

Chapter 541

1987 REPLACEMENT PART

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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 the vendor, and shall be subject to the same liabilities during 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 the person is interested in the result, and may have the right of the person 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 Commission 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 [Amended by 1985 c 673 §101]

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 Commission 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 [Amended by 1985 c 673 §102]

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 certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the Water Resources Department. 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 [Amended by 1985 c 673 §103]

WATERSHED ENHANCEMENT

541.350 Definitions for ORS 541.350 to 541.395. As used in ORS 541.350 to 541.395

(1) "Associated uplands" includes those lands of a watershed that are critical to the functioning and protection of the riparian area

(2) "Board" means the Governor's Watershed Enhancement Board created under ORS 541.360

(3) "Division" means the Soil and Water Conservation Division created under ORS 561.400

(4) "Riparian area" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, dependent upon surface or subsurface water, that reveals through the zone's existing or potential soil-vegetation complex, the influence of such surface or subsurface water. A riparian area may be located adjacent to a lake, reservoir, estuary, pothole, spring, bog, wet meadow, muskeg or ephemeral, intermittent or perennial stream.

(5) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet [1987 c 734 §1]

541.355 Policy. (1) The Legislative Assembly finds that

(a) Each watershed in Oregon is unique and each requires different management techniques and programs

(b) The initiative and implementation of riparian area restoration and management programs should be planned and implemented at the local level by persons or agencies that perceive the need and have the management responsibility for achieving the best solution for local watershed enhancement and improved land and water management

(c) It is in the best interest of the state to restore and maintain and enhance its watersheds in order to protect the economic and social well-being of the state and its citizens

(2) Therefore, the Legislative Assembly declares that

(a) A goal of the people of the State of Oregon is to

(A) Enhance Oregon's waters through the management of riparian and associated upland areas of watersheds in order to improve water quality and quantity for all beneficial purposes as set forth in ORS 536 310.

(B) Restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuaries systems

(C) Restore and enhance the ground water storage potential associated with healthy riparian area ecosystems

(D) Improve the filtering capability of riparian areas to reduce nonpoint source runoff and improve water quality

(b) In order to achieve this goal in the most cost-effective manner, the State of Oregon shall

(A) Maximize the use of individuals and groups wishing to volunteer time and effort to watershed enhancement projects,

(B) Encourage private individuals and organizations and local, state and federal agencies to work jointly to conduct watershed enhancement programs, and

(C) Enforce statutes, rules and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the riparian areas of the state [1987 c 734 §2]

541.360 Watershed Enhancement Board; voting and nonvoting members; staff. (1) The Governor's Watershed Enhancement Board is created. The board shall consist of 10 members as set forth in subsection (2) of this section. The board shall elect one member of the board as chairperson. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2)(a) The five voting members of the board shall be the chairperson of each of the following boards or commissions, or a member of the board or commission designated by the commission to serve on the Governor's Watershed Enhancement Board in lieu of the chairperson

(A) The Environmental Quality Commission,

(B) The State Fish and Wildlife Commission,

(C) The State Board of Forestry,

(D) The State Soil and Water Conservation Commission, and

(E) The Water Resources Commission

(b) In addition to the voting members, the following persons shall serve as nonvoting members of the board and shall participate as needed in the activities of the board

(A) The director of the agricultural extension service of Oregon State University, or designee, and

(B) The Director of Agriculture, or designee

(c) In addition to the voting and nonvoting members designated in paragraphs (a) and (b) of this subsection, representatives of the following federal agencies shall be invited to serve as additional nonvoting members of the board

(A) A representative of the United States Forest Service

(B) A representative of the United States Bureau of Land Management

(C) A representative of the soil conservation service of the United States Department of Agriculture

(3) The board shall use state agency employees with relevant expertise to provide staff support necessary for the board to carry out its duties and responsibilities under ORS 541 350 to 541 395 [1987 c 734 §3]

541.365 Board to conduct watershed enhancement program. A watershed enhancement program shall be conducted by the Governor's Watershed Enhancement Board to benefit all users of the waters of this state. The program shall be conducted in a manner that provides the greatest possible opportunity for volunteer participation to achieve the goals of the program. [1987 c 734 §5]

541.370 Duties of board; advisory committees. (1) In carrying out the watershed enhancement program, the Governor's Watershed Enhancement Board shall

(a) Coordinate the implementation of enhancement projects approved by the board with the activities of the Soil and Water Conservation Division staff and other agencies, especially those agencies working together through a system of coordinated resource management planning

(b) Use the expertise of the appropriate state agency according to the type of enhancement project

(c) Provide educational and informational materials to promote public awareness and involvement in the watershed and enhancement program

(d) Coordinate the activities of persons, agencies or political subdivisions developing local watershed enhancement projects approved by the board

(e) Grant funds for the implementation of approved watershed enhancement projects from such moneys as may be available to the board therefor

(f) Develop and maintain a centralized repository for information about the effects of watershed enhancement projects

(g) Give priority to proposed watershed enhancement projects receiving federal funding or assistance from federal agencies

(h) Identify gaps in research or available information about watershed enhancement

(i) Cooperate with appropriate federal entities to identify the needs and interests of the State of Oregon so that federal plans and project schedules relating to watershed enhancement incorporate the state's intent to the fullest extent practicable.

(j) Encourage the use of nonstructural methods to enhance the riparian areas and associated uplands of Oregon's watersheds

(2) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee [1987 c 734 §6]

541.375 Watershed enhancement projects; application for funds or assistance; criteria for approval. (1) Any person, state agency, federal agency or political subdivision of this state may submit a request for funding for or for advice and assistance in developing a watershed enhancement project under the program established by the Governor's Watershed Enhancement Board under ORS 541 365.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board. The requester may submit the request to the board or to a local soil and water conservation district organized under ORS 568 210 to 568 805.

(3) Based upon criteria established by rule by the board, within 90 days after a district receives a request under subsection (1) of this section, the district shall either

(a) Approve the proposal and provide the requested advice, assistance or funding for the project, or

(b) Forward the proposal to the board for approval or disapproval

(4) A watershed enhancement project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment and site specific in-stream structures

(5) A watershed enhancement project proposal submitted to a district under this section shall not be subject to review and approval by the Soil and Water Conservation Division under ORS 561 400

(6) The Governor's Watershed Enhancement Board shall approve for implementation only those enhancement projects that

(a) Are based on sound principles of watershed management,

(b) Use enhancement methods most adapted to the project locale, and

(c) Meet the criteria established by the board under ORS 541 390

(7) The Governor's Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(8) If the Governor's Watershed Enhancement Board approves a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license [1987 c 734 §7]

541.380 Rules. (1) In accordance with the applicable provisions of ORS 183.310 to 183 550, the Governor's Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program

(2) The rules and standards adopted by the board under subsection (1) of this section shall include, but need not be limited to

(a) Criteria for selecting projects to receive assistance or funding from the board

(b) Conditions for approval by the board for implementation of a project including but not limited to

(A) Provisions satisfactory to the board for inspection and evaluation of the implementation of a project including all necessary agreements to allow the board and employees of any cooperating agency providing staff services for the board access to the project area,

(B) Provisions satisfactory to the board for controlling the expenditure of and accounting for any funds granted by the board for implementation of the project,

(C) An agreement that those initiating the project will submit all pertinent information and research gained from the project to the board for inclusion in the centralized repository established by the board, and

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project

(c) The amount of funding that a local soil and water conservation district organized under ORS 568 210 to 568 805 can provide directly for a watershed enhancement project without prior approval of the board [1987 c 734 §8]

541.385 Water Resources Department to provide staff for board. The Water Resources Department shall provide staff for project oversight and the day-to-day operation of the Governor's Watershed Enhancement Board, including scheduling meetings, providing public notice of meetings and other board activities and keeping records of board activities [1987 c 734 §4]

541.390 Duties of Soil and Water Conservation Division. In addition to the duties conferred on the Soil and Water Conservation Division under ORS 561 400 and 568 210 to 568 805, the division shall

(1) In cooperation with the Governor's Watershed Enhancement Board, provide appropriate personnel who, under the direction of the board, shall

(a) Serve as community advisors to cooperatively develop watershed enhancement projects with volunteers; and

(b) Cooperatively evaluate watershed enhancement projects with those responsible for project implementation

(2) Provide technical assistance to individuals responsible for implementation of a watershed enhancement project

(3) Work with the Governor's Watershed Enhancement Board to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning [1987 c 734 §9]

541.395 State agency reports to be provided to board. In order to assist the Governor's Watershed Enhancement Board in developing and maintaining a centralized repository under ORS 541 370, the following agencies shall provide the board with a copy of any report produced by the agency that is related to enhancement or restoration of riparian areas or associated uplands

(1) The Department of Environmental Quality

(2) The State Department of Fish and Wildlife

(3) The Water Resources Department

(4) The State Forestry Department

(5) The State Department of Agriculture

(6) The agricultural extension service of Oregon State University [1987 c 734 §10]

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 the person, 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 Authority of Water Resources Commission to require signs warning public of stream level fluctuation. (1) Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted 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 commission 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 commission post notices downstream from the structure at places of public access to the stream to be designated by the commission warning the public that the stream level below the structure is subject to fluctuation [1959 c 624 §1, 1961 c 379 §9a, 1985 c 673 §104]

541.515 Notice by commission when hazard created by release of stored water.

(1) Whenever it appears to the satisfaction of the Water Resources Commission, upon the commission's own determination or upon evidence submitted 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 commission 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 commission, 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 commission hold a hearing on such unreasonable hazard or action required to minimize such unreasonable hazard, and that upon failure to request a hearing the commission shall make an order stating the terms, limitations and conditions of the action required to minimize such unreasonable hazard [1961 c 379 §1 1985 c 673 §105]

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 Commission hold a hearing, the commission shall make and file in the Water Resources Department 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 Water Resources Department. The commission 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, 1985 c 673 §106]

541.525 Hearing 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 Commission hold a hearing, the commission 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 commission, 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, 1985 c 673 §107]

541.530 Order of commission regulating release of water. After the hearing provided for in ORS 541.525, if the Water Resources Commission 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 and the increase creates or will create an unreasonable hazard to human life or property, the commission shall make and file in the offices of the Water Resources Department 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 commission shall consider 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 [1961 c 379 §4, 1971 c 734 §84, 1985 c 673 §108]

541.535 Installation of automatic stream level recording devices. An order of the Water Resources Commission under 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 commission at one or more locations satisfactory to the commission. 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, 1985 c 673 §109]

541.540 Procedure in emergency when release of water 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 Commission, 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 commission or the Water Resources Department of the situation.

(3) The owner, operator or person in immediate charge of the structure shall immediately notify, to the best of the person's ability, those persons whose life or property may be threatened by such release of water [1961 c 379 §6, 1985 c 673 §110]

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

(2) The commission 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, 1985 c 673 §111]

WATER RESOURCES (Wetlands)

541.550 Definitions for ORS 541.550 to 541.587. As used in ORS 541.550 to 541.587

(1) "Credit" means a numerical value that represents the wetland resource functions and values of a site

(2) "Mitigation bank" means a publicly owned and operated wetland site, created, restored or enhanced by the division in accordance with ORS 541 550 to 541 587 to compensate for unavoidable adverse impacts due to activities which otherwise comply with the requirements of ORS 541 550 to 541 685 and 33 U S C sections 1251 through 1376

(3) "Onsite mitigation methods" means all measures that may be taken to reduce, offset or eliminate damage or destruction to the functional characteristics and processes of a wetland, including but not limited to relocating, reducing the size or scope, or changing the operational characteristics of the proposed activity, or creating or enhancing wetland functions or values at the project site

(4) "Permit action" means activity under a specific removal or fill permit requested or issued under ORS 541 550 to 541 685

(5) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the Parks and Recreation Division of the Department of Transportation pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U S C 460-L et seq) [1987 c 855 §3]

541.555 Policy. It is the purpose of ORS 541 550 to 541 587 to

(1) Promote, in concert with other federal and state programs as well as interested parties, the maintenance and conservation of wetlands,

(2) Improve cooperative efforts among private, nonprofit and public entities for the management and protection of wetlands,

(3) Offset losses of wetland values caused by activities which otherwise comply with state and federal law in order to create, restore or enhance wetland values and functions,

(4) Maintain and encourage a predictable, efficient regulatory framework for environmentally acceptable development, and

(5) Provide an option for accomplishing off-site mitigation when such mitigation is required under a removal or fill permit [1987 c 855 §2]

541.557 Wetlands; acquisition and protection; powers of Director of Division of State Lands. Subject to approval by the State Land Board, the director may

(1) Charge a fee for purchase of credits in the mitigation bank as provided by ORS 541 550 to 541 587

(2) Acquire or accept title to lands suitable for use in mitigation banks or actions, or to protect sensitive or unique wetlands habitat

(3) Pay costs incurred for alterations needed to create, restore or enhance wetland areas for purposes of carrying out the provisions of ORS 541 550 to 541 587

(4) Authorize payment of administrative, research or scientific monitoring expenses of the division in carrying out the provisions of ORS 541 550 to 541 587

(5) Disperse funds received under the Federal Coastal Zone Management Act of 1972, as amended (16 U S C 1451 et seq), for such purposes as specifically stipulated in a grant award

(6) Receive funds under the Federal Emergency Wetlands Resources Act of 1986, P L 99-645, for the voluntary acquisition of wetlands and interests therein according to the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan Funds received under the Federal Emergency Wetlands Resources Act of 1986, P L 99-645, shall be used for nonmitigation complementary purposes and programs of ORS 541 550 to 541 587 [1987 c 855 §7]

541.560 Program for wetlands mitigation banks; program criteria. (1) In accordance with the provisions of ORS 541 550 to 541 587, upon the approval of the State Land Board, the director shall initiate and implement a program for wetlands mitigation banks Not more than four pilot mitigation banks shall be funded under ORS 541 550 to 541 587 before July 1, 1991

(2) Subject to the approval of the State Land Board, the division shall adopt, by rule, standards and criteria for the site selection process, operation and evaluation of mitigation banks Criteria to be considered shall include but need not be limited to

(a) Historical wetland trends, including the estimated rate of current and future losses of the respective types of wetlands

(b) The contributions of the wetlands to

(A) Wildlife, migratory birds and resident species,

(B) Commercial and sport fisheries,

(C) Surface and ground water quality and quantity, and flood moderation,

(D) Outdoor recreation including enhancement of scenic waterways, and

- (E) Scientific and research values
- (c) Regional economic needs

(3) For each mitigation bank, the division shall establish a well-defined plan, including preliminary objectives, inventory of resource values and an evaluation and monitoring program [1987 c 855 §8]

541.565 Resource values and credits for mitigation banks; use and withdrawal of credits; annual evaluation of system by director. (1) For each mitigation bank, the division shall establish a system of resource values and credits

(2) A credit from a mitigation bank may be withdrawn only for a permit action after all onsite mitigation methods have been examined and found to be impracticable

(3) Credits from a mitigation bank shall be used only for mitigation of a permit action that occurs within 40 miles of that bank

(4) Credits from a freshwater mitigation bank shall be used only for mitigation of permit actions that occur within the same tributary, reach or subbasin as the mitigation bank

(5) Credits from an estuarine mitigation bank shall be used only for mitigation of permit actions that occur within the same estuarine ecological system

(6) The director shall not withdraw any credits from any mitigation bank until the director

(a) Has taken actions sufficient to establish hydrological function of the mitigation bank site,

(b) Has conducted other creation, restoration and enhancement actions to establish other wetland functions and values at the mitigation bank site, and

(c) Evaluated the results of the actions and determined that a high probability exists that the wetland functions and values of the mitigation bank site are equal to or greater than the functions and the values of the wetland area to be damaged or destroyed

(7) The price for any mitigation credit shall be set at an amount that will compensate the state for all of the costs and expenses the state has incurred, and is expected to incur in establishing and maintaining that portion of the mitigation bank

(8) No mitigation bank credits may be withdrawn for any permit action where the wetland area to be adversely affected by a removal or fill activity exceeds five acres. The "area affected" shall include the area where material is removed

or filled and any surrounding area adversely affected by the activity

(9) The director shall not consider the availability or nonavailability of mitigation bank credits in deciding whether to grant or deny any removal or fill permit under ORS 541 550 to 541 685

(10) The director annually shall

(a) Evaluate the wetlands functions and values created within each wetland mitigation bank site, and

(b) Compare the current functions and values with the functions and values that the director anticipated the site would provide. If the director finds any significant disparity between the actual and anticipated functions and values, the director shall

(A) Suspend the withdrawal of credits to that mitigation site, or

(B) Take prompt action to assure that the anticipated functions and values are established

(11) The director shall not withdraw credits from the mitigation bank for specific permit actions if the director determines that

(a) The credits for that specific permit action would not adequately maintain habitat or species diversity, or

(b) The mitigation bank site for which credits are proposed to be withdrawn is not sufficiently similar in wetland functions and values to the wetland area to be damaged or destroyed [1987 c 855 §9]

541.567 Fill and removal activities in mitigation banks; reports. (1) The director shall maintain a record of fill and removal activities and actions for each mitigation bank and pilot program implemented and conduct monitoring of banks with moneys from the Oregon Wetlands Mitigation Bank Revolving Fund Account

(2) The director shall provide quarterly reports to the State Land Board on moneys spent and received for each wetland mitigation bank [1987 c 855 §10]

541.570 Rules. Subject to the approval of the State Land Board, the director shall adopt rules according to the provisions of ORS 183 310 to 183 550 to carry out the provisions of ORS 541 550 to 541 587 [1987 c 855 §12]

541.575 Director to consult and cooperate with other agencies and interested parties. (1) The provisions of ORS 541 550 to 541 587 shall be carried out by the director in

consultation with the State Department of Fish and Wildlife, Department of Transportation, Department of Land Conservation and Development, Department of Environmental Quality, Economic Development Department, federal natural resources and regulatory agencies, affected local governments and special districts, conservation organizations and other interested parties

(2) In cooperation with the parties in subsection (1) of this section, the director, in consultation with the State Land Board, shall

(a) Review opportunities for inclusion of appropriate wetlands in the Statewide Comprehensive Outdoor Recreation Plan

(b) Develop and recommend a wetlands priority plan for inclusion in the Statewide Comprehensive Outdoor Recreation Plan. The wetlands priority plan shall be complementary to the purposes and programs under ORS 541 550 to 541 587 [1987 c 855 §13]

541.577 Oregon Wetlands Mitigation Bank Revolving Fund Account. (1) The Oregon Wetlands Mitigation Bank Revolving Fund Account is established in the General Fund of the State Treasury. All moneys received under ORS 541 580 shall be paid into the State Treasury and credited to the account. All moneys in the account are appropriated continuously to the Division of State Lands to be used by the division as set forth in ORS 541 585. The moneys in the account may be invested and reinvested as provided in ORS 293 701 to 293 776

(2) The division shall keep a record of all moneys deposited in the account. The record shall indicate by separate cumulative accounts the source from which the moneys are derived and the individual activity or program against which each withdrawal is charged. [1987 c 855 §4]

541.580 Sources of account. The following moneys shall be paid into the Oregon Wetlands Mitigation Bank Revolving Fund Account

(1) Any moneys appropriated for that purpose by the Legislative Assembly,

(2) Moneys awarded for such purposes as specifically stipulated under grants through the Federal Emergency Wetlands Resources Act of 1986, P L 99-645, or the Federal Coastal Zone Management Act of 1972, 15 U S C 1451 et seq, as amended,

(3) Moneys obtained by gift, bequest, donation or grant from any other public or private source for the purposes of ORS 541 550 to 541 595 and 541 670,

(4) Repayment of moneys from the account, including interest on such moneys, and

(5) Moneys obtained from interest or other earnings from investments of moneys in the account [1987 c 855 §6]

541.585 Use of account. The division may use the moneys in the Oregon Wetlands Mitigation Bank Revolving Fund Account for the following purposes

(1) For the voluntary acquisition of land suitable for use in mitigation banks

(2) To pay for costs incurred for alterations needed to create, restore or enhance wetland areas for purposes of carrying out the provisions of ORS 541 550 to 541 587

(3) For payment of administrative, research or scientific monitoring expenses of the division in carrying out the provisions of ORS 541 550 to 541 587

(4) For the dispersal of funds received under the Federal Coastal Zone Management Act of 1972, as amended (16 U S C 1451 et seq), for such purposes as specifically stipulated in a grant award

(5) For the dispersal of funds received under the Federal Emergency Wetlands Resources Act of 1986, P L 99-645, for the voluntary acquisition of wetlands and interests therein as identified in the wetlands provisions of the Statewide Comprehensive Outdoor Recreation Plan [1987 c 855 §5]

541.587 Report on Oregon Wetlands Mitigation Bank Revolving Fund; contents.

As part of the report to the State Land Board required under ORS 541 670, the director shall prepare an annual report on the Oregon Wetlands Mitigation Bank Revolving Fund Account. The report shall include, but need not be limited to

(1) The financial status of the account,

(2) Creation, restoration or enhancement activities and credits sold, granted or otherwise disposed of or remaining in mitigation banks established under ORS 541 550 to 541 587,

(3) Wetlands acquired with moneys in the account, and

(4) For each mitigation bank, a summary of activities, including but not limited to

(a) A description of the location, size, number of potential credits and credits withdrawn for each specific permit action, and

(b) The status of all mitigation bank activities pending or completed during the past year [1987 c 855 §11]

541.590 Effect of ORS 541.550 to 541.595 and 541.670. ORS 541 550 to 541 595 and 541 670 are intended to be supple-

mentary to, and are not intended to abrogate, any state or federal law relating to wetlands [1987 c 855 §19]

Note 541.595 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note Sections 14 and 15, chapter 855, Oregon Laws 1987, provide

Sec 14 The State Land Board shall appoint a technical scientific committee, including public, nonprofit, industry and other private sector members, to assist the director in the review and evaluation of mitigation bank proposals and operations [1987 c 855 §14]

Sec 15 Section 14 of this Act is repealed on July 1, 1991 [1987 c 855 §15]

541.595 Short title. ORS 541.550 to 541.587 may be cited as the "Oregon Wetlands Mitigation Bank Act of 1987" [1987 c 855 §1a]

(Removal of Material; Filling)

541.605 Definitions for ORS 541.550 to 541.685. As used in ORS 541.550 to 541.685, 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]

Note Sections 1 and 2, chapter 545, Oregon Laws 1985, provide

Sec 1 Sections 2 to 6 of this Act are added to and made a part of ORS 541.605 to 541.685

Sec 2 (1) Notwithstanding any other provision of ORS 541.605 to 541.685

(a) As used in ORS 541.605 to 541.685, "fill" means the deposit by artificial means of material in any waters of this state

(b) In the manner provided by ORS 541.640, the director may provide a general exception from the application of ORS 541.605 to 541.685 for fills that involve less than 50 cubic yards of material and will not result in substantial harm to the water resources of this state

(2) This section does not become operative until the federal Environmental Protection Agency grants authority to the Division of State Lands to administer permits for the discharge of dredged or fill material under Section 404 of the Federal Water Pollution Control Act (P L 92-500, as amended)

(3) This section is repealed on July 1, 1989

541.610 Policy. (1) The protection, conservation and best use of the water resources of this state are matters of the utmost public con-

cern 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 habitats 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 541 550 to 541 685 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 541 550 to 541 685, 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 541 550 to 541 685.

(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 541 550 to 541 685.

(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 the director 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 written request and at the expense of the member of the public 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 541 550 to 541 685 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; exception. (1) Notwithstanding any provision of ORS 541 550 to 541 685 to the con-

trary, except as provided in subsection (2) of this section, 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

(2) Notwithstanding the provision of subsection (1) of this section, the Director of the Division of State Lands may issue a permit to fill Smith Lake or Bybee Lake, located in Multnomah County, if such fill is to enhance or maintain fish and wildlife habitat at or near Smith Lake or Bybee Lake. A fill shall be considered to be for the purpose of enhancing or maintaining fish and wildlife habitat if the proposed fill is approved by the State Department of Fish and Wildlife [1977 c 120 §2, 1987 c 160 §1]

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 and with uses designated for adjacent land in an acknowledged comprehensive plan and zoning ordinances

(g) Whether the proposed fill is compatible with the acknowledged comprehensive plan and land use regulations for the area where the proposed fill is to take place

(h) Whether the proposed fill is for stream-bank 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 541 550 to 541 685

(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, 1987 c 70 §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 197 855 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, 1983 c 827 §56]

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 grant of permit makes a showing before the director by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 541 550 to 541 685 [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 Resources Commission 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 Resources Commission 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 Resources Commission 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 541 550 to 541 685, the Director of the Division of State Lands by rule may make exceptions from the application of ORS 541 550 to 541 685 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. (1) 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, the director may

(a) Investigate, hold hearings, make orders and take action, as provided in ORS 541 550 to 541 685, as soon as possible.

(b) 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

(c) Conduct public hearings in accordance with ORS 183 310 to 183 550

(d) Publish findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 541 550 to 541 685

(e) Give notice of any proposed order relating to a violation by personal service or by mailing the notice by registered or certified mail to the person or governmental body affected. Any person aggrieved by a proposed order of the director may request a hearing within 20 days of the date of personal service or mailing of the notice. Hearings shall be conducted under the provisions of ORS 183 310 to 183.550 applicable to contested cases, and judicial review of final orders shall be

conducted in the Court of Appeals according to ORS 183 482. If no hearing is requested or if the party fails to appear, a final order shall be issued upon a prima facie case on the record of the agency

(f) Take appropriate action for the enforcement of any rules or final orders. Any violation of ORS 541 550 to 541 685 or of any rule or final order of the director under ORS 541 550 to 541 685 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 if applicable 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

(2) In addition to the administrative action the director may take under subsection (1) of this section, the director may enter an order requiring any person to cease and desist from any violation if the director determines that such violation presents an imminent and substantial risk of injury, loss or damage to water resources

(a) An order under this subsection

(A) May be entered without prior notice or hearing

(B) Shall be served upon the person by personal service or by registered or certified mail

(C) Shall state that a hearing will be held on the order if a written request for hearing is filed by the person subject to the order within 10 days after receipt of the order

(D) Shall not be stayed during the pendency of a hearing conducted under paragraph (b) of this subsection

(b) If a person subject to an order under this subsection files a timely demand for hearing, the director shall hold a contested case hearing according to the applicable provisions of ORS 183 310 to 183 550. If the person fails to request a hearing, the order shall be entered as a final order upon prima facie case made on the record of the agency

(c) Neither the director nor any duly authorized representative of the division shall be liable for any damages a person may sustain as a result of a cease and desist order issued under this subsection

(d) The state and local police shall cooperate in the enforcement of any order issued under this subsection and shall require no further authority or warrant in executing or enforcing such order. If any person fails to comply with an order issued under this subsection, the circuit court of the county in which the violation occurred or is threatened shall compel compliance with the director's order in the same manner as with an order of that court.

(3) As used in this section, "violation" means removing material from or placing fill in, any of the waters of this state without a permit or in a manner contrary to the conditions set out in a permit issued under ORS 541.625. [1967 c 567 §10, 1971 c 754 §10, 1973 c 330 §6, 1973 c 674 §9, 1985 c 414 §1]

541.655 Revocation, suspension or refusal to renew 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, the director may revoke, suspend or refuse to renew such permit. The director may revoke a permit only after giving notice and opportunity for a 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, 1985 c 414 §2]

541.660 Abatement proceedings; restraining order, injunction; public compensation. (1) In addition to any enforcement action taken under ORS 541.650, civil 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 or by any person in the person's name.

(2) Before beginning any action under subsection (1) of this section, a person other than the director shall provide 60 days notice to the director of the intended action. A person other than the director may not begin an action under subsection (1) of this section if the director has commenced and is diligently prosecuting civil, criminal or administrative proceedings in the same matter.

(3) The director may institute an action in the name of the State of Oregon for a temporary restraining order or preliminary injunction if a threatened or existing nuisance under ORS 541.645 creates an emergency that requires immediate action to protect the public health, safety or welfare. The director shall not be required to furnish a bond in such proceeding.

(4) The State Land Board, the Director of the Division of State Lands and the employees or duly

authorized representatives of the division shall not be liable for any damages a defendant may sustain as a result of an injunction, restraining order or abatement order issued under this section.

(5) A case filed under this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

(6) In any action brought under this section, the plaintiff 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. Any money received by the plaintiff under this subsection shall be deposited in the Common School Fund [1967 c 567 §12, 1973 c 330 §8, 1973 c 674 §11, 1979 c 284 §166, 1985 c 414 §3]

541.662 Double and treble damages for destruction of public right of navigation, fishery or recreation; costs and attorney fees. (1) If any person or governmental body, through 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.

(4) In any action brought under ORS 541.660, the court shall award to the prevailing party the costs of suit and reasonable attorney fees at trial and on appeal. Subject to the provisions of ORS 20.140, any costs and attorney fees so awarded to the director shall be deposited in the Common School Fund to offset the director's expenses of bringing such action [Enacted by 1973 c 330 §10 and 1973 c 674 §13, 1985 c 545 §7]

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 541 550 to 541 685, 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]

541.670 Annual report of fill and removal activities; contents of report. The director shall submit an annual report to the State Land Board on the activities conducted under ORS 541 550 to 541 685. The annual report shall include the following

(1) The number of fill and removal permits applied for, denied and granted, organized according to whether or not the permits were for waters subject to section 404 of the Federal Water Pollution Control Act (P L 92-500, as amended). For all permits granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body, that shows

(a) The total number of permits, the number of new permits and the number of renewal permits

(b) The volume and acreage of fills and removals authorized during the past year, and the volume and acreage of fills and removals completed during the past year

(2) By river or other water body, a summary of the total volume and acreage of fills and removals made under a general waiver, general permit or similar authority

(3) A summary of mitigation measures, including a description of each mitigation project approved during the past year including the location and size of each mitigation project and a report on the status of all mitigation projects pending or completed during the past year

(4) A summary of enforcement activities, including

(a) The number of potential violations reported

(b) The number of compliance investigations conducted

(c) The results of compliance actions, including

(A) The number of cases resolved by voluntary compliance, administrative hearings and judicial enforcement proceedings,

(B) The amount of damages and penalties assessed,

(C) The amount of damages and penalties recovered, and

(D) A brief description of each after-the-fact permit issued, including the location and size by volume and acreage

(5) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description

(6) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 541 587 [1985 c 545 §6, 1987 c 855 §16]

541.675 Civil penalties. Any person who violates any provision of ORS 541 550 to 541 685 or any rule, order or permit adopted or issued under ORS 541 550 to 541 685 shall be subject to a civil penalty in an amount to be determined by the director of not more than \$10,000 per day of violation [1985 c 545 §3]

541.680 Procedures for civil penalties.

(1) Any civil penalty imposed under ORS 541 675 shall become due and payable when the person incurring the penalty receives a notice in writing from the director. The notice referred to in this section shall be sent by registered or certified mail and shall include

(a) A reference to the particular sections of the statute, rule, order or permit involved,

(b) A short and plain statement of the matters asserted or charged,

(c) A statement of the amount of the penalty imposed, and

(d) A statement of the party's right to request a hearing within 20 days of receiving the notice.

(2) The person to whom the notice is addressed shall have 20 days from the date of personal service or mailing of the notice in which to make a written request for a hearing.

(3) Hearings shall be conducted under the provisions of ORS 183 310 to 183 550 applicable to contested cases. If no hearing is requested or if the party requesting a hearing fails to appear, a final order shall be entered upon a prima facie case made on the record of the agency

(4) Unless the amount of penalty is paid within 10 days after the order becomes final, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. The clerk shall record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. The penalty provided in the order so recorded becomes a lien upon the title to any interest in real property situated in the county and owned by the person against whom the order is entered. Execution may be issued upon the order in the

same manner as execution upon a judgment of a court of record

(5) The provisions of this section are in addition to and not in lieu of any other penalty or sanction provided by law. An action taken by the director under this section may be joined by the director with any other action taken against the same person under ORS 541 650 (1)(f)

(6) Any civil penalty recovered under this section shall be deposited in the Common School Fund for use by the division in administration of ORS 541 550 to 541 685 and 541 990, and as otherwise required by law [1985 c 545 §4]

541.685 Schedule of civil penalties; factors to be considered in imposing civil penalties. (1) The director shall adopt by rule the amount of civil penalty that may be imposed for a particular violation

(2) In imposing a penalty under the schedule adopted under subsection (1) of this section, the director shall consider the following factors

(a) The past history of the person incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation

(b) Any prior violations of statutes, rules, orders and permits pertaining to waters of the state

(c) The impact of the violation on public interests in fishery, navigation and recreation

(d) Any other factors determined by the director to be relevant and consistent with the policy of ORS 541 610

(3) The penalty imposed under this section may be remitted or mitigated upon such terms and conditions as the director determines to be proper and consistent with the policy of ORS 541 610 Upon the request of the person incurring the penalty, the director shall consider evidence of the economic and financial condition of the person in determining whether a penalty shall be remitted or mitigated [1985 c 545 §5]

541.695 Application of ORS 541.550 to 541.685. (1) Nothing in ORS 541 550 to 541 685 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 541 550 to 541 685 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 527 735, 527 990 and 527 992 [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) "Commission" means the Water Resources Commission appointed under ORS 536 022

(2) "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

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

(4) "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

(5)(a) "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

(b) "Secondary use" does not include any use that is incompatible with a water development project

(6) "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) An undertaking, in whole or in part, in this state for the purpose of providing water for municipal use for communities with population less than 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments and all other structures and facilities necessary or convenient for supplying water

(d) Secondary uses in conjunction with projects described in paragraphs (a) to (c) of this subsection

(7) "Water developer" means

(a) Any individual resident of this state,

(b) Any partnership for profit subject to the provisions of ORS chapter 68 or 70, whose principal income is from farming in Oregon,

(c) Any corporation for profit subject to the provisions of ORS chapter 60, 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 777 005 to 777 725, 777 850 to 777 910 and 777 990,

(m) Any city or county, or

(n) Any organization formed for the purpose of distributing water for community water supply [1977 c 246 §1, 1981 c 166 §1, 1981 c 592 §1, 1985 c 673 §184, 1985 c 677 §65, 1987 c 94 §103]

(Loan Applications)

541.703 Project applications; preference for approval. Of the applications filed under ORS 541 705 for assistance in constructing a water development project for municipal use, the commission shall give preference for approval to those projects required to be undertaken as a result of a proceeding under ORS 222 840 to 222 915 or 431 705 to 431 760 to alleviate conditions constituting a danger to public health. [1983 c 407 §13, 1985 c 673 §112]

541.705 Project applications; contents.

(1) Any water developer may file with the Water Resources Commission 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 the manner, be in the form and contain or be accompanied by any information prescribed by the commission. The commission, 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 commission, an application filed under subsection (1) of this section shall

(a) Describe the nature and purposes of the proposed water development project, including the need for the project and reason why the project would be in the public interest

(b) State whether any purposes other than irrigation, drainage or municipal use, but consistent therewith, will be served by the proposed water development project, and the nature of the 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 if the project includes as a primary purpose irrigation or drainage, 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, 1981 c 592 §2, 1985 c 673 §113]

541.710 Processing project application; fee. (1) Upon receipt of an application filed as provided in ORS 541 705, the commission 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 commission determines that it is not satisfactory, the commission 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 the commission considers necessary to make the plan satisfactory

(2) The commission shall charge and collect from the applicant at the time the application is filed, a fee of \$100. In addition, the commission shall charge the applicant the amount required to reimburse the commission 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, 1985 c 673 §114]

541.715 Applicant 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 the proposed water development project of the applicant [1977 c 246 §4]

541.720 Conditions for project application approval. The commission 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 commission 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, if the primary purposes of the project include irrigation or drainage, 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, credit-worthy and responsible water developer and is willing and able to enter into a contract with the commission 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, the proposed project is in the public interest 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, 1981 c 592 §3, 1985 c 673 §115]

(Loan Contracts)

541.730 Loan contract; repayment plan; other terms and conditions. If the commission approves the financing for the construction of a water development project, the commission, 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 commission, 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 commission 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 commission may provide,

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

(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 commission, 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

(5) Provisions satisfactory to the commission for field engineering and inspection, the commission 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 commission considers necessary to insure expenditure of the funds for the purposes set forth in the approved application

(6) That the commission 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 commission. The commission may approve a loan assignment or transfer only if the commission finds

that the assignee or transferee qualifies as a water developer as defined in ORS 541 700 (7) 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, 1985 c 673 §116]

541.735 Payment of funds by State Treasurer pursuant to loan contract. If the commission 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 commission [1977 c 246 §7, 1985 c 673 §117]

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 (7)(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 commission, 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 (7)(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 commission 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 commission 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 commission 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 commission 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, 1985 c 673 §118].

541.745 Remedies of commission when water developer fails to comply with contract. If a water developer fails to comply with a contract entered into with the commission for construction and repayment as provided in ORS 541 730, the commission, 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 to continue construction and interest on the moneys [1977 c 246 §8, 1981 c 166 §4, 1985 c 673 §119].

541.750 Repayment of moneys to Water Development Administration and Bond Sinking Fund. Any water developer that enters into a contract with the commission 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 commission 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 devel-

oper 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, 1985 c 673 §120].

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 commission 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 commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission 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 commission may appoint. The total amount of

moneys loaned for federal water development project purposes shall not exceed \$5 million [1977 c 246 §16, 1985 c 673 §121]

541.770 Federal project loan contract terms; foreclosure. If the commission approves an application for the loan of moneys authorized by ORS 541 765, the commission 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 commission considers necessary to insure expenditure of the moneys loaned for the purposes provided in ORS 541 765

(5) That the commission 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, 1985 c 673 §122]

(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, 541 705 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 Admin-

istration 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]

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; 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 commission 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 commission under the provisions of ORS 541 745

(3) The moneys referred to in subsection (2) of this section are continuously appropriated to the commission for the purposes provided in subsection (1) of this section

(4) The commission, 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, 1985 c 673 §123]

541.835 Water Development Fund; use. All moneys in the Water Development Fund created by Article XI-I (1), Oregon Constitution, hereby are appropriated continuously to the commission 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, 1985 c 673 §124]

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

commission may request the funds necessary for such payments from the Legislative Assembly or the Emergency Board

(2) When the commission determines that moneys in sufficient amount are available in the Water Development Administration and Bond Sinking Fund, the commission 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, 1985 c 673 §125]

541 845 Rules. In accordance with the applicable provisions of ORS 183 310 to 183 550, the Water Resources Commission may adopt rules necessary to carry out ORS 541 700 to 541 855 [1977 c 246 §13, 1985 c 673 §126]

541.850 Commission authorized to accept gifts or grants. The commission may accept gifts of money or other property from any source, given for the purposes of ORS 541 700 and 541 705 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, 1985 c 673 §127]

541.855 Commission to make biennial report to Legislative Assembly and Governor. The commission 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, 1985 c 673 §128]

NORTH UMPQUA RIVER DAMS

541.875 Dams and use of water for hydroelectric generation on North Umpqua prohibited; exceptions; conditions; enjoining violation. (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 the repair, maintenance or improvement required by

a state agency of any dam constructed on the North Umpqua River prior to November 1, 1981. No hydroelectric facility may be constructed, repaired or reconstructed on an existing 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 except in conformance with this section.

(3) Except as provided in subsection (4) of this section, no person shall appropriate and no officer or agency of this state shall issue or approve any license, permit or certificate for the use of water for hydroelectric generation at a dam at the location referred to in subsection (1) of this section.

(4) Notwithstanding any other provision of law, in addition to other conditions that may be imposed by the Water Resources Commission, the continued validity of any license, permit or certificate for the use of water for hydroelectric generation at a dam at the location referred to in subsection (1) of this section is subject to such reasonable terms and conditions as the State Fish and Wildlife Commission determines are necessary to prevent loss of or damage to fish or wildlife resources. These terms and conditions may include the requirement that the hydroelectric project cease during a specific period of the year to protect the migration of juvenile and adult anadromous fish.

(5) If the terms and conditions established by the State Fish and Wildlife Commission have been violated, the commission shall so notify the Water Resources Commission. Upon receipt of such notification, the Water Resources Commission shall institute an action in the Circuit Court for Douglas County in the name of the state to abate, and to temporarily and permanently enjoin the violation. The court has the right to make

temporary and final orders as in other injunction proceedings. The Water Resources Commission shall not be required to give bond in such action. After a suit is commenced, application for a temporary injunction shall be made to the court, with service on the operator of the facility and the court shall grant a hearing thereon within 10 days. If an application for a temporary injunction is made, the court, on application of the Water Resources Commission, may issue an order restraining the defendant and all other parties from operating the facility in violation of State Fish and Wildlife Commission terms and conditions established under this section, until the decision of the court granting or refusing a temporary injunction and until the further order of the court. [1981 c 151 §2, 1983 c 652 §2, 1985 c 673 §129]

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]

