Chapter 541

1981 REPLACEMENT PART

Miscellaneous Provisions on Water Rights, Uses and Protection; Water Development Projects

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WATER COMPANIES ORGANIZED UNDER 1891 ACT

541.010 Furnishing of water for certain purposes declared to be a public utility; rates; amendment of law. (1) The use of the water of the lakes and running streams of Oregon, for general rental, sale or distribution, for purposes of irrigation, and supplying water for household and domestic consumption, and watering livestock upon dry lands of the state, is a public use, and the right to collect rates or compensation for such use of water is a franchise. A use shall be deemed general within the purview of this section when the water appropriated is supplied to all persons whose lands lie adjacent to or within reach of the line of the ditch, canal or flume in which the water is conveyed, without discrimination other than priority of contract, upon payment of charges therefor, as long as there may be water to supply.

(2) Rates for the uses of water mentioned in this section may be fixed by the Legislative Assembly or by such officer as may be given that authority by the Legislative Assembly, but rates shall not be fixed lower than will allow the net profits of any ditch, canal, flume or system thereof to equal the prevailing legal rate of interest on the amount of money actually paid in and employed in the construction and operation of the ditch, canal, flume or system.

(3) This section and ORS 541.020 to 541.080 may at any time be amended by the Legislative Assembly, and commissioners for the management of water rights and the use of water may be appointed.

541.020 Construction of ditch, etc., by corporation; route across lands. Whenever any corporation organized under the Act of 1891, pages 52 to 60, Oregon Laws 1891, finds it necessary to construct its ditch, canal, flume, distributing ditches, or feeders across the improved or occupied lands of another, it shall select the shortest and most direct route practicable, having reference to cost of construction upon which the ditch, canal, flume, distributing ditches, or feeders can be constructed with uniform or nearly uniform grade.

541.030 Ditches, etc., across state lands; grant of right of way. The right of way, to the extent specified in the Act of 1891, pages 52 to 60, Oregon Laws 1891, for the ditches, canals, flumes, distributing ditches, and feeders of any corporation appropriating water under the provisions of the Act of 1891, across all lands belonging to the State of Oregon and not under contract of sale, is granted.

541.040 Headgate; mode of construction. Every corporation having constructed a ditch, canal or flume under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, shall erect and keep in good repair a headgate at the head of its ditch, canal or flume, which, together with the necessary embankments, shall be of sufficient height and strength to control the water at all ordinary stages. The framework of the headgate shall be of timber not less than four inches square, and the bottom, sides and gate shall be of plank not less than two inches in thickness.

541.050 Leakage or overflow; liability; exception. Every corporation having constructed a ditch, canal, flume or reservoir under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, shall be liable for all damages done to the persons or property of others, arising from leakage or overflow of water therefrom growing out of want of strength in the banks or walls, or negligence or want of care in the management of the ditch, canal, flume or reservoir. However, damage resulting from extraordinary and unforeseen action of the elements, or attributable in whole or in part to the wrongful interference of another with the ditch, canal, flume or reservoir, which may not be known to the corporation for such length of time as would enable it by the exercise of reasonable efforts to remedy the same, shall not be recovered against the corporation.

541.055 District liability for seepage and leakage from water or flood control works; limitation on commencement of action. (1) Any person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 that owns, operates or maintains any irrigation, drainage, water supply, water control or flood control works shall be liable for damage caused by seepage and leakage from such works only to the extent that such damage is directly and proximately caused by the negligence of the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 and not

otherwise. Damage resulting from extraordinary and unforeseen action of the elements, or attributable in whole or in part to the wrongful interference of another person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 with the irrigation, drainage, water supply, water control or flood control works, which may not be known to the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 for such length of time as would enable the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 by the exercise of reasonable efforts to remedy the same, shall not be recovered against the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554.

(2) An action or suit under subsection (1) of this section must be commenced within two years from the date when the damage is first discovered or in the exercise of reasonable care should have been discovered. However, in no event shall any such action or suit be commenced more than four years from the date the damage actually occurred. [1979 c 882 §1]

541.060 Waste of water; flooding premises; unnecessary diversion. Every corporation having constructed a ditch, canal or flume under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, shall carefully keep and maintain the embankments and walls thereof, and of any reservoir constructed to be used in conjunction therewith, so as to prevent the water from wasting and from flooding or damaging the premises of others. The corporation shall not divert at any time any water for which it has no actual use or demand.

541.070 Ditches, canals and flumes as real estate. All ditches, canals and flumes permanently affixed to the soil, constructed under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, are declared to be real estate, and the same or any interest therein shall be transferred by deed only, duly witnessed and acknowledged. The vendee of the same, or any interest therein, at any stage shall succeed to all the rights of his vendor, and shall be subject to the same liabilities during his ownership.

541.080 Suits involving water rights; parties; decree as to priorities. In any suit commenced for the protection of rights to water acquired under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to the suit, and the court may in one decree determine the relative priorities and rights of all parties to the suit. Any person claiming a right on the stream or source, not made a party to the suit, may become such on application to the court, when it is made to appear that he is interested in the result, and may have his right determined. The court may at any stage, on its own motion, require any persons having or claiming rights to water on the stream or source, to be brought in and made parties, when it appears that a complete determination of the issue involved cannot be made without their presence.

APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER, UNDER 1899 ACT

541.110 Use of water to develop mineral resources and furnish power. The use of the water of the lakes and running streams of Oregon for the purpose of developing the mineral resources of the state and to furnish electric power for all purposes, is declared to be a public and beneficial use and a public necessity. Subject to the provisions of the Water Rights Act (as defined in ORS 537.010), the right to divert unappropriated waters of any such lakes or streams for such public and beneficial use is granted.

541.120 Ditches, etc., through lands; two or more prohibited; use of existing ditch by others than owner; joint liability. No tract or parcel of improved or occupied land in this state shall, without the written consent of the owner, be subjected to the burden of two or more ditches, canals, flumes or pipelines constructed under the Act of 1899, pages 172 to 180, Oregon Laws 1899, for the purpose of conveying water through the property, when the same object can be feasibly and practically attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch, canal, flume or pipeline. Any person having constructed a ditch, canal, flume or pipeline for the purpose provided in the Act of 1899 shall allow any other person to enlarge such ditch, canal, flume or pipeline, so as not to interfere

with the operations of the person owning the same, and to use such ditch, canal, flume or pipeline in common with the person owning the same, upon payment to such person of a reasonable proportion of the cost of constructing and maintaining the ditch, canal, flume or pipeline. Such persons shall be jointly liable to any person damaged.

541.130 Right of way for ditches across state lands granted. The right of way to the extent specified in the Act of 1899, pages 172 to 180, Oregon Laws 1899, for the ditches, canals, flumes, pipelines, distributing ditches, and feeders of any person appropriating water under the provisions of that Act, across any and all lands belonging to the State of Oregon and not under contract of sale, is granted.

APPROPRIATION OF WATER BY THE UNITED STATES

541.210 [Repealed by 1953 c.328 §2]

541.220 Survey of stream system; delivery of data to Attorney General; suits for determination of water rights. In any stream system where construction is contemplated by the United States under the Act of Congress approved June 17, 1902, 32 Stat. 388 to 390, and known as the Reclamation Act, the Water Resources Director shall make a hydrographic survey of the stream system, and shall deliver an abstract thereof together with an abstract of all data necessary for the determination of all rights for the use of the waters of such system, to the Attorney General. The Attorney General, together with the district attorneys of the districts affected by the stream system shall, at the request of the Secretary of the Interior, enter suit on behalf of the State of Oregon, in the name of the state, for the determination of all rights for the use of the water, and shall diligently prosecute the same to a final adjudication.

541.230 State lands within irrigated area; restrictions on sale; conveyance of lands needed by United States. No lands belonging to the state, within the areas to be irrigated from work constructed or controlled by the United States or its authorized agents, shall be sold except in conformity with the classification of farm units by the United States. The title of such land shall not pass from the state until the applicant therefor has fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except under the conditions prescribed in this section. Any state lands needed by the United States for irrigation works may, in the discretion of the Division of State Lands, be conveyed to it without charge. [Amended by 1967 c 79 §1]

541.240 Right of way for ditches, etc.; reservation in conveyances. There is granted over all the unimproved lands now or hereafter belonging to the state the necessary right of way for ditches, canals, and reservoir sites for irrigation purposes constructed by authority of the United States or otherwise. All conveyances of state land made after May 18, 1905, shall contain a reservation of such right of way and reservoir sites.

541.250 Cession to United States not rescinded. Nothing in ORS 541.220 to 541.240 shall be construed as rescinding the cession by the state to the United States of lands, as provided in chapter 5, Oregon Laws 1905.

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

541.310 Suits for determination of rights; parties; survey of stream; disbursements. In any suit wherein the state is a party, for determination of a right to the use of the waters of any stream system, all who claim the right to use the waters shall be made parties. When any such suit has been filed the court shall call upon the Water Resources Director to make or furnish a complete hydrographic survey of the stream system as provided in ORS 541.220, in order to obtain all data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in the suit shall be taxed by the court as in other equity suits.

541.320 Decrees adjudicating rights; filing; statement as to matters adjudicated. Upon the adjudication of the rights to the use of the water of a stream system, a certi-

fied copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the office of the Water Resources Director. The decree shall declare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

541.410 Wheels, pumps, engines, etc.; use by riparian owner to raise water; prior rights of others. Any person who owns or has the possessory right to any land bordering on any lake or natural stream of water shall have the right to employ wheels, pumps, hydraulic engines, or other machinery for the purpose of raising water to the level required for use of the water in irrigating any land belonging to him; provided, that the use of the water shall not conflict with the better or prior right of any other person.

SPLASH DAMS

541.450 Definitions for ORS 541.450 to 541.460. As used in ORS 541.450 to 541.460 and 541.990:

(1) "Splash dam" means a dam constructed and used in the floating and driving of logs and other lumber products whereby water behind the dam is released for the purpose of causing or aiding the floating of logs or other lumber products on a navigable or nonnavigable river in the waters thereof below the location of the dam.

(2) "Splash dam" does not mean any device used on the waters of this state for the assembly or storage of logs or other lumber products, or for any other purpose incidental thereto. [1957 c 163 §1]

541.455 Splash dams unlawful. After January 1, 1958, it shall be unlawful to operate a splash dam on any of the navigable or nonnavigable waters of this state. No officer or agency of this state shall issue any permit for the construction or maintenance of any dam to be used for splash dam purposes. [1957 c 163 §2]

541.460 Abatement proceedings by Attorney General. The Attorney General, upon being informed that any violation of ORS 541.450 to 541.460 or 541.990 (1) has occurred, is hereby empowered to proceed immediately in the circuit court of the county in which said splash dam is located, to petition the court for the removal of said splash dam by abatement proceedings; and all costs in connection therewith incurred by the Attorney General shall be assessed against the offending person, firm or corporation. [1957 c.163 §3]

RELEASE OF WATER FROM IMPOUNDMENT OR DIVERSION STRUCTURE

541.510 Water Resources Director may require posting of signs when public safety endangered by release of water from impoundment or diversion structure. (1) Whenever it appears to the satisfaction of the Water Resources Director upon his own determination or upon evidence submitted to him by any person that the release of water from an impoundment or diversion structure constructed before or after May 26, 1959, endangers or may endanger the public safety, the director shall send a written notice to the owner or operator of the structure.

(2) The notice provided for in subsection (1) of this section shall state:

(a) That the release of water from the impoundment or diversion structure endangers or may endanger the public safety.

(b) That the owner or operator of the structure shall within a time to be set by the director post notices downstream from the structure at places of public access to the stream to be designated by the director warning the public that the stream level below the structure is subject to fluctuation. [1959 c.624 §1, 1961 c.379 §9a]

541.515 Notice by Water Resources Director when hazard to property or human life created by release of water from impoundment or diversion structure. (1) Whenever it appears to the satisfaction of the Water Resources Director, upon his own determination or upon evidence submitted to him by any person that the present or proposed release of stored water from an impoundment or diversion structure, including any water power project, constructed before or after May 1, 1961, results in rapid increase in the stream level below the structure which creates or will

create a hazard to human life or property, the director shall cause written notice of such determination to be mailed to the owner or operator of the structure.

(2) The notice provided for in subsection (1) of this section shall state:

(a) That the present or proposed release of stored water from the impoundment or diversion structure creates or may create an unreasonable hazard to human life or property.

(b) The manner in which such unreasonable hazard to human life or property is or may be created.

(c) The action which is required, in the opinion of the director, to minimize such unreasonable hazard to human life or property.

(d) That the owner or operator of the impoundment or diversion structure, within 15 days after the mailing of the notice, may request in writing that the director hold a hearing on such unreasonable hazard or action required to minimize such unreasonable hazard, and that upon failure to request a hearing the director shall make an order stating the terms, limitations and conditions of the action required to minimize such unreasonable hazard. [1961 c.379 §1]

541.520 Procedure when owner or operator of structure fails to request hearing; order regulating release of water. If, within 15 days after the mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure fails to request in writing that the Water Resources Director hold a hearing, the director shall make and file in his office an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize unreasonable hazard to human life or property as set forth in the notice. The order shall become effective upon filing a copy in the office of the director. The director shall cause a copy of the order to be mailed to the owner or operator of the structure. The order is not subject to appeal. [1961 c 379 §2]

541.525 Hearing required upon request of owner or operator of structure; notice and conduct of hearing. (1) If, within 15 days after mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure requests in writing that the Water Resources Director hold a hearing, the director shall hold a hearing in accordance with ORS 183.310 to 183.550 on the hazard to human life or property which is or will be created by the rapid increase in the stream level below the structure resulting from the release of water from the structure and the terms, limitations and conditions relating to such release of water necessary to minimize such unreasonable hazard.

(2) At least 10 days prior to the hearing the director, in addition to the notice requirements of ORS 183.310 to 183.550, shall cause a copy of the notice to be published in a newspaper of general circulation in each county in which the structure is located and in which unreasonable hazard to human life or property is or may be created. [1961 c 379 §3; 1971 c.734 §83]

541.530 Order of Water Resources Director regulating release of water from structure; judicial review. (1) After the hearing provided for in ORS 541.525 the Water Resources Director, if he determines that the release of stored water from the impoundment or diversion structure results or will result in rapid increase in the stream level below the structure, which increase creates or will create an unreasonable hazard to human life or property, shall make and file in his office an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize the unreasonable hazard. In determining what constitutes unreasonable hazard and what terms, limitations and conditions are necessary to minimize it, the director shall consider and give weight to the likelihood of harm to the public, recreation benefits, power benefits, agriculture benefits, purpose of the structure, water flows, extent, nature and time of use by the public and all other material factors.

(2) The order is subject to judicial review as provided in ORS 183.310 to 183.550. [1961 c 379 §4, 1971 c.734 §84]

541.535 Installation of automatic stream level recording devices. An order of the Water Resources Director made as provided in ORS 541.520 or 541.530 may require the owner or operator of an impoundment or diversion structure to install one or more automatic stream level recording devices satisfactory to the director at one or more locations satisfactory to the director. The cost of each such device and the installation and maintenance thereof shall be paid by the owner or operator of the structure. [1961 c.379 §5]

541.540 Procedure in emergency when release of water from structure essential. When conditions beyond the control of the owner or operator of an impoundment or diversion structure, to which an order of the Water Resources Director, made as provided in ORS 541.520 or 541.530 relates, threaten the safety of the structure, and the release of water from the structure contrary to the terms, limitations and conditions stated in the order is or may be necessary to remove such threat:

(1) The terms, limitations and conditions of the order shall not apply to such release of water.

(2) The owner, operator or person in immediate charge of the structure shall immediately notify the director, or his office, of the situation.

(3) The owner, operator or person in immediate charge of the structure shall immediately notify, to the best of his ability, those persons whose life or property may be threatened by such release of water. [1961 c 379 §6]

541.545 Compliance with orders of Water Resources Director; enforcement. (1) No person shall fail to comply with an order of the Water Resources Director made as provided in ORS 541.520 or 541.530.

(2) The director may enforce any order made as provided in ORS 541.520 or 541.530, and may prosecute proceedings to enjoin violations of subsection (1) of this section. [1961 c.379 §§7, 8]

REMOVAL OF MATERIAL; FILLING

541.605 Definitions for ORS 541.605 to 541.665. As used in ORS 541.605 to 541.665, unless the context requires otherwise:

(1) "Channel relocation" means a change in location of a channel in which a new channel is dug and the flow is diverted from the old channel into the new channel if more than 50 cubic yards of material is removed in constructing the new channel or if it would require more than 50 cubic yards of material to completely fill the old channel.

(2) "Director" means the Director of the Division of State Lands.

(3) "Division" means the Division of State Lands.

(4) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, the Columbia River Estuary extends to the western edge of Puget Island.

(5) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state.

(6) "Governmental body" includes the Federal Government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(7) "Intermittent stream" means any stream which flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(8) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(9) "Public use" means a publicly owned project or a privately owned project that is available for use by the public.

(10) "Removal" means the taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation.

(11) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(12) "Waters of this state" means natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state. [1967 c 567 §2, 1971 c 509 §4, 1971 c 754 §1, 1973 c.330 §1, 1973 c 674 §1, 1977 c 417 §2; 1977 c 418 §1, 1979 c.564 §1]

541.610 Policy. (1) The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. Streams, lakes, bays, estuaries and other bodies of water in this state, including not only water and materials for domestic, agricultural and industrial use but also habi-

tats and spawning areas for fish, avenues for transportation and sites for commerce and public recreation, are vital to the economy and well-being of this state and its people. Unregulated removal of material from the beds and banks of the waters of this state may create hazards to the health, safety and welfare of the people of this state. Unregulated filling in the waters of this state for any purpose, may result in interfering with or injuring public navigation, fishery and recreational uses of the waters. In order to provide for the best possible use of the water resources of this state, it is desirable to centralize authority in the Director of the Division of State Lands, and implement control of the removal of material from the beds and banks or filling of the waters of this state.

(2) The Director of the Division of State Lands shall take into consideration all beneficial uses of water including streambank protection when administering fill and removal statutes.

(3) There shall be no condemnation, inverse condemnation, other taking, or confiscating of property under ORS 541.605 to 541.665 without due process of law. [1967 c 567 §1, 1971 c 754 §2, 1973 c 330 §2, 1973 c 674 §2, 1977 c 418 §2, 1979 c 564 §2]

541.615 Permit required to remove material from bed or banks of waters; exceptions. (1) Except as otherwise specifically permitted under ORS 541.605 to 541.665, no person or governmental body shall remove any material from the beds or banks or fill any waters of this state without a permit issued under authority of the Director of the Division of State Lands, or in a manner contrary to the conditions set out in the permit.

(2) No governmental body shall issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 541.605 to 541.665.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any governmental body entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 541.605 to 541.665.

(4) Subsection (1) of this section does not apply to removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property, when notice of such emergency removal or filling is given to the Division of State Lands within 24 hours following the start of such activity. The division, not later than 24 hours following notice, shall inspect the emergency activity, and deny or approve; provided, however, that in emergency actions involving highways, the appropriate highway authority having jurisdiction over the highway in which the work is being performed, shall notify the division within 72 hours following the start of such activity. [1967 c.567 §3; 1971 c.754 §3]

541.620 Application for permit; fee; disposition of fees. (1) Each applicant for a permit to remove material from the bed or banks or fill any waters of this state first shall file a written application with the Director of the Division of State Lands, specifying the nature and amount of material to be removed or the amount of fill, the waters and the specific location from which it is to be removed or where the fill will be placed, the method of removal or filling and the times during which removal or filling is to be conducted. The director may require additional information as is necessary to enable him to determine whether the granting of the permit applied for is consistent with the protection, conservation and best use of the water resources of this state. For the purposes of this subsection, fills or removals of material at locations not more than one mile apart may be combined in one application.

(2) The Director of the Division of State Lands shall furnish to any member of the public upon his written request and at his expense a copy of any application for a permit pursuant to subsection (1) of this section.

(3) (a) Each application under subsection (1) of this section must be accompanied by a fee in accordance with the following schedule:

(A) For a removal by a private operator or public body, or a person contracting to perform services for such persons, $50;

(B) For a removal by a commercial operator, $100;

(C) For a fill by a private operator or public body, or a person contracting to perform services for such persons, $100;

(D) For a fill by a commercial operator, $250;

(E) For erosion—flood repair or channel relocation work by a private landowner or public body, or a person contracting to perform services for such persons, no fee;

(F) For erosion—flood repair by multiproject, no fee;

(G) Riprap, no fee.

(b) For the purposes of paragraph (a) of this subsection, the following terms shall have the following meanings:

(A) "Private operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(B) "Public body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services;

(C) "Commercial operator" means any person undertaking a project having financial profit as a goal;

(D) "Multiproject" means projects where storm or flood damage has necessitated multiple projects to maintain and repair existing facilities or land in natural waterways, in which case a single permit with multiple attachments may be issued;

(E) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with regulations promulgated by the division; and

(F) "Erosion—flood repair" means any work necessary to preserve existing facilities and land from flood and high stream flows, in accordance with regulations promulgated by the division.

(4) Annually on the anniversary date of the permit, each holder of a material removal permit shall pay a fee during the term of the permit in accordance with the schedule set forth in subsection (3) of this section. The permit shall be suspended during any period of delinquency of payment as though no permit was applied for. Notwithstanding this subsection the director may, before granting any extension of the permit, require the permittee to show that the continued exercise of the permit is consistent with the protection, conservation and best use of the water resources of this state.

(5) Fees received under subsections (3) and (4) of this section shall be credited to the Common School Fund for use by the division in administration of ORS 541.605 to 541.665 and 541.990 and as otherwise required by law. [1967 c 567 §4; 1969 c 338 §4, 1971 c 754 §4, 1973 c 674 §3, 1977 c 418 §3, 1977 c 564 §6]

541.622 Prohibition against issuance of permits to fill Smith Lake or Bybee Lake. Notwithstanding any provision of ORS 541.605 to 541.665 to the contrary, after October 4, 1977, the Director of the Division of State Lands shall not issue any permit to fill Smith Lake or Bybee Lake, located in Multnomah County, below the contour line which lies 11 feet above mean sea level as determined by the 1947 adjusted United States Coastal Geodetic Survey Datum. [1977 c 120 §2]

541.625 Conditions of permit; consultation with other agencies; hearing; appeal. (1) The director shall issue a permit to remove material from the beds or banks of any waters of this state applied for under ORS 541.620 if the director determines that the removal described in the application will not be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS 541.610.

(2) The director shall issue a permit applied for under ORS 541.620 for filling waters of this state if the director determines that the proposed fill would not unreasonably interfere with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation.

(3) In determining whether or not a permit shall be issued, the director shall consider the following:

(a) The public need for the proposed fill and the social, economic or other public benefits likely to result from the proposed fill. When the applicant for a fill permit is a public body, the director may accept and rely upon the public body's findings as to local public need and local public benefit.

(b) The economic cost to the public if the proposed fill is not accomplished.

(c) The availability of alternatives to the project for which the fill is proposed.

(d) The availability of alternative sites for the proposed fill.

(e) Whether the proposed fill conforms to sound policies of conservation and would not interfere with public health and safety.

(f) Whether the proposed fill is in conformance with existing public uses of the waters or uses of adjacent land.

(g) Whether the proposed fill is consistent with a duly enacted zoning or land use plan

for the area where the proposed fill is to take place.

(h) Whether the proposed fill is for streambank protection.

(4) The director may issue a permit for a substantial fill in an estuary for a nonwater dependent use only if the fill is for a public use and would satisfy a public need that outweighs harm to navigation, fishery and recreation and if the proposed fill meets all other criteria contained in ORS 541.605 to 541.665.

(5) If the director issues a permit, the director may impose such conditions as the director considers necessary to carry out the purposes of ORS 541.610, 541.626 and subsections (1) and (2) of this section. In formulating such conditions the director may consult with the State Geologist, the State Fish and Wildlife Director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the State Soil and Water Conservation Commission, the Director of Agriculture, the Administrator of the Parks and Recreation Division, the State Marine Director, the State Highway Engineer, the Director of the Economic Development Department, the Water Resources Director and affected local governmental units. Each permit is valid only for the time specified therein. Obtaining a lease from the Division of State Lands shall not be one of the conditions to be considered in granting a permit under ORS 541.620.

(6) Any applicant whose application for a permit has been denied, or who objects to any of the conditions imposed under subsections (1), (2) and (5) of this section by the director, may, within 10 days of the denial of the permit or the imposition of any condition, request a hearing from the director. Thereupon the director shall set the matter down for hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. After such hearing, the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482.

(7) In the event that a decision on issuance of a permit by the Director of the Division of State Lands is delayed for a period exceeding 45 days from the date of application in the case of a removal, or 90 days from the date of application in the case of a fill, a temporary permit shall be issued pending such final decision.

(8) Permits issued under this section shall be in lieu of any permit that might be required for the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075, 468.110, 468.120, 468.700 to 468.725 and 468.735 to 468.775, so long as:

(a) The operation is that for which the permit is issued; and

(b) The standards for granting such permits are substantially the same as those established pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468.700 to 468.725 and 468.735 to 468.775 to the extent they affect water quality.

(9) Any agency or other unit of government requested by the director to comment on an application for a permit under this section must submit its comments to the director within 45 days after receiving the request for comment. If an agency or other unit of government fails to comment on the application within 45 days, the director shall assume the agency or other unit of government has no objection and shall approve or deny the application. [1967 c.567 §5, 1969 c.593 §49; 1971 c 754 §5; 1973 c 330 §3; 1973 c 674 §6, 1977 c 417 §1; 1979 c.200 §1; 1979 c.564 §3a; 1981 c.796 §1]

541.626 Mitigation as condition for fill or removal from estuary; considerations; other permit conditions. (1) As used in this section, "mitigation" means the creation, restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and species diversity, unique features and water quality.

(2) Except as provided in subsection (4) of this section, the director shall require mitigation as a condition of any permit for filling or removal of material from an intertidal or tidal marsh area of an estuary.

(3) If the director requires mitigation, the director shall consider:

(a) The identified adverse impacts of the proposed activity;

(b) The availability of areas in which mitigating activities could be performed;

(c) The provisions of land use plans for the area adjacent to or surrounding the area of the proposed activity;

(d) The recommendations of any interested or affected state or local agencies; and

(e) The extent of compensating activity inherent in the proposed activity.

(4) Notwithstanding any provisions of ORS 197.005 to 197.430 and 197.605 to 197.650 or the state-wide planning goals adopted thereunder to the contrary, the director may.

(a) Waive mitigation in part for an activity for which mitigation would otherwise be required if, after consultation with appropriate state and local agencies the director determines that:

(A) There is no alternative manner in which to accomplish the purpose of the project;

(B) There is no feasible manner in which mitigation could be accomplished;

(C) The economic and public need for the project and the economic and public benefits resulting from the project clearly outweigh the potential degradation of the estuary;

(D) The project is for a public use; and

(E) The project is water dependent or the project is publicly owned and water related; or

(b) Waive mitigation wholly or in part for an activity for which mitigation would otherwise be required if the activity is:

(A) Filling for repair and maintenance of existing functional dikes and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(B) Riprap to allow protection of an existing bankline with clean, durable erosion resistant material when a need for riprap protection is demonstrated that cannot be met with natural vegetation and no appreciable increase in existing upland will occur;

(C) Filling for repair and maintenance of existing roads and negligible physical or biological damage to the tidal marsh or intertidal areas of the estuary will result;

(D) Dredging for authorized navigation channels, jetty or navigational aid installation, repair or maintenance conducted by or under contract with the Army Corps of Engineers;

(E) Dredging or filling required as part of an estuarine resource restoration or enhancement project agreed to by local, state and federal agencies; or

(F) A proposed alteration that would have negligible adverse physical or biological impact on estuarine resources.

(5) Nothing in this section is intended to limit the authority of the director to impose conditions on a permit under ORS 541.625 (4). [1979 c.564 §5; 1981 c.796 §2]

541.627 Hearing regarding issuance of permit; procedure; appeals; suspension of permit pending appeal. Any person aggrieved or adversely affected by the director's grant of a permit may file a written request for hearing with the director within 60 days after the date the permit was granted. If the director finds that the person making the written request has a legally protected interest which is adversely affected by the grant of the permit, the director shall set the matter down for hearing within 30 days after receipt of the request. The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. The permittee shall be a party to the proceeding. Within 45 days of the hearing the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's original order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by ORS 183.482. A permit to fill granted by the director may be suspended by the director during the pendency of the proceedings before the director and any appeal. The director shall not suspend the permit unless the person aggrieved or adversely affected by the grant of permit makes a showing before the director by clear and convincing evidence that commencement or continuation of the fill would cause irremediable damage and would be inconsistent with ORS 541.605 to 541.665. [1973 c.674 §5, 1979 c.564 §6]

541.630 Closure of specified waters to removal or filling. Any agency listed in ORS 541.625 (5) may request the Water Policy Review Board by rule to close one or more specified waters of this state to the issuance of permits. After a public hearing held in conformity with ORS 183.310 to 183.550, if the Water Policy Review Board finds that issuance of permits with respect to such water resources would be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS

541.610, the Water Policy Review Board may by rule close such waters to the issuance of permits and to any other removals or fills under ORS 541.640 for an indefinite period or during such other times as are stated in the rule. [1967 c.567 §6; 1971 c 754 §6; 1973 c.330 §4; 1973 c 674 §7, 1981 c 796 §3]

541.635 Investigations and surveys. In considering applications for permits, the Director of the Division of State Lands may cause investigations or surveys to be made of the location of the work contemplated to determine whether such removal or filling is consistent with ORS 541.610 and 541.625. [1967 c 567 §7, 1971 c 754 §7]

541.640 Waiving permit requirement in certain cases. Notwithstanding any other provision of ORS 541.605 to 541.665, the Director of the Division of State Lands by rule may make exceptions from the application of ORS 541.605 to 541.665 with respect to removals or fills of a limited nature if no substantial harm could result to the water resources of this state as specified in ORS 541.610. However, the director shall notify each agency listed in ORS 541.625 (5) of any exceptions made under this section. [1967 c.567 §8; 1971 c.754 §8; 1973 c.330 §5; 1973 c.674 §8, 1981 c.796 §4]

541.645 Noncomplying removal of material or filling constitutes public nuisance. The removal of material from the beds or banks or filling any of the waters of this state without a permit issued under ORS 541.625, or in a manner contrary to the conditions set out in the permit, is a public nuisance. [1967 c 567 §9, 1971 c 754 §9]

541.650 Enforcement powers of director. If the director determines that material is being removed from or filling is occurring in any of the waters of this state without a permit issued under ORS 541.625, or in a manner contrary to the conditions set out in the permit, he may:

(1) Investigate, hold hearings, make orders and take action, as provided in ORS 541.605 to 541.665, as soon as possible.

(2) For the purpose of investigating conditions relating to such removal or filling, through the employes or the duly authorized representatives of the division, enter at reasonable times upon any private or public property.

(3) Conduct public hearings in accordance with ORS 183.310 to 183.550.

(4) Publish his findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 541.605 to 541.665.

(5) Give notice of any order relating to a particular violation of his rules or orders, or relating to a particular violation of any condition of a permit, by mailing notice of such order to the person or governmental body affected and by filing a duplicate original of such order in the manner required by ORS chapter 183. Any person aggrieved by an order of the director may appeal from such order to the circuit court of the county in which the property or any part thereof affected by such order is situated.

(6) Take appropriate action for the enforcement of his rules or orders promulgated as a result of any hearing. Any violation of ORS 541.605 to 541.665 or of any rule or order of the director under ORS 541.605 to 541.665 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the director shall set forth the dates of notice and hearing and the specific rule or order of the director, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation. [1967 c 567 §10; 1971 c 754 §10; 1973 c.330 §6; 1973 c.674 §9]

541.655 Revocation of permit. If the director finds that a person or governmental body holding a permit issued under ORS 541.625 is removing material from the bed or banks or filling any of the waters of this state contrary to the conditions set out in the permit, he may revoke such permit after notice and hearing as provided in ORS 183.415 to 183.430, 183.440 to 183.460 and 183.470. [1967 c.567 §11, 1971 c.754 §11, 1973 c.330 §7; 1973 c.674 §10]

541.660 Abatement proceedings. (1) In lieu of penal enforcement proceedings, proceedings to abate alleged public nuisances under ORS 541.645 may be instituted at law

or in equity, in the name of the State of Oregon, upon relation of the Director of the Division of State Lands.

(2) However, notwithstanding any other provisions of law, the director, without the necessity of prior administration procedures or hearing and entry of an order or at any time during such administrative proceedings if such proceedings have been commenced, may institute an action for legal or equitable remedies in the name of the State of Oregon to abate or restrain threatened or existing nuisances under ORS 541.645, whenever such nuisances or threatened nuisances create an emergency that requires immediate action to protect the public health, safety or welfare. In any action brought under this section, the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from an existing public nuisance under ORS 541.645. No temporary restraining order or temporary injunction or abatement order shall be granted unless the defendant is accorded an opportunity to be heard thereon at a time and place set by the court in an order directing the defendant to appear at such time and place, and to then and there show cause, if the defendant has any, why a temporary restraining order or temporary injunction or abatement order should not be granted. The order to show cause, together with affidavits supporting the application for such temporary restraining order, temporary injunction or abatement order, shall be served on the defendant as a summons. The defendant may submit counter-affidavits at such time and place. The director shall not be required to furnish any bond in such proceeding. Neither the State Land Board nor the Director of the Division of State Lands or the employes or duly authorized representatives of the division, shall be liable for any damages defendant may sustain by reason of an injunction or restraining order or abatement order issued after such hearing.

(3) Cases filed under this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute. [1967 c.567 §12; 1973 c.330 §8, 1973 c 674 §11, 1979 c 284 §166]

541.662 Double damages for destruction of public right of navigation, fishery or recreation; treble damages for intentional violations; damages in addition to criminal penalties. (1) If any person or governmental body, through his or its negligence, violates ORS 541.615, the director, in a proceeding brought pursuant to ORS 541.660, may seek and the court may award double a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(2) If any person or governmental body intentionally violates ORS 541.615, the director, in a proceeding brought pursuant to ORS 541.660, may seek and the court may award treble a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(3) An award made pursuant to this section shall be in addition to and not in lieu of any criminal penalties imposed for a violation of ORS 541.615. [Enacted by 1973 c 330 §10 and 1973 c 674 §13]

Note: 541 662 was enacted by two identical provisions, section 10 of chapter 330 and section 13 of chapter 674, Oregon Laws 1973 Both are compiled as a single section

541.665 Fill under permit presumed not to affect public rights; public rights extinguished. If the director issues a permit to fill pursuant to ORS 541.605 to 541.665, it shall be presumed that such fill does not infringe upon the public rights of navigation, fishery or recreation, and the public rights to lands created by the fill shall be considered extinguished. [1971 c 754 §14]

541.695 Application of ORS 541.605 to 541.665. (1) Nothing in ORS 541.605 to 541.665 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.620.

(2) Nothing in ORS 541.605 to 541.665 applies to removal of materials from the beds or banks or filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forest land; and

(b) Such removal or filling is directly connected with a forest management practice conducted in accordance with ORS 527.610 to

527.730 and 527.990. [1971 c 754 §12; 1977 c.417 §3]

WATER DEVELOPMENT PROJECTS (Definitions)

541.700 Definitions for ORS 541.700 to 541.855. As used in ORS 541.700 to 541.855, unless the context requires otherwise:

(1) "Construction" means the construction, or improvement or rehabilitation, in whole or in part, of a water development project, including planning and engineering work directly related to such construction or improvement or rehabilitation, or any combination of such construction or improvement or rehabilitation.

(2) "Director" means the Water Resources Director appointed pursuant to ORS 536.032.

(3) "Federal water development project" means a project that meets the requirements of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended, or the Small Reclamation Projects Act of 1956 (70 Stat. 1044), as amended.

(4) "Secondary use" means:

(a) Any water-related recreational use.

(b) Any wildlife or natural resource conservation use.

(c) Municipal and industrial water uses with a water development project as the source.

(d) Water quality enhancement directly related to the development of a new water development project.

(e) Any flood control use.

(f) Any power generation use.

(g) Any water supply system utilized for the purpose of agricultural temperature control.

(h) Any water supply system utilized for the maintenance of livestock.

(i) Any water supply system utilized as a domestic water system for the benefit of an individual residence related to the operation of the water development project.

"Secondary use" does not include any use that is incompatible with a water development project.

(5) "Water development project" means:

(a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments and all other structures, facilities and property necessary or convenient for supplying lands with water for irrigation purposes.

(b) An undertaking, in whole or in part, in this state for the purpose of drainage, including ditching, tiling, piping, channel improvement, pumping plants or other agronomically approved methods of land drainage that will increase soil versatility and productivity.

(c) Secondary uses in conjunction with projects described in paragraphs (a) and (b) of this subsection.

(6) "Water developer" means:

(a) Any individual resident of this state;

(b) Any partnership for profit subject to the provisions of ORS chapter 68 or 69, whose principal income is from farming in Oregon;

(c) Any corporation for profit subject to the provisions of ORS chapter 57, whose principal income is from farming in Oregon;

(d) Any nonprofit corporation subject to the provisions of ORS 61.005 to 61.950, whose principal income is from farming in Oregon;

(e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from farming in Oregon;

(f) Any irrigation district organized under or subject to the Irrigation District Act, as defined in ORS 545.002;

(g) Any water improvement district organized under ORS chapter 552;

(h) Any water control district organized under ORS chapter 553;

(i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;

(j) Any drainage district organized under ORS chapter 547 or subject to the Irrigation District Act, as defined in ORS 545.002;

(k) Any corporation, cooperative, company or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;

(L) Any port district organized under ORS chapter 777; or

(m) Any city or county. [1977 c 246 §1, 1981 c 166 §1]

(Loan Applications)

541.705 Project applications; contents. (1) Any water developer may file with the director an application to enable the construction of a water development project as provided in ORS 541.700 to 541.855. The application shall be filed in such manner, be in such form and contain or be accompanied by such information as the director may prescribe. The director, in considering applications, shall encourage the largest number of users of the Water Development Fund and shall consider the impact on the family farm units of the state.

(2) In addition to other requirements prescribed by the director, an application filed as provided in subsection (1) of this section shall:

(a) Describe the nature and purposes of the proposed water development project.

(b) State whether any purposes other than irrigation or drainage, but consistent therewith, will be served by the proposed water development project, and the nature of such other purposes, if any.

(c) Set forth or be accompanied by a feasibility study for the construction, operation and maintenance of the proposed water development project, an estimate of the costs of construction and an evaluation of the agricultural potential of the land from any competent public agency.

(d) State whether any moneys other than those in the Water Development Fund are proposed to be used for the construction of the proposed water development project, and whether any other moneys are available or have been sought for the construction.

(e) Show that the applicant holds or can acquire all lands, other than public lands, and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project. [1977 c 246 §2]

541.710 Processing project application; fee. (1) Upon receipt of an application filed as provided in ORS 541.705, the director shall determine whether the feasibility study described in ORS 541.705 for the water development project set forth in or accompanying the application is satisfactory and if the director determines that it is not satisfactory, he may:

(a) Reject the application;

(b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or

(c) Make such revisions of the feasibility study as he considers necessary to make the plan satisfactory.

(2) The director shall charge and collect from the applicant at the time the application is filed, a fee of $100. In addition, the director shall charge the applicant the amount required to reimburse him for costs that exceed the application fee incurred in connection with the application. Moneys referred to in this subsection shall be paid into the Water Development Administration and Bond Sinking Fund. [1977 c 246 §3]

541.715 Applicants authorized to obtain private planning, engineering and construction services. Nothing in ORS 541.700 to 541.855 is intended to prevent an applicant from employing a private planning firm, engineering firm and construction firm to perform the planning work, engineering work and construction on his proposed water development project. [1977 c 246 §4]

541.720 Conditions for project application approval. The director may approve the financing for the construction of a water development project described in an application filed as provided in ORS 541.705 using moneys in the Water Development Fund, secured by a first lien in the manner provided in ORS 541.740 if, after investigation the director finds that:

(1) The proposed water development project is feasible and a reasonable risk from practical and economic standpoints;

(2) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and the agricultural potential is confirmed;

(3) The plan for construction and operation will provide multipurpose facilities, to the extent practicable;

(4) The applicant is a qualified, creditworthy and responsible water developer and is willing and able to enter into a contract with the director for construction and repayment as provided in ORS 541.730;

(5) Moneys in the Water Development Fund are or will be available for the construction of the proposed water development project;

(6) There is a need for the proposed water development project and the applicant's financial resources are adequate to provide the working capital needed to operate and maintain the project; and

(7) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project. [1977 c 246 §5, 1981 c.166 §2]

(Loan Contracts)

541.730 Loan contract; repayment plan; other terms and conditions. If the director approves the financing for the construction of a water development project, the director, on behalf of the state, and the applicant may enter into a loan contract, secured by a first lien in the manner provided in ORS 541.740, which shall set forth, among other matters:

(1) That the director, on behalf of the state, must approve the arrangements made by the applicant for the construction, operation and maintenance of the water development project, using moneys in the Water Development Fund for the construction.

(2) A plan for repayment by the applicant to the Water Development Administration and Bond Sinking Fund of moneys borrowed from the Water Development Fund used for the construction, operation and maintenance of the water development project and interest on such moneys used at such rate of interest as the director determines is necessary to provide adequate funds to recover administrative expenses incurred under ORS 541.700 to 541.855. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the director may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances, if approved by the director;

(c) Shall provide for such evidence of debt assurance of and security for repayment by the applicant as are considered necessary or proper by the director; and

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the constructed project, or 30 years from the date of the first payment due under the financial plan, whichever is less, and shall also set forth the manner of determining when loan payments are delinquent. The payment schedule shall include repayment of interest which accrues during any period of delay in repayment authorized by paragraph (a) of this subsection, and the payment schedule may require payments of varying amounts for collection of such accrued interest.

(3) Provisions satisfactory to the director for field engineering and inspection, the director to be the final judge of completion of the contract.

(4) That the liability of the state under the contract is contingent upon the availability of moneys in the Water Development Fund for use in the construction, operation and maintenance of the water development project.

(5) Such further provisions as the director considers necessary to insure expenditure of the funds for the purposes set forth in the approved application.

(6) That the director may institute an appropriate action or suit to prevent use of the facilities of a water development project financed by the Water Development Fund by any person who is delinquent in the repayment of any moneys due the Water Development Administration and Bond Sinking Fund.

(7) That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the director. The director may approve a loan assignment or transfer only if the director finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700 (6) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state. [1977 c 246 §6; 1981 c 166 §3]

541.735 Payment of funds by State Treasurer pursuant to loan contract. If the director approves a loan for a water development project or federal water development project, the State Treasurer shall pay moneys for such project from the Water Development Fund in accordance with the terms of the loan contract, as prescribed by the director. [1977 c 246 §7]

541.740 Liens and other loan security; foreclosure. (1) (a) When a loan is made to a water developer other than a water developer

described in ORS 541.700 (6)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property of the water developer, to the user charges, including interest, owed to or received by the water developer. At the discretion of the director, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project.

(b) Except for tax liens, the lien created by this section is prior and superior to all other liens or encumbrances upon the affected real property or user charges, without regard to the date on which the other liens or encumbrances attached to the real property or user charges.

(c) The existence or foreclosure of the lien created by this subsection shall not cause the acceleration of payment of user charges or other payments on affected real property. Such payments shall continue to be made as they become due.

(2) When a loan is made under ORS 541.700 to 541.855 to a water developer described in ORS 541.700 (6)(a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan which mortgage or security agreement shall be a first lien upon such real property of the water developer as the director shall require for adequate security.

(3) When a lien created by subsection (1) of this section is foreclosed, a person whose real property is subject to the lien solely because that real property is irrigated or drained by reason of a water development project shall only have that portion of real property subjected to foreclosure that represents that person's pro rata share of the indebtedness.

(4) When a loan is made to a water developer under ORS 541.700 to 541.855, the director shall file notice of the loan with the recording officer of each county in which is situated real property of the water developer or real property to which the lien created by subsection (1) or (2) of this section may attach. The notice shall contain a description of the real property of the water developer, a description of any other real property that will be served by the water development project and to which the lien is to attach, the amount of the loan and a statement that the State of Oregon has a lien against such real property as provided in subsection (1) or (2) of this section.

(5) Upon payment of all amounts loaned to a water developer pursuant to ORS 541.700 to 541.855, the director shall file with each recording officer referred to in subsection (4) of this section a satisfaction notice that indicates repayment of the loan.

(6) The director may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses incurred in foreclosing, into the Water Development Administration and Bond Sinking Fund. [1977 c 246 §8, 1981 c.166 §4]

541.745 Remedies of director upon failure of water developer to comply with contract. If a water developer fails to comply with a contract entered into with the director for construction and repayment as provided in ORS 541.730, the director, in addition to remedies provided in ORS 541.740, may seek other appropriate legal remedies to secure the loan and may contract with any other water developer as provided in ORS 541.730 for continuance of construction and for repayment of moneys from the Water Development Fund used therefor and interest thereon. [1977 c 246 §8, 1981 c.166 §4]

541.750 Repayment of moneys to Water Development Administration and Bond Sinking Fund. Any water developer that enters into a contract with the director for construction and repayment as provided in ORS 541.730 or 541.745 may obtain moneys for repayment to the Water Development Administration and Bond Sinking Fund under the contract in the same manner as other moneys are obtained for other authorized purposes. The director may also provide by contract or otherwise, for the construction, operation and maintenance of a water development project until the project is assumed by such new water developer. Moneys in the Water Development Fund may be used for such construction, operation and maintenance, and if so used, shall be repaid to the Water Development Administration and Bond Sinking Fund by the contracting water developer. [1977 c.246 §10]

541.755 Loan becomes immediately due and payable if other funds used for project construction; use of other funds to repay state loan. Except as provided in ORS 541.760:

(1) If any water development project investigated under ORS 541.700 to 541.855 is constructed with funds other than those loaned under ORS 541.700 to 541.855, the amount expended by the state shall immediately become due and payable, together with interest at the rate provided in ORS 541.730 (2) from the date of notification of the amount due.

(2) If any water development project is refinanced or financial assistance is obtained from other sources after the execution of the loan from the state, all such funds shall be first used to repay the state. [1977 c 246 §14]

541.760 Reduction of loan amount when secondary use funding available. If a water development project has any secondary use, and if the water developer receives from any source other than the Water Development Fund any funds to assist in the construction, operation or maintenance of such secondary use, the amount of the loan to the water developer from the Water Development Fund shall be limited to that amount necessary for the construction of those portions of the project not funded by other sources. [1977 c 246 §15]

541.765 Loans for certain federal projects authorized; use of funds; amount limitation. In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855, the director may authorize loans of such moneys to those persons to whom approval has been granted by the Congress of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the director, in such form as the director prescribes, and shall furnish such proof of federal approval for funding and construction as the director considers appropriate. Money so loaned shall be used only for the acquisition of easements and rights of way for federal water development projects, and shall be limited in amount to the market value of the interests to be acquired, as determined by such appraisers as the director may appoint. The total amount of moneys loaned for federal water development project purposes shall not exceed $5 million. [1977 c.246 §16]

541.770 Federal project loan contract terms; foreclosure of liens. If the director approves an application for the loan of moneys authorized by ORS 541.765, the director shall enter into a loan contract with the borrower that provides, among other matters:

(1) That the loan be secured by a first lien in the same manner as provided in ORS 541.740.

(2) That the loan bear interest at the same rate of interest as provided in ORS 541.730.

(3) That the loan becomes due and payable to the Water Development Administration and Bond Sinking Fund not later than 60 days after the date that federal funds for the acquisition of easements and rights of way for the project are paid to the borrower or 30 years from the date of the loan, whichever is earlier.

(4) Such provisions as the director considers necessary to insure expenditure of the moneys loaned for the purposes provided in ORS 541.765.

(5) That the director may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in foreclosing, into the Water Development Administration and Bond Sinking Fund. [1977 c 246 §17, 1981 c.166 §5]

(Bonds)

541.780 Bonds to provide project financing. In order to provide funds for the purposes specified in Article XI-I (1) of the Oregon Constitution, bonds may be issued in accordance with the provisions of ORS 286.031 to 286.061. [1977 c 246 §19; 1981 c.660 §45]

541.785 Disposition and use of bond proceeds. All moneys obtained from the sale of bonds under ORS 541.780 to 541.815 shall be credited by the State Treasurer to the Water Development Fund. Such moneys shall be used only for the purposes stated in Article XI-I (1), Oregon Constitution, and ORS 541.700 to 541.770 and 541.835. Pending the use of such moneys for the proper purposes, such moneys may be invested in the manner provided by law. [1977 c.246 §20, 1981 c 660 §46]

541.790 [1977 c.246 §21, repealed by 1981 c.660 §18]

541.795 [1977 c.246 §22; 1981 c.166 §6; repealed by 1981 c 660 §18]

541.800 Payment of bond principal and interest from Water Development Administration and Bond Sinking Fund. (1) The State Treasurer shall make payment

of the principal of and the interest on any bond issued under ORS 541.780 to 541.815 from the Water Development Administration and Bond Sinking Fund.

(2) The State Treasurer shall compute and determine in January of each year, after the sale of bonds under ORS 541.780 to 541.815, the amount of principal and interest which will fall due during such year on bonds then outstanding and unpaid and shall maintain or hold in the Water Development Administration and Bond Sinking Fund sufficient moneys to pay such maturing obligations. [1977 c.246 §§23, 26] [1977 c.246 §§23, 26]

541.805 [1977 c.246 §24, repealed by 1981 c 660 §18]

541.810 [1977 c 246 §25; repealed by 1981 c 660 §18]

541.815 Limitation on bond issuance amount. No bonds shall be issued or sold under ORS 541.780 to 541.815 nor indebtedness incurred thereunder, which, singly or in the aggregate with previous debts or liabilities incurred for the construction, operation and maintenance of water development projects and for the acquisition of easements and rights of way for federal water development projects shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under ORS 541.780 to 541.815, exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 541.780 to 541.815, in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1977 c 246 §27]

(Administration)

541.830 Water Development Administration and Bond Sinking Fund created; fund sources; use; Governor's approval. (1) There hereby is created the Water Development Administration and Bond Sinking Fund, separate and distinct from the General Fund, to provide for payment of:

(a) Administrative expenses of the director in processing applications and investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855.

(b) Administrative expenses of the State Treasurer in carrying out the duties, functions and powers imposed upon the State Treasurer by ORS 541.700 to 541.855.

(c) Principal and interest of all bonds issued pursuant to the provisions of ORS 541.780 to 541.815.

(2) The fund created by subsection (1) of this section shall consist of:

(a) Application fees required by ORS 541.710.

(b) Repayments of moneys loaned to water developers from the Water Development Fund, including interest on such moneys.

(c) Repayments of moneys loaned for the acquisition of easements and rights of way for federal water development projects, including interest on such moneys.

(d) Such moneys as may be appropriated to the fund by the Legislative Assembly, including appropriations dedicated to the partial repayment of projects affording public benefits.

(e) Moneys obtained from the sale of refunding bonds and any accrued interest on such bonds.

(f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.

(g) Interest earned on cash balances invested by the State Treasurer.

(h) Any revenues received by the director under the provisions of ORS 541.745.

The moneys referred to in this subsection are continuously appropriated to the director for the purposes provided in subsection (1) of this section.

(3) The director, with the approval of the Governor, may identify those projects financed under the provisions of ORS 541.700 to 541.855 which offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered. [1977 c 247 §28, 1981 c 172 §1]

541.835 Water Development Fund appropriated continuously to director; use of moneys. All moneys in the Water Development Fund created by Article XI-I (1), Oregon Constitution, hereby are appropriated continuously to the director and shall be used for the purposes provided in ORS 541.700 to 541.855. Moneys expended from the fund may include those expended or to be expended for engineering, legal fees and acquisition of water rights and property required for rights of way or facility locations. [1977 c 246 §18]

541.840 Emergency Board request for funds to pay administrative expenses; repayment of board allocations. (1) If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments referred to in ORS 541.830 (1), the director may request the funds necessary for such payments from the Legislative Assembly or the Emergency Board.

(2) When the director determines that moneys in sufficient amount are available in the Water Development Administration and Bond Sinking Fund, the director shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1977 c.246 §30]

541.845 Rules. In accordance with any applicable provisions of ORS 183.310 to 183.550, the director may make such rules as he considers necessary to carry out his duties, functions and powers under ORS 541.700 to 541.855. [1977 c.246 §13]

541.850 Director authorized to accept gifts or grants. The director may accept gifts of money or other property from any source, given for the purposes of ORS 541.700 to 541.770. Money so received shall be paid into the Water Development Fund. Money or other property so received shall be used for the purposes for which received. [1977 c.246 §12]

541.855 Director to make biennial report to Legislative Assembly and Governor. The director shall make available to the Legislative Assembly and the Governor a biennial report of the transactions of the Water Development Fund and the Water Development Administration and Bond Sinking Fund in such detail as will accurately indicate the transactions and the condition of the funds. [1977 c.246 §29]

NORTH UMPQUA RIVER DAMS

541.875 Dams on North Umpqua prohibited; exceptions. (1) No person shall construct or maintain, and no officer or agency of this state shall issue any permit for the construction or maintenance of, any dam on that portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua River and South Umpqua River.

(2) Nothing in this section applies to any dam constructed on the North Umpqua River prior to November 1, 1981, to the historic uses of such a dam or to the repair or reconstruction of such a dam at the present site. [1981 c.151 §2]

PENALTIES

541.990 Penalties. (1) Any person, or any officer of any firm or corporation who shall be found guilty of constructing any splash dam for the floating of logs or other lumber products on any stream or other body of water in the State of Oregon after August 20, 1957, shall be fined not more than $1,000, or shall be imprisoned not more than one year in the county jail in the county in which such conviction is entered, or by both fine and imprisonment.

(2) Violation of ORS 541.510 is a misdemeanor.

(3) Violation of ORS 541.545 (1) is a misdemeanor.

(4) Violation of ORS 541.615 is a misdemeanor. [1957 c.163 §4; subsection (2) enacted as 1959 c 624 §2; subsection (3) enacted as 1961 c 379 §9; subsection (4) enacted as 1967 c.567 §13]