

TITLE 45

WATER RESOURCES: IRRIGATION, DRAINAGE, FLOOD CONTROL, RECLAMATION

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Chapter 536

1985 REPLACEMENT PART

Water Resources Department; Water Resources Commission; Water Resources Director

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Note Chapter 666, Oregon Laws 1985, provides

Sec 1 There is established a Strategic Water Management Group consisting of the following members or a designee of the member

- (1) The Governor,
- (2) The Director of the Executive Department,
- (3) The Director of the Department of Environmental Quality,
- (4) The Water Resources Director,
- (5) The State Fish and Wildlife Director,
- (6) The Director of Agriculture,
- (7) The Director of the Department of Energy,
- (8) The Director of the Department of Land Conservation and Development,
- (9) The Director of the Division of State Lands,
- (10) The State Forester,
- (11) The State Geologist,
- (12) The Assistant Director for the Health Division of the Department of Human Resources,
- (13) The Administrator of the Parks and Recreation Division of the Department of Transportation, and
- (14) The Director of the Economic Development Department

Sec 2 The Governor shall be the chairperson of the Strategic Water Management Group and the Director of the Executive Department shall be the vice-chairperson, with duties and powers necessary for the performance of the functions of such offices as the Strategic Water Management Group determines

Sec 3 The Strategic Water Management Group shall coordinate all of the following:

- (1) Agency activities insofar as those activities affect the water resources of this state. Such activities include the periodic review and updating by the agencies of the agencies' water related data, policies and management plans
- (2) The responses of state agencies to problems and issues affecting the water resources of this state when such responses require the participation of numerous state agencies
- (3) The development of the water related portions of each member agency's biennial budget as submitted to the Governor that affect the water related activities of other state agencies

Sec 4 In carrying out its coordination activities, the Strategic Water Management Group shall encourage federal agency actions that are consistent with the water policies of the State of Oregon

Sec 5 This Act is repealed on July 1, 1987

Note: Sections 5 to 9, chapter 796, Oregon Laws 1983, provide

Sec 5. As used in sections 6 to 8 of this Act, unless the context requires otherwise, "committee" means the Joint Legislative Committee on Water Policy [1983 c 796 §5]

Sec 6 (1) The Joint Legislative Committee on Water Policy is established as a committee of the Legislative Assembly

(2) The Joint Legislative Committee on Water Policy shall consist of five members of the House appointed by the Speaker of the House of Representatives and five members of the Senate appointed by the President of the Senate. No more than four of the House members, nor more than four of the Senate members, shall be of the same political party. If the Speaker or the President is a member, either from time to time may designate an alternate from among the members of the appropriate body to exercise powers as a member of the committee, except that the alternate shall not preside if the Speaker or the President is a chairperson

(3) A committee shall be appointed within 30 days after the convening of the Legislative Assembly in regular session. Vacancies occurring in the membership of the committee shall be filled by the appointing authority. If a vacancy occurs in the membership of the committee during the interim, the vacant position shall not be counted for the purpose of determining a quorum until the vacancy is filled

(4) Any action of the committee must be approved by an affirmative vote of a majority of the members of the committee

(5) The committee has a continuing existence and may meet, act and conduct its business during the sessions of the Legislative Assembly or any recess thereof, and in the interim period between sessions

(6) Each presiding officer shall designate a chairperson who shall serve as cochairperson and who shall perform such duties as the members require including the approval of voucher claims [1983 c 796 §6, 1985 c 5 §1]

Sec. 7 The committee shall

(1) Review the progress of the department and the commission in carrying out the provisions of section 2 of this Act

(2) Review and make recommendations to the Legislative Assembly on rules and policies adopted by the department and the commission

(3) Study and make recommendations to the Legislative Assembly on the following

(a) The implementation of a process for long range policy planning, conservation, development and management of the state's water resource,

(b) The establishment of a data base for use by all state agencies and local governments for water resources planning purposes,

(c) Water conservation measures including, but not limited to, incentive programs and best available agriculture, forestry, fisheries, municipal and industrial technologies,

(d) Methods to provide funding for water resource planning,

(e) Methods for increasing the quantity and quality of water for in-stream uses while maintaining and increasing quantities available for consumptive uses,

(f) Methods for insuring the orderly development of hydroelectric resources, including but not limited to a process of classifying stream segments as to their suitability for hydroelectric development,

(g) The extent of groundwater decline within the state, its long term effects on agriculture and other development,

approaches for abating the declines and practices that affect groundwater recharge, and

(h) Any other matter relating to water resources in Oregon [1983 c 796 §7]

Sec 8 The Water Resources Director and the chairperson of the Water Resources Commission shall report periodically to the Joint Legislative Committee on Water Policy on the progress achieved in carrying out responsibilities under section 2 of this Act and on any other matters requested by the committee. The report shall be made in a form and manner as the committee may prescribe [1983 c 796 §9]

Sec 9 Sections 5 to 8 of this Act are repealed July 1, 1989 [1983 c 796 §9]

536 005 [1975 c 581 §13, repealed by 1985 c 673 §185]

GENERAL PROVISIONS

536.007 Definitions for ORS chapters 536 to 543. As used in ORS chapters 537, 538, 539, 540, 541, 542, 543 and this chapter

(1) "Commission" means the Water Resources Commission

(2) "Department" means the Water Resources Department

(3) "Director" means the Water Resources Director

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

(5) "Order" has the meaning given in ORS 183 310

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

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

(8) "Rule" has the meaning given in ORS 183 310

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

(10) "State water resources policy" means the water resources policy provided for in ORS 536 300 to 536 350 and 537 505 to 537 525

(11) "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

(12) "Water resources of this state" means waters of this state and the following auxiliary

lands whose usage directly affects the development and control of the waters of this state

(a) Potential reservoir sites

(b) Flood-plain areas forming the predictable channels of flood-water drainage of rivers and streams [1985 c 673 §2]

536 008 [1975 c 581 §14, 1985 c 421 §4, repealed by 1985 c 673 §185]

536 010 [Amended by 1955 c 707 §66, 1973 c 792 s 23, repealed by 1975 c 581 §29]

WATER RESOURCES COMMISSION

536 014 [1975 c 581 §15, 1981 c 545 §12, 1983 c 643 §1, repealed by 1985 c 673 §185]

536 018 [1975 c 581 §16, repealed by 1985 c 673 §185]

536 020 [Repealed by 1955 c 707 §75]

536.022 Water Resources Commission; members; terms; confirmation; compensation and expenses. (1) There is created a Water Resources Commission consisting of seven members, appointed by the Governor, one of whom the Governor shall designate as chairperson. The members appointed to the commission shall be subject to confirmation by the Senate as provided in ORS 171 562 and 171 565. One member of the commission shall be appointed from each of the congressional districts referred to in ORS 188 130, one member from east of the summit of the Cascade Mountains, as defined in ORS 477 001, and one member from west of that summit. Beginning July 1, 1986, two members appointed to the commission shall be from east of the summit of the Cascade Mountains

(2) The term of office of a member shall be four years. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the retiring member's duties on July 1 next following. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. The members of the commission shall serve at the pleasure of the Governor

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292 495 [1985 c 673 §3]

536.025 Duty of commission; delegation to Water Resources Director; exception. (1) It is the function of the Water Resources Commission to establish the policies for the operation of the Water Resources Department in a manner consistent with the policies

and purposes of ORS 537 525 and this chapter. In addition, the commission shall perform any other duty vested in it by law.

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

(3) The commission may delegate to the director the authority to conduct a public hearing relating to the adoption or amendment of a basin program as provided in ORS 536 300. However, the commission may not delegate to the director the authority to adopt or amend a basin program [1985 c 673 §4]

536.027 Rules and standards. (1) In accordance with the applicable provisions of ORS 183 310 to 183 550, the Water Resources Commission shall adopt rules and standards to perform the functions vested by law in the commission.

(2) Except as provided in ORS 183 335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard before its adoption. The hearing may be before the commission, any designated member of the commission or any person designated by and acting for the commission [1985 c 673 §5]

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

(a) Conduct public hearings

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

(c) Administer oaths

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department under this chapter and ORS chapters 537, 538, 539, 540, 541, 542 and 543

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the same fees and mileage as in civil actions in the circuit court [1985 c 673 §11]

536 030 [Repealed by 1975 c 581 §29]

WATER RESOURCES DIRECTOR

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

536 035 [1955 c 513 §1, repealed by 1975 c 581 §29]

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

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

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

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

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

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

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

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

536.039 Water Resources Department.

There is hereby established in the executive-administrative branch of the government of the

state under the Water Resources Commission a department to be known as the Water Resources Department. The department shall consist of the director of the department and all personnel employed in the department including but not limited to all watermasters appointed under ORS 540.020 [1985 c 673 §§6, 203]

536.040 Public records; copies as evidence. The records of the department are public records and shall remain on file in the office of the director 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 Water Resources Commission in advance, and paid into the General Fund of the State Treasury

(1) For examining an application for permit to appropriate water, \$200

(2) For filing and recording permit to appropriate water

(a) For irrigation purposes, \$100 for the first 10 acres, or fraction thereof, to be irrigated and \$2 for each acre in excess of 10 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 \$100 for the first 50 acre-feet and 25 cents for each acre-foot in excess of 50

(d) For domestic purposes, \$100 for the first household unit and \$25 for each additional household unit

(e) For any other purpose, \$100 including but not limited to municipal, for the first second-foot or fraction thereof and \$50 for each additional second-foot

(3) For filing or recording any other water right instrument, \$10 for the first page and \$5 for each additional page

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

(5) For certifying to copies, documents, records, or maps, \$10 for each certificate

(6) For blueprint copy of any map or drawing, the 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, \$50

(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 \$30 per receiving owner for the first 10 acres or fraction thereof and \$1 for each acre in excess of 10 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, \$35

(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, \$100

(11) For filing any protest with the commission, \$25.

(12) For filing an application for extension of time within which irrigation or other works shall be completed or the right perfected, \$100 [Amended by 1961 c 187 §3, 1967 c 36 §1, 1973 c 163 §4, 1975 c 581 §21, 1981 c 627 §1, 1983 c 256 §1, 1985 c 673 §12]

536.060 [Repealed by 1971 c 734 §21]

536.065 [1971 c 734 §77, repealed by 1985 c 673 §185]

536.070 [Amended by 1975 c 581 §21a, repealed by 1985 c 673 §185]

536.075 Judicial review of order of Water Resources Commission or Water Resources Director; stay of order; scope of review. (1) Any party affected by an order of the Water Resources Commission or Water Resources Director issued without a contested case hearing may appeal the order to the Circuit Court of Marion County or to the circuit court of the county in which all or part of the property affected by the order is situated. The review shall be conducted according to the provisions of ORS 183.484, 183.486, 183.495, 183.497 and 183.500.

(2) Any party affected by an order of the Water Resources Commission or the Water Resources Director issued after a contested case hearing may appeal the order to the Court of Appeals

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

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

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

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

(7) The provisions of this section shall not apply to any proceeding under ORS 537 670 to 537 695 or ORS chapter 539 [1985 c 673 §9]

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; compensation or expenses prohibited. (1) In carrying out the duties, functions and powers prescribed by law, the Water Resources Commission shall appoint an advisory committee to advise the commission on all matters relating to

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

(b) Licensing of water well constructors, 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 ground water geologists or hydrologists, and one of whom shall represent the public at large. Members shall serve for such terms as the commission may specify. The committee shall meet at least once every

three months and at other times and places as the commission may specify.

(3) A member of the committee shall receive neither compensation nor expenses in the performance of duties as a member. [1977 c 749 §2, 1981 c 416 §9, 1985 c 673 §18]

WATER RESOURCES ADMINISTRATION

536 210 [1955 c 707 §2, 1965 c 355 §1, 1975 c 581 §22, repealed by 1985 c 673 §185]

536.220 Policy; water resources generally. (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]

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

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 [1967 c 157 §2, 1975 c 581 §23, repealed by 1985 c 673 §185]

536 270 [1955 c 707 §7, repealed by 1975 c 581 §29]

536 280 [1955 c 707 §8, repealed by 1971 c 418 §23]

536 290 [1955 c 707 §9, 1967 c 156 §1, repealed by 1975 c 581 §29]

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

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin After

the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the Water Resources Director the authority to conduct additional public hearings in the affected river basin [1955 c 707 §10(1), (2), 1965 c 355 §2, 1985 c 673 §14]

536.310 Purposes and policies to be considered in formulating state water resources program. In formulating the water resources program under ORS 536 300 (2), the commission shall take into consideration the purposes and declarations enumerated in ORS 536.220 and also the following additional declarations of policy

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

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

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

(4) Multiple-purpose impoundment structures are to be preferred over single-purpose structures, upstream impoundments are to be preferred over downstream impoundments The fishery resource of this state is an important economic and recreational asset In the planning and construction of impoundment structures and mildams 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 fostered and encouraged if existing rights and priorities under existing laws will permit,

(8) Watershed development policies shall be favored, whenever possible, for the preservation

of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged,

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

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

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

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

(13) Notwithstanding any other provision of this section, when available supplies of water are insufficient in the South Umpqua River to provide for both the needs of human consumption pursuant to a municipal water right and the maintenance of previously established minimum stream flows, preference shall be given to the municipal needs if the municipality adopts and enforces an ordinance restricting use of the water so obtained to direct human consumption uses [1955 c 707 §10(3), 1979 c 170 §1]

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 in volume 6A of Oregon Revised Statutes

536.315 Designation of exact land areas included within auxiliary lands. As part of the water resources policy statement authorized under ORS 536.300, the Water Resources Commission may designate the exact land areas included within the listing of auxiliary lands in ORS 536 007 [1965 c 355 §4, 1985 c 673 §179]

536.320 Limitation of powers of commission. The commission shall not have power

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

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

(3) To modify or amend any standard or policy as prescribed in ORS 536 310 nor to adopt any rule or regulation in conflict therewith [1955 c 707 §10(4)]

536.325 Establishment of minimum stream flows; application for minimum stream flow by state agencies; action on application; time limit; findings. (1) The Department of Environmental Quality or the State Department of Fish and Wildlife may submit to the Water Resources Commission applications for the establishment of minimum perennial stream flows. The applications shall be in a form specified by the commission and shall include data on the quantities of water necessary to support fish life or to minimize pollution and other information specified by the commission

(2) The commission, on its own initiative or in response to applications filed under subsection (1) of this section, may establish or modify minimum perennial stream flows. The commission may establish or modify such minimum perennial stream flows without adopting a new basin program or a comprehensive update of an existing basin program for the affected river basin

(a) After considering Water Resources Department staff recommendations,

(b) After an opportunity to be heard has been given to all other state agencies which may be concerned,

(c) After considering the provisions of ORS 536 220, 536 300 (1) and 536 310, and

(d) After holding at least one public hearing in the affected river basin

(3) Minimum perennial stream flows shall become effective upon adoption by the Water Resources Commission. Notwithstanding ORS 536.320 (2) or any other provision of law, minimum perennial stream flows shall have as a priority date the date the application for the minimum perennial stream flow was filed, or, if no application has been filed, the date the commission initiated action to consider the minimum perennial stream flow

(4) Within one year of the date an application recommending a minimum perennial stream flow is submitted to the Water Resources Commission, the commission shall

(a) Adopt the recommended minimum perennial stream flow,

(b) Adopt a minimum perennial stream flow at some other rate after making a finding that the

other rate is more appropriate for supporting aquatic life and minimizing pollution, or

(c) Reject the recommended minimum perennial stream flow after making a finding that establishment of a minimum flow is of lesser importance than other uses of the waters of the particular stream

(5) Any action taken by the Water Resources Commission under this section shall be accompanied by a statement of specific findings and reasons for the action

(6) The Governor shall guide and assist the Water Resources Director and the Water Resources Commission in performing duties under this section to insure compliance with the time limitation provided in this section for taking action on minimum perennial stream flows.

(7) Except as provided in section 3, chapter 796, Oregon Laws 1983, no applications for minimum perennial stream flows shall be submitted to the Water Resources Commission before January 1, 1986

(8) Nothing in this section is intended to affect the priority of any permit or certificate issued as the result of an application filed on or before August 8, 1983 [1979 c 319 §2, 1983 c 796 §4, 1985 c 673 §15]

536.330 Water Resources Act as supplemental to and including existing statutes. Chapter 707, Oregon Laws 1955, shall be construed by the commission as supplemental to existing statutes and not in lieu thereof except to the extent that existing statutes are expressly amended or repealed by chapter 707, Oregon Laws 1955 ORS 536 220 to 536 540 and the authority of the department thereunder shall include all laws now existing or hereinafter enacted that relate to or affect the use and control of the water resources of this state [1955 c 707 §10(5), 1963 c 415 §1, 1975 c 581 §24, 1985 c 673 §180]

Note See note under 536 310

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

(1) May, by a water resources statement referred to in ORS 536 300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state

as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in 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 commission 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 ORS 536 300 (2) and subject to the preferential uses named in ORS 536 310 (12), prescribe preferences for the future for particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data [1955 c 707 §10(6), 1963 c 414 §1]

536.350 Delivery of water resources statement to certain public bodies; effect.

The Water Resources Commission shall deliver a copy of each water resources statement referred to in ORS 536 300 (2) to each state agency or public corporation of this state which may be concerned with or which may carry on activities likely to affect the use or control of the water resources of this state Each state agency or public corporation of this state which receives a copy of a water resources statement shall give to the commission a receipt for the water resources statement. A copy of any such statement duly certified by the director to be a full, true and correct copy shall be received in evidence in any court in the state and if the certificate recites that a copy of the statement was delivered to a particular state agency or public corporation of this state, it shall be presumed that the same was actually delivered as stated in the certificate [1955 c 707 §10(7), 1985 c 673 §16]

536.360 State agencies and public corporations to conform to statement of state water resources policy. In the exercise

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

536.370 Exercise of power in conflict with state water resources policy not effective until approved by commission.

(1) No exercise by any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536 350, of any power, duty or privilege, including the promulgating or undertaking of any order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy as set forth in the statement, shall be effective or enforceable until approved by the commission as provided in subsection (2) of this section

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

(a) The commission grants its approval as provided in ORS 536 390, or

(b) The commission does not notify the state agency or public corporation within 30 days after the filing of the notification as provided in ORS 536 380 (1) of the intention of the commission to review the proposed exercise of the power, duty or privilege, or

(c) The commission grants its approval as provided in ORS 536 380 (4) [1955 c 707 §12]

536.380 Notification to commission of proposed exercise of power involving water resources required; review and determination by commission.

(1) Except as otherwise provided in ORS 536 390, whenever any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536 350, proposes to exercise any power, duty or privilege referred to in ORS 536.370 (1), it shall first file with the commission a notification of the proposed exercise. The notification shall be in such form and shall contain a description of the proposed exercise and such other information as the commission may require. The notification shall be a public record in the office of the commission

(2) Within 30 days after the filing of the notification as provided in subsection (1) of this

section, the commission shall notify the state agency or public corporation of the intention of the commission to review the proposed exercise of the power, duty or privilege, if

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

(b) A protest against the proposed exercise is filed with the commission within 25 days after the filing of the notification as provided in subsection (1) of this section by any person, state agency or public corporation of this state or agency of the Federal Government

(3) The commission, in its discretion, may hold a public hearing on the proposed exercise of the power, duty or privilege. The commission shall determine the time and place of the public hearing, and shall give written notice thereof to the state agency or public corporation whose proposed exercise of a power, duty or privilege is being reviewed and to each protestant under 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 commission has notified the state agency or public corporation of the intention of the commission to review the proposed exercise of the power, duty or privilege as provided in subsection (2) of this section, the commission shall undertake the review and proceed therewith with reasonable diligence. At the conclusion of the review the commission shall make a determination approving the proposed exercise, approving the proposed exercise subject to conditions specified in the determination or disapproving the proposed exercise. A copy of the determination by the commission shall be delivered to the state agency or public corporation whose proposed exercise of a power, duty or privilege was reviewed and to each protestant under paragraph (b) of subsection (2) of this section, if any [1955 c 707 §14]

536.390 Approval without filing notification. The commission may enter into agreements or provide by orders, rules or regulations whereby it approves the exercise of any one or more of the powers, duties or privileges referred to in ORS 536 370 (1) by a state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536 350, without the filing of the notification as provided in ORS

536 380 (1) Each agreement, order, rule or regulation shall specifically provide for the modification or revocation thereof at the discretion of the commission and upon reasonable notice to the state agency or public corporation, and may contain such other conditions, limitations or requirements as the commission, in its discretion, may require to insure the accomplishment of the purposes of the state water resources policy [1955 c 707 §13]

536.400 Application to court to compel compliance with state water resources policy. (1) As used in subsection (2) of this section, "violation" means any exercise or attempt to exercise by any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536 350, of any power, duty or privilege which would in any way conflict with the state water resources statement, without the approval of the commission as provided in ORS 536 370 (2)

(2) The commission, may apply to the circuit court of the county in which a violation is alleged to exist for the restraining by appropriate process of the commission or continuation of a violation, or for the enforcement by appropriate process of compliance with ORS 536 370 to 536 390 [1955 c 707 §15]

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

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

(3) The order of withdrawal shall specify with particularity the waters withdrawn from appro-

priation, the uses for which the waters are withdrawn, the reason for the withdrawal and the duration of the withdrawal. The commission may modify or revoke the order at any time

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

(5) While the order of withdrawal is in effect, no application for a permit to appropriate the waters withdrawn for the uses specified in the order and no application for a preliminary permit or license involving appropriations of such waters shall be received for filing by the Water Resources Commission [1955 c 707 §16, 1961 c 224 §11, 1985 c 673 §17]

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

(4) Any state agency or public corporation of this state required or permitted by law to formulate, enter into or carry out any compact or other

agreement referred to in subsection (1) of this section shall give timely and adequate notice to the commission before it undertakes any action under such requirement or permission [1955 c 707 §17, 1961 c 298 §1, 1975 c 581 §25]

536.430 Commission to devise plans and programs for development of water resources. The commission shall devise plans and programs for the development of the water resources of 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 commission, by itself or in conjunction with any person, local voluntary committee or association, state agency or public corporation of this or any other state, any interstate agency or any agency of the Federal Government, may conduct such investigations, surveys or studies, including the holding of public hearings, relating to the water resources of this state as it deems necessary to facilitate and assist in carrying out its functions as provided by law [1955 c 707 §20]

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

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

536.470 Coordination of local, state, interstate and federal programs. The commission may consult and cooperate with any state agency or public corporation of this or any other

state, any interstate agency or any agency of the Federal Government for the purpose of promoting coordination between local, state, interstate and federal plans, programs and projects for the use or control of the water resources of this state or to facilitate and assist the commission in carrying out its functions as provided by law [1955 c 707 §21]

536.480 Making available information concerning water resources. The commission, insofar as practicable, shall make available, free or at cost, to the public and to any state agency or public corporation of this or any other state, any interstate agency or any agency of the Federal Government, information concerning the water resources of this state or the functions of the commission as provided by law, including information relating to the state water resources policy, to any plan or program devised by the commission for the development of the water resources of this state, to the results of any investigation, survey or study conducted by the commission and to the results of any hearing held by the commission [1955 c 707 §23]

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

536.500 Acceptance and expenditure of moneys from public and private sources.

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

536.510 [1955 c 707 §26, repealed by 1985 c 673 §185]

536.520 State agencies and public corporations furnishing information and services to commission. (1) In order to facili-

tate and assist in carrying out its functions as provided by law, the commission may

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

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

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

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

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

536 530 [1955 c 707 §29, repealed by 1975 c 581 §29 and by 1975 c 605 §33]

536.540 Approval of voucher claims. All voucher claims for indebtedness or expenses authorized and incurred by the commission in carrying out its functions as provided by law shall be approved by the commission or as provided in ORS 293 330 [1955 c 707 §31]

536 550 [1955 c 707 §30, repealed by 1985 c 673 §185]

536 560 [1955 c 707 §76, 1979 c 284 §164, repealed by 1985 c 673 §185]

MISCELLANEOUS PROVISIONS

536.570 Moneys and securities of irrigation districts in possession of Water Resources Commission; deposit with State Treasurer. The Water Resources Commission may deposit with the State Treasurer for safekeeping all moneys and securities which may come into the commission's possession in connection with the reorganization, retirement or settlement of the bonds, warrants or other evidences of indebtedness of any irrigation district within the state. When so deposited the State

Treasurer shall safely keep the same subject to call of the Water Resources Commission [Formerly 544 050, amended by 1957 c 351 §3, 1985 c 673 §19]

536.580 Rights acquired prior to August 3, 1955, not affected. Nothing in ORS 509 645, 536 220 to 536 540 or 543 225, as enacted by chapter 707, Oregon Laws 1955, nor in the amendments made by chapter 707, Oregon Laws 1955, to ORS 225 290, 225 300, 261 325, 261 330, 509 605, 509 610, 509 625, 509 640, 537 170, 537 200 (1969 Replacement Part), 543 050 or 543 230, nor in sections 38, 41, 43, 45 or 50 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested and inchoate prior to August 3, 1955 [1955 c 707 §55, 1973 c 723 §125, 1985 c 673 §181]

536.590 Rights acquired prior to January 1, 1956, not affected. Nothing in the amendments made by chapter 707, Oregon Laws 1955, to ORS 182 410, 536 010 (1973 Replacement Part), 542 110, 548 365, 555 030 or 555 070, nor in sections 58 to 65, 70 or 75 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested or inchoate prior to January 1, 1956 [1955 c 707 §77, 1969 c 168 §2, 1985 c 673 §182]

EMERGENCY 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 Commission may order individual state agencies and political subdivisions within any drainage basin or subbasin to develop and file with the commission, within 30 days 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, prevention of waste, salvage and reuse of water resources

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

(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 Commission, the commission shall

review the plan and approve it if the commission finds that the plan satisfactorily promotes uniformity in water curtailment practices and the coordination of usage regulation

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

(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 Commission such periodic reports regarding implementation of the plans as the commission 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 insofar 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, 1985 c 673 §20]

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]

