotes uniformity in water conservation practices and the coordination of usage regulation.

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

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

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

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

(5) If a state agency or political subdivision fails to file a water conservation or curtailment plan when so ordered, or if the Water Resources Director does not approve a filed plan, the Water Resources Director may develop appropriate plans.

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

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

(7) Orders provided for in subsection (6) of this section and curtailments, adjustments, allocations and regulations ordered pursuant thereto shall be designed in so far as practicable not to discriminate within any class of consumers.

(8) It is the intent of the Legislative Assembly that curtailments, adjustments, allocations and regulations ordered pursuant to subsection (6) of this section be continued

only so long as a declaration by the Governor of the existence of severe, continuing drought is in effect.

(9) The Governor may direct individual state agencies and political subdivisions of this state to seek enforcement of all orders and regulations issued pursuant to subsections (2) to (6) of this section.

[1977 c 541 §2]

536.730 Effect of emergency powers on vested water rights. Nothing in ORS 536.700 to 536.730 is intended to permit the Governor to hinder the ability of any holder of a vested water right to obtain and use legally assured benefits of that right.

[1977 c.541 §4]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
October 1, 1977.

Thomas G Clifford
Legislative Counsel