TITLE 45

WATER RESOURCES: IRRIGATION, DRAINAGE, FLOOD CONTROL, RECLAMATION

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

Chapter 536

1989 EDITION

Water Resources Administration

GENERAL PROVISIONS

536.007 Definitions for ORS chapters 536 to 543
536.009 Operating account

WATER RESOURCES COMMISSION

536.022 Water Resources Commission; members; terms; confirmation; compensation and expenses
536.025 Duty of commission; delegation to Water Resources Director; exception
536.027 Rules and standards
536.029 Powers of Water Resources Commission

WATER RESOURCES DIRECTOR

536.032 Water Resources Director; term; qualifications
536.037 Functions of director
536.039 Water Resources Department
536.040 Public records; copies as evidence
536.050 Fees
536.075 Judicial review of order of Water Resources Commission or Water Resources Director; stay of order; scope of review
536.080 Effect of records of former State Water Board and State Water Superintendent
536.090 Advisory committee on ground water and well operation; members; qualification; term; compensation or expenses prohibited

STRATEGIC WATER MANAGEMENT GROUP

536.100 Strategic Water Management Group; members
536.104 Chairperson and vice-chairperson of group
536.108 Coordination by group
536.112 Encouragement of federal actions
536.116 Duties of group in relation to Federal Energy Regulatory Commission; state comprehensive plan; delegation of duties
536.121 Assistance to agencies

536.125 Ground water resource protection strategy; advisory committees

536.129 Requests for funding, advice or assistance for ground water projects

536.133 Awarding of grants; purposes

537.137 Technical advisory committee; duties; membership

537.141 Activities of group after declaration of area of ground water concern

536.145 Ground water management committee; appointment; duties after declaration of area of ground water concern

536.149 Duties of ground water management committee after declaration of ground water management area

536.153 Appointment of ground water management committee if one not appointed under ORS 536.141

536.157 Designation of lead agency for development of action plan; contents of plan

536.161 Comment on plan; final plan

536.165 Group acceptance or rejection of plan; rules

536.169 Repeal of declaration of ground water management area

WATER RESOURCES ADMINISTRATION

536.220 Policy; water resources generally

536.235 Policy; minimum stream flows

536.295 Conditions for uses additional to those for which waters classified in basin program

536.300 Formulation of state water resources program; public hearing in affected river basin

536.310 Purposes and policies to be considered in formulating state water resources program

536.315 Designation of exact land areas included within auxiliary lands

536.320 Limitation of powers of commission

536.325 Establishment of minimum stream flows; application for minimum stream flow by state agencies; action on application; time limit; findings

536.330 Water Resources Act as supplemental to and including existing statutes

536.340 Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses

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

536.360 State agencies and public corporations to conform to statement of state water resources policy

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

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

536.390 Approval without filing notification

536.400 Application to court to compel compliance with state water resources policy

536.410 Withdrawal of unappropriated waters from appropriation by commission order

536.420 Representation of state in carrying out compacts and agreements with other governmental agencies regarding water resources

536.430 Commission to devise plans and programs for development of water resources

536.440 Investigations and studies

536.450 Assistance by commission to other persons and agencies

536.460 Preparation and submission of information or recommendations to other persons or agencies

536.470 Coordination of local, state, interstate and federal programs

536.480 Making available information concerning water resources

536.490 Attendance at conferences and meetings

536.500 Acceptance and expenditure of moneys from public and private sources

536.520 State agencies and public corporations furnishing information and services to commission

536.540 Approval of voucher claims

MISCELLANEOUS PROVISIONS

536.570 Moneys and securities of irrigation districts in possession of Water Resources Commission; deposit with State Treasurer

536.580 Rights acquired prior to August 3, 1955, not affected

536.590 Rights acquired prior to January 1, 1956, not affected

EMERGENCY WATER SHORTAGE POWERS

536.700 "Drainage basin" defined

536.710 Policy

536.720 Declaration of state authority; Governor's power to order water conservation or curtailment plan

536.730 Effect of emergency powers on vested water rights

536.740 Gubernatorial authority to declare drought

536.750 Powers of commission after declaration of drought

536.760 Cessation of actions taken under ORS 536.750

536.770 Purchase of option or agreement for use of water permit or right during declared drought

536.780 Water conservation or curtailment plan; contents; review; effect of failure to file or implement

PENALTIES

536.900 Civil penalties; imposition

536.905 Notice; hearing

536.910 Amount of penalty; rules

536.915 Remission or reduction of penalty

536.920 Factors to be considered in imposition of penalty

536.925 Order assessing penalty; recording

536.930 Consequence of failure to follow order; judicial review of penalty

536.935 Disposition of penalties; appropriation

CROSS REFERENCES

Administrative procedures and rules of state agencies, 183 310 to 183.550

Definitions for 536.125 to 536.137 and 536.141 to 536.169, 468 691

Duties of Water Resources Director regarding geothermal resources, Ch. 522

Environmental Quality Commission, water quality standards, consistency with board policies required, 468.735

Ground water concern, areas of, declaring, 448.268, 468.696

Hydroelectric projects, Ch. 543

Resource Conservation Trust Fund, 468.659 to 468.685

Water Policy, Joint Legislative Committee on, 171.540

536.014, 536.018

Fishway or hatchery facilities, review of requirement of, 509.645

Open space lands, special assessment for ad valorem taxation, 308.740

536.014

Traveling expenses, 292 210 to 292.288

536.032

Drainage and irrigation district dissolution proceedings, 548.940, 548.955

Duty of State Geologist and Water Resources Director when geothermal and water uses conflict, 522.255

Klamath River Basin Compact, duties of director in connection with, 542.620, 542 630

Outdoor recreation resources, policy, 390.010

Release of water from impoundment or diversion structures, 541 510 to 541.545

Soil and water conservation districts, water conservation, 568 552

Traveling expenses, 292 210 to 292.288

Water well constructors and operators, licensing, 537 747 to 537.753

Watershed protection and flood prevention projects, cooperative studies, 542.750

536.037

PCB disposal facility, recommendation concerning application, 466 280

536.040

Report of well driller before commencing construction, confidentiality, 537.762

536.050

Fees to be paid into State Treasury promptly, 293.265

Watermasters, handling funds collected for, 540.135

536.137

Final rules establishing maximum levels of ground water contaminants, 468.694

536.141

Ground water concern areas, declaring, 448.268, 468.696

536.145

Ground water concern areas, declaring, 448 268, 468 696

536.149

Ground water management area, declaring, 468.698

536.220

Policy with reference to ground water, 537 525

State and local parks and recreation programs, Ch. 390

Water improvement, water diversion, bank protection works and dredging facilities; construction and use on scenic waterways, 390.835

Willamette River Greenway, 390 310 to 390.368

536.300

Klamath River Basin Compact, 542 620

Protecting water resources when material removed, 196.670 to 196.765

Test stream and watershed study by Agricultural Experiment Station of Oregon State University, 542.710

536.310

Water improvement, water diversion, bank protection works and dredging facilities; construction and use on scenic waterways, 390.835

Willamette River Greenway, 390.310 to 390.368

536.340

Cancellation of forfeited water right by Water Resources Commission, 540.631, 543 730

536.380

Fishway or hatchery facilities, approval, 509.645

536.420

Columbia River Compact Commission, 1989 c 391

Goose Lake Interstate Compact, 542.520

Klamath River Basin Compact, Water Resources Director as representative, 542.630

536.570

Surrender of securities, payment of money deposited with Water Resources Director, 548 405 to 548.415

536.005 [1975 c.581 §13; repealed by 1985 c.673 §185]

GENERAL PROVISIONS

536.007 Definitions for ORS chapters 536 to 543. As used in ORS 196.600 to 196.770, 541.010 to 541.320 and 541.410 to 541.990 and ORS chapters 536 to 540, 542 and 543:

(1) "Commission" means the Water Resources Commission.

(2) "Department" means the Water Resources Department.

(3) "Director" means the Water Resources Director.

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

(5) "Order" has the meaning given in ORS 183.310.

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

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

(8) "Rule" has the meaning given in ORS 183.310.

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

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

(11) "Undetermined vested right" means a water right claimed under ORS 539.010 as having vested or as having been initiated before February 24, 1909, that has not been determined in an adjudication proceeding under ORS chapter 539 nor is evidenced by a permit or certificate issued under the Water Rights Act.

(12) "Waters of this state" means any surface or ground waters located within or without this state and over which this state has sole or concurrent jurisdiction.

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

(a) Potential reservoir sites.

(b) Flood-plain areas forming the predictable channels of flood-water drainage of rivers and streams. [1985 c.673 §2; 1989 c.691 §5]

536.008 [1975 c.581 §14; 1985 c.421 §4; repealed by 1985 c.673 §185]

536.009 Operating account. (1) There hereby is established in the General Fund of the State Treasury the Water Resources Department Operating Account to provide for the payment of the administrative expenses of the Water Resources Commission and the Water Resources Department in carrying out the provisions of ORS 536.050 and 537.747.

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

(a) Fees received pursuant to ORS 536.050 (1) and 537.747 (6).

(b) All moneys received on behalf of this account by gift, grant or appropriation, from whatever source. [1989 c.758 §3]

Note: 536.009 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

WATER RESOURCES COMMISSION

536.014 [1975 c.581 §15; 1981 c.545 §12; 1983 c.643 §1; repealed by 1985 c.673 §185]

536.018 [1975 c.581 §16; repealed by 1985 c.673 §185]

536.020 [Repealed by 1955 c.707 §75]

536.022 Water Resources Commission; members; terms; confirmation; compensation and expenses. (1) There is created a Water Resources Commission consisting of seven members, appointed by the Governor, one of whom the Governor shall designate as chairperson. The members appointed to the commission shall be subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. One member of the commission shall be appointed from each of the congressional districts referred to in ORS 188.130, one member from east of the summit of the Cascade Mountains, as defined in ORS 477.001, and one member from west of that summit. Beginning July 1, 1986, two members appointed to the commission shall be from east of the summit of the Cascade Mountains.

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

for the unexpired term. The members of the commission shall serve at the pleasure of the Governor.

(3) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1985 c.673 §3]

536.025 Duty of commission; delegation to Water Resources Director; exception. (1) It is the function of the Water Resources Commission to establish the policies for the operation of the Water Resources Department in a manner consistent with the policies and purposes of ORS 196.600 to 196.770, 537.525, 541.010 to 541.320, 541.410 to 541.990 and ORS chapters 536 to 540, 542 and 543. In addition, the commission shall perform any other duty vested in it by law.

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

(3) The commission may delegate to the director the authority to conduct a public hearing relating to the adoption or amendment of a basin program as provided in ORS 536.300. However, the commission may not delegate to the director the authority to adopt or amend a basin program. [1985 c.673 §4]

536.027 Rules and standards. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Water Resources Commission shall adopt rules and standards to perform the functions vested by law in the commission.

(2) Except as provided in ORS 183.335 (5), the commission shall cause a public hearing to be held on any proposed rule or standard before its adoption. The hearing may be before the commission, any designated member of the commission or any person designated by and acting for the commission. [1985 c.673 §5]

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

(a) Conduct public hearings.

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

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and department under ORS 196.600 to 196.770, 541.010 to 541.320, 541.410 to 541.990 and ORS chapters 536 to 540, 542 and 543.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [1985 c.673 §11; 1989 c.980 §14c]

536.030 [Repealed by 1975 c.581 §29]

WATER RESOURCES DIRECTOR

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

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

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

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

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

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

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

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

(f) Coordinate any activities of the department related to a watershed enhancement project approved by the Governor's Watershed Enhancement Board under ORS 541.375 with activities of other cooperating state and federal agencies participating in the project.

(2) In addition to duties otherwise required by law, the director shall prescribe internal policies and procedures for the government of the department, the conduct of its employees, the assignment and performance

of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

(3) The director may delegate to any employee of the department the exercise or discharge in the director's name of any power, duty or function of whatever character, vested in or imposed by law upon the director. The official act of a person so acting in the director's name and by the director's authority shall be considered to be an official act of the director. [1985 c.673 §8, 1987 c.734 §14]

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

536.040 Public records; copies as evidence. The records of the department are public records and shall remain on file in the office of the director and be open to the inspection of the public at all times during business hours. The records shall show in full all maps, profiles, and engineering data relating to the use of water, and certified copies thereof shall be admissible as evidence in all cases where the original would be admissible as evidence. [Amended by 1975 c.581 §20]

536.050 Fees. (1) Except as provided in subsection (2) of this section, the following fees shall be collected by the Water Resources Department in advance:

(a) For examining an application for permit to appropriate water, $200.

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

(A) For irrigation purposes, $100 for the first 10 acres, or fraction thereof, to be irrigated and $2 for each acre in excess of 10 acres.

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

(C) For storage, a minimum fee of $100 for the first 50 acre-feet and 25 cents for each acre-foot in excess of 50.

(D) For domestic purposes, $125 for the first second-foot or fraction thereof and $60 for each additional second-foot.

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

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

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

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

(f) For blueprint copy of any map or drawing, the actual cost of the work.

(g) For examining an application for approval of a change in point of diversion, or a change in place of use or change in use of water, $50.

(h) For filing each application to transfer water rights for irrigation from one tract of land to another or to transfer to irrigation use from any other use, a minimum fee of $30 per receiving owner for the first 10 acres or fraction thereof and $1 for each acre in excess of 10 acres, such fees to be based upon the number of acres to which the water right is transferred.

(i) For filing each application for change in point of diversion, $35.

(j) For filing each application for a change in the use or place of use theretofore made of the water where the use is other than irrigation, $100.

(k) For filing any protest with the department, $25.

(L) For filing an application for extension of time within which irrigation or other works shall be completed or the right perfected, $100.

(m) For examining an application for an exchange of water, $250.

(n) For a limited license under ORS 537.143, the fee established by rule by the Water Resources Commission.

(o) For filing, examining and certifying a petition under ORS 541.329, $250 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section.

(2) Notwithstanding the fees established under subsection (1) of this section, the commission may by rule establish examination and permit fees lower than those under subsection (1) of this section for:

(a) The right to appropriate water for a storage project of five acre-feet or less; or

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area. As used

in this paragraph, "riparian area" has the meaning given that term in ORS 541.350.

(3) All moneys received under subsection (1) of this section shall be deposited in the Water Resources Department Operating Account and credited to the Water Resources Department. Such moneys are continuously appropriated to the Water Resources Department to pay the department's expenses in administering and enforcing the provisions of ORS chapters 536 to 543.

(4) In the event the petitioner knowingly misrepresents the map and petition required in ORS 541.329, the commission may assess a penalty of up to $1,000 based upon guidelines to be established by the commission. In addition, the petition and map shall be amended to correct the error at the petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (4). [Amended by 1961 c 187 §3; 1967 c.36 §1; 1973 c.163 §4; 1975 c.581 §21; 1981 c.627 §1; 1983 c.256 §1; 1985 c.673 §12; 1987 c.815 §8; 1989 c.587 §1; 1989 c.758 §1; 1989 c.933 §4; 1989 c.1000 §6]

536.060 [Repealed by 1971 c.734 §21]

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

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

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

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

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

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

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

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

(7) The provisions of this section shall not apply to any proceeding under ORS 537.670 to 537.695 or ORS chapter 539. [1985 c 673 §9]

536.080 Effect of records of former State Water Board and State Water Superintendent. The transfer of functions from the former State Water Board and State Water Superintendent to the State Engineer, effected by chapter 283, Oregon Laws 1923, shall not impair the legal force and effect in any water right adjudication, suit, action or other proceeding before the State Engineer, or in the courts or other tribunals of the state, of the official records of, or any evidence filed with, said State Water Board or State Water Superintendent.

536.090 Advisory committee on ground water and well operation; members; qualification; term; compensation or expenses prohibited. (1) In carrying out the duties, functions and powers prescribed by law, the Water Resources Commission shall appoint an advisory committee to advise the commission on all matters relating to:

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

(b) Licensing of water well constructors, including the examination of such persons for license.

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

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

STRATEGIC WATER MANAGEMENT GROUP

536.100 Strategic Water Management Group; members. There is established a Strategic Water Management Group consisting of the following members or a designee of the member:

(1) The Governor;

(2) The Director of the Executive Department;

(3) The Director of the Department of Environmental Quality;

(4) The Water Resources Director;

(5) The State Fish and Wildlife Director;

(6) The Director of Agriculture;

(7) The Director of the Department of Energy;

(8) The Director of the Department of Land Conservation and Development;

(9) The Director of the Division of State Lands;

(10) The State Forester;

(11) The State Geologist;

(12) The Assistant Director for the Health Division of the Department of Human Resources;

(13) The State Parks and Recreation Director; and

(14) The Director of the Economic Development Department. [1985 c.666 §1; 1989 c 904 §67]

Note: 536.100 to 536.121 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

536.104 Chairperson and vice-chairperson of group. The Governor shall be the chairperson of the Strategic Water Management Group and the Director of the Executive Department shall be the vice-chairperson, with duties and powers necessary for the performance of the functions of such offices as the Strategic Water Management Group determines. [Formerly 536.110]

Note: See note under 536.100.

536.108 Coordination by group. (1) The Strategic Water Management Group shall coordinate all of the following:

(a) Agency activities insofar as those activities affect the water resources of this state. Such activities include the periodic review and updating by the agencies of the agencies' water related data, policies and management plans.

(b) The responses of state agencies to problems and issues affecting the water resources of this state when such responses require the participation of numerous state agencies.

(c) Interagency management of ground water as necessary to achieve the goal set forth in ORS 468.692.

(d) The regulatory activities of any affected state agency responding to the declaration of a ground water management area under ORS 468.698. As used in this subsection "affected state agency" means any agency having management responsibility for, or regulatory control over the ground water resource of this state or any substance that may contaminate the ground water resource of this state.

(e) The development of the water related portions of each member agency's biennial budget as submitted to the Governor that affect the water related activities of other state agencies.

(2) In addition to its duties under subsection (1) of this section, the Strategic Water Management Group shall, on or before January 1 of each odd-numbered year, prepare a report to the Legislative Assembly. The report shall include the status of ground water in Oregon, efforts made in the immediately preceding year to protect, conserve and restore Oregon's ground water resources, grants awarded under ORS 536.129 and any proposed legislation the group finds necessary to accomplish the goal set forth in ORS 468.692. [Formerly 536 120; 1989 c.833 §52]

Note: See note under 536.100.

536.110 [1985 c.666 §2, renumbered 536.104 in 1989]

536.112 Encouragement of federal actions. In carrying out its coordination activities, the Strategic Water Management Group shall encourage federal agency actions that are consistent with the water policies of the State of Oregon. [Formerly 536.130]

Note: See note under 536.100.

536.116 Duties of group in relation to Federal Energy Regulatory Commission; state comprehensive plan; delegation of duties. (1) In addition to other duties assigned, the Strategic Water Management Group created under ORS 536.100, shall:

(a) Monitor applications and other matters related to hydroelectric projects in Oregon that are pending before the Federal Energy Regulatory Commission.

(b) Coordinate state agency response and intervention in proceedings before the Federal Energy Regulatory Commission.

(c) Coordinate state decisions regarding judicial review of actions of the Federal Energy Regulatory Commission.

(2) The Strategic Water Management Group shall coordinate refinement and up-

date of the state's comprehensive plan, as described in subsection (3) of this section, to better guide state agencies in communicating applicable plan elements, as interpreted and applied by the appropriate state agencies, to the Federal Energy Regulatory Commission in accordance with section 10(a)(2) of the Federal Power Act (16 U.S.C. 803).

(3) The comprehensive plan for improving, developing and conserving Oregon's waterways is composed of the following elements:

(a) All state statutes, interstate compacts and constitutional provisions establishing policy for or regulating waterways, water use and fish and wildlife including but not limited to this chapter and ORS chapters 468, 469, 496, 509, 537, 538 and 543 and ORS 390.805 to 390.925;

(b) All state agency rules, policies and plans related to the use or management of waterways in Oregon;

(c) All local comprehensive plans developed pursuant to ORS chapters 196 and 197 insofar as the plans govern the use or management of waterways in Oregon; and

(d) All appropriate state agency or local government water related data, inventories of river basin resources and evaluations of the anticipated demands for those resources.

(4) The comprehensive plan referred to in subsections (2) and (3) of this section represents:

(a) The state's planning to improve, develop and conserve Oregon's waterways;

(b) The needs and uses of all Oregon rivers; and

(c) The state's own balancing of the competing uses of Oregon waterways.

(5) The Strategic Water Management Group may delegate all or part of the responsibility assigned under subsections (1) to (5) of this section to a specific agency represented by a member of the group.

(6) As used in subsections (1) to (5) of this section, "waterways" includes but is not limited to the water resources of this state as defined in ORS 536.007. [Formerly 536.140]

Note: See note under 536.100.

536.120 [1985 c.666 §3; 1989 c.833 §52; renumbered 536.108 in 1989]

536.121 Assistance to agencies. In addition to other duties assigned, the Strategic Water Management Group shall assist agencies in developing management practices and methods of carrying out their existing duties in a manner that encourages the coordination of the agencies' efforts in compiling and displaying relevant resource data and standards of the state's comprehensive plan for improving, developing and conserving the state's waterways in a format best suited to serve the needs of waterway developers, agencies and the public. The group shall give priority to compiling and displaying elements of the comprehensive plan that apply to hydroelectric development. [Formerly 536.150]

Note: See note under 536.100.

536.125 Ground water resource protection strategy; advisory committees. (1) The Strategic Water Management Group shall implement the following ground water resource protection strategy:

(a) Coordinate projects approved by the group with activities of other agencies.

(b) Develop programs designed to reduce impacts on ground water from:

(A) Commercial and industrial activities;

(B) Commercial and residential use of fertilizers and pesticides;

(C) Residential and sewage treatment activities; and

(D) Any other activity that may result in contaminants entering the ground water.

(c) Provide educational and informational materials to promote public awareness and involvement in the protection, conservation and restoration of Oregon's ground water resource. Public information materials shall be designed to inform the general public about the nature and extent of ground water contamination, alternatives to practices that contaminate ground water and the effects of human activities on ground water quality. In addition, educational programs shall be designed for specific segments of the population that may have specific impacts on the ground water resource.

(d) Coordinate the development of local ground water protection programs, including but not limited to local well head protection programs.

(e) Award grants for the implementation of projects approved under the criteria established under ORS 536.133.

(f) Develop and maintain a centralized repository for information about ground water, including but not limited to:

(A) Hydrogeologic characterizations;

(B) Results of local and state-wide monitoring or testing of ground water;

(C) Data obtained from ground water quality protection research or development projects; and

(D) Alternative residential, industrial and agricultural practices that are considered best practicable management practices for ground water quality protection.

(g) Identify research or information about ground water that needs to be conducted or made available.

(h) 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 the protection the ground water resource incorporate the state's intent to the fullest extent practicable.

(i) Aid in the development of voluntary programs to reduce the quantity of hazardous or toxic waste generated in order to reduce the risk of ground water contamination from hazardous or toxic waste.

(2) To aid and advise the Strategic Water Management Group in the performance of its functions, the group may establish such advisory and technical committees as the group considers necessary. These committees may be continuing or temporary. The Strategic Water Management Group shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson of the Strategic Water Management Group shall be an ex officio member of each committee. [1989 c.833 §20]

536.129 Requests for funding, advice or assistance for ground water projects. (1) Any person, state agency, political subdivision of this state or ground water management committee organized under ORS 536.145 or 536.153 may submit to the Strategic Water Management Group a request for funding, advice or assistance for a research or development project related to ground water quality as it relates to Oregon's ground water resource.

(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 Strategic Water Management Group. The requester may submit the request either to the group or to a ground water management committee organized under ORS 536.145 or 536.153.

(3) The Strategic Water Management Group shall approve only those requests that meet the criteria established by the group under ORS 536.133. [1989 c.833 §21]

536.130 [1985 c.666 §4; renumbered 536.112 in 1989]

536.133 Awarding of grants; purposes. (1) Of the moneys available to the Strategic Water Management Group to award as grants under ORS 536.129, not more than one-third shall be awarded for funding of projects directly related to issues pertaining to a ground water management area.

(2) The Strategic Water Management Group may award grants for the following purposes:

(a) Research in areas related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(b) Demonstration projects related to ground water including but not limited to hydrogeology, ground water quality, alternative residential, industrial and agricultural practices;

(c) Educational programs that help attain the goal set forth in ORS 468.692; and

(d) Incentives to persons who implement innovative alternative practices that demonstrate increased protection of the ground water resource of Oregon.

(3) Funding priority shall be given to proposals that show promise of preventing or reducing ground water contamination caused by nonpoint source activities.

(4) In awarding grants for research under subsection (2) of this section, the Strategic Water Management Group shall specify that not more than 10 percent of the grant may be used to pay indirect costs. The exact amount of a grant that may be used by an institution for such costs may be determined by the group.

(5) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Strategic Water Management Group shall adopt by rule guidelines and criteria for awarding grants under this section. [1989 c.833 §22]

536.137 Technical advisory committee; duties; membership. (1) Not later than 60 days after July 24, 1989, the Strategic Water Management Group shall appoint a nine-member technical advisory committee to develop criteria and a method for the Environmental Quality Commission to apply in adopting by rule maximum measurable levels of contaminants in ground water. The technical advisory committee shall recommend criteria and a method for the development of standards that are protective of public health and the environment. If a federal standard exists, the method shall provide that the commission shall first consider the federal standard, and if the commission does not adopt the federal standard, the method shall require the commission to give a scientifically valid reason for not concurring with the federal standard. As used in this subsection, "federal standard" means a maximum contaminant level, a national primary drinking water regulation or an interim drinking water regulation adopted by the Administrator of the U.S. Environmental

Protection Agency pursuant to the federal Safe Drinking Water Act, as amended, 42 U.S.C. 300g-1.

(2) The technical advisory committee appointed under subsection (1) of this section shall be comprised of:

(a) A toxicologist;

(b) A health professional;

(c) A water purveyor;

(d) A biologist; and

(e) Technically capable members of the public representing the following groups:

(A) Citizens;

(B) Local governments;

(C) Environmental organizations;

(D) Industrial organizations; and

(E) Agricultural organizations.

(3) The technical advisory committee may appoint individuals or committees to assist in development of the criteria and maximum measurable levels of contaminants in ground water. An individual or committee appointed by the committee under this subsection shall serve in an advisory capacity only.

(4) The technical advisory committee shall complete its initial development of criteria and methods within one year after July 24, 1989. [1989 c.833 §24]

536.140 [1987 c.409 §§1, 2; renumbered 536.116 in 1989]

536.141 Activities of group after declaration of area of ground water concern. After a declaration of an area of ground water concern, the Strategic Water Management Group shall:

(1) Within 90 days, appoint a ground water management committee in the geographic area overlying the ground water aquifer;

(2) Focus research and public education activities on the area of ground water concern;

(3) Provide for necessary monitoring in the area of ground water concern;

(4) Assist the ground water management committee in developing, in a timely manner, a draft and final local action plan for addressing the issues raised by the declaration of an area of ground water concern; and

(5) If not developed by the ground water management committee, develop a draft and final local action plan. [1989 c.833 §34]

Note: 536.141 to 536.169 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

536.145 Ground water management committee; appointment; duties after declaration of area of ground water concern. (1) Upon the request of a local government, or as required under ORS 536.141 or 536.153, the Strategic Water Management Group shall appoint a ground water management committee. The ground water management committee shall be composed of at least seven members representing a balance of interests in the area affected by the declaration.

(2) After a declaration of an area of ground water concern, the ground water management committee shall develop and promote a local action plan for the area of ground water concern. The local action plan shall include but need not be limited to:

(a) Identification of local residential, industrial and agricultural practices that may be contributing to a deterioration of ground water quality in the area;

(b) An evaluation of the threat to ground water from the potential nonpoint sources identified;

(c) Evaluation and recommendations of alternative practices;

(d) Recommendations regarding demonstration projects needed in the area;

(e) Recommendations of public education and research specific to that area that would assist in addressing the issues related to the area of ground water concern; and

(f) Methods of implementing best practicable management practices to improve ground water quality in the area.

(3) The availability of the draft local action plan and announcement of a 30-day public comment period shall be publicized in a newspaper of general circulation in the area designated as an area of ground water concern. Suggestions provided to the ground water management committee during the public comment period shall be considered by the ground water management committee in determining the final action plan.

(4) The ground water management committee may request the Strategic Water Management Group to arrange for technical advice and assistance from appropriate state agencies and higher education institutions.

(5) A ground water management committee preparing or carrying out an action plan in an area of ground water concern or in a ground water management area may apply for a grant under ORS 536.129 for limited funding for staff or for expenses of the ground water management committee. [1989 c.833 §35]

Note: See note under 536.141.

536.149 Duties of ground water management committee after declaration of ground water management area. After the

declaration of a ground water management area, a ground water management committee created under ORS 536.145 shall:

(1) Evaluate those portions of the local action plan, if any, that achieved a reduction in contaminant level;

(2) Advise the state agencies developing an action plan under ORS 536.157 to 536.165 regarding local elements of the plan; and

(3) Analyze the local action plan, if any, developed pursuant to ORS 536.145 to determine why the plan failed to improve or prevent further deterioration of the ground water in the ground water management area designated in the declaration. [1989 c.833 §39]

Note: See note under 536.141.

536.150 [1987 c.409 §3; renumbered 536 121 in 1989]

536.153 Appointment of ground water management committee if one not appointed under ORS 536.141. After the declaration of a ground water management area, the Strategic Water Management Group shall appoint a ground water management committee for the affected area if a ground water management committee has not already been appointed under ORS 536.141. If the affected area had previously been designated an area of ground water concern, the same ground water management committee appointed under ORS 536.141 shall continue to address the ground water issues raised as a result of the declaration of a ground water management area. [1989 c.833 §40]

Note: See note under 536.141.

536.157 Designation of lead agency for development of action plan; contents of plan. After the Strategic Water Management Group is notified that a ground water management area has been declared, the Strategic Water Management Group shall designate a lead agency responsible for developing an action plan and assign other agencies appropriate responsibilities for preparation of a draft action plan within 90 days after the declaration. The agencies shall develop an action plan to reduce existing contamination and to prevent further contamination of the affected ground water aquifer. The action plan shall include, but need not be limited to:

(1) Identification of practices that may be contributing to the contamination of ground water in the area;

(2) Consideration of all reasonable alternatives for reducing the contamination of the ground water to a level below that level requiring the declaration of a ground water management area;

(3) Recommendations of mandatory actions that, when implemented, will reduce the contamination to a level below that level requiring the declaration of ground water management area;

(4) A proposed time schedule for:

(a) Implementing the group's recommendations;

(b) Achieving estimated reductions in concentrations of the ground water contaminants; and

(c) Public review of the action plan;

(5) Any applicable provisions of a local action plan developed for the area under a declaration of an area of ground water concern; and

(6) Required amendments of affected city or county comprehensive plans and land use regulations in accordance with the schedule and requirements in ORS 197.640 to 197.647 to address the identified ground water protection and management concerns. [1989 c.833 §41]

Note: See note under 536.141.

536.161 Comment on plan; final plan. (1) After completion and distribution of the draft action plan under ORS 536.157, the lead agency shall provide a 60-day period of public comment on the draft action plan and the manner by which members of the public may review the plan or obtain copies of the plan. A notice of the comment period shall be published in two issues of one or more newspapers having general circulation in the counties in which the designated area of the ground water emergency is located, and in two issues of one or more newspapers having general circulation in the state.

(2) Within 60 days after the close of the public comment period, the lead agency shall complete a final action plan. All suggestions and information provided to the lead agency during the public comment period shall be considered by the lead agency and when appropriate shall be acknowledged in the final action plan. [1989 c.833 §42]

Note: See note under 536.141.

536.165 Group acceptance or rejection of plan; rules. (1) The Strategic Water Management Group shall, within 30 days after completion of the final action plan, accept the final action plan or remand the plan to the lead agency for revision in accordance with recommendations of the Strategic Water Management Group. If the plan is remanded for revision, the lead agency shall return the revised final action plan to the Strategic Water Management Group within 30 days.

(2) Within 120 days after the Strategic Water Management Group accepts the final action plan, each agency of the group that is responsible for implementing all or part of the plan shall adopt rules necessary to carry out the agency's duties under the action

plan. If two or more agencies are required to initiate rulemaking proceedings under this section, the agencies shall consult with one another to coordinate the rules. The agencies may consolidate the rulemaking proceedings. [1989 c.833 §43]

Note: See note under 536.141

536.169 Repeal of declaration of ground water management area. (1) If, after implementation of the action plan developed by affected agencies under ORS 536.157 to 536.165, the ground water improves so that the levels of contaminants no longer exceed the levels established under ORS 468.698, the Strategic Water Management Group shall request the Department of Environmental Quality to repeal the ground water management area declaration and to establish an area of ground water concern.

(2) Before the declaration of a ground water management area is repealed under subsection (1) of this section, the Strategic Water Management Group must find that, according to the best information available, a new or revised local action plan exists that will continue to improve the ground water in the area and that the Strategic Water Management Group finds can be implemented at the local level without the necessity of state enforcement authority.

(3) Before the Strategic Water Management Group terminates any mandatory controls imposed under the action plan created under ORS 536.157 to 536.165, the ground water management committee must produce a local action plan that includes provisions necessary to improve ground water in the area and that the Strategic Water Management Group finds can be implemented at the local level without the necessity of state enforcement authority. [1989 c 833 §44]

Note: See note under 536 141.

WATER RESOURCES ADMINISTRATION

536.210 [1955 c 707 §2, 1965 c.355 §1; 1975 c 581 §22; repealed by 1985 c 673 §185]

536.220 Policy; water resources generally. (1) The Legislative Assembly recognizes and declares that:

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

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

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

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

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468.692. [1955 c.707 §1; 1989 c.833 §53]

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

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

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

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

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

536.265 [1967 c.157 §2, 1975 c.581 §23, repealed by 1985 c.673 §185]

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

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

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

536.295 Conditions for uses additional to those for which waters classified in basin program. Notwithstanding any provision of ORS 536.300 or 536.340, the Water Resources Commission may accept an application to appropriate water for a use in addition to the uses for which waters are classified in the applicable basin program if:

(1) The use will be of short duration during each year;

(2) The use will be for a continuous period of no longer than five years; or

(3) The use is of an unusual nature not likely to recur in the basin, and unlikely to have been within the uses considered by the commission in classifying the uses presently allowed in the applicable basin program including but not limited to:

(a) Exploratory thermal drilling;

(b) Heat exchange;

(c) Maintaining water levels in a sewage lagoon; or

(d) Facilitating the watering of livestock away from a river or stream. [1989 c.9 §1]

Note: 536.295 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action See Preface to Oregon Revised Statutes for further explanation.

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

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

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin. After the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the Water Resources Director the authority to conduct additional public hearings in the affected river basin. [1955 c 707 §10(1), (2); 1965 c 355 §2, 1985 c.673 §14]

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

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

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

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

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

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

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

(7) The maintenance of minimum perennial stream flows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit;

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

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

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

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

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

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

(13) Notwithstanding any other provision of this section, when available supplies of water are insufficient in the South Umpqua River to provide for both the needs of human consumption pursuant to a municipal water right and the maintenance of previously established minimum stream flows, preference shall be given to the municipal needs if the municipality adopts and enforces an ordinance restricting use of the water so obtained to direct human consumption uses. [1955 c.707 §10(3); 1979 c.170 §1; 1987 c.546 §1]

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

536.315 Designation of exact land areas included within auxiliary lands. As part of the water resources policy statement authorized under ORS 536.300, the Water Resources Commission may designate the exact land areas included within the auxiliary lands described in ORS 536.007. [1965 c.355 §4; 1985 c 673 §179; 1987 c.158 §114]

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

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

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

(3) To modify or amend any standard or policy as prescribed in ORS 536.310 nor to adopt any rule or regulation in conflict therewith. [1955 c.707 §10(4)]

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

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

(a) After considering Water Resources Department staff recommendations;

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

(c) After considering the provisions of ORS 536.220, 536.300 (1) and 536.310; and

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

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

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

(a) Adopt the recommended minimum perennial stream flow;

(b) Adopt a minimum perennial stream flow at some other rate after making a finding that the other rate is more appropriate for supporting aquatic life and minimizing pollution; or

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

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

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

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

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

536.330 Water Resources Act as supplemental to and including existing statutes. Chapter 707, Oregon Laws 1955, shall be construed by the commission as supplemental to existing statutes and not in lieu thereof except to the extent that existing statutes are expressly amended or repealed by chapter 707, Oregon Laws 1955. ORS 536.220 to 536.540 and the authority of the department thereunder shall include all laws now existing or hereinafter enacted that relate to or affect the use and control of the water resources of this state. [1955 c.707 §10(5); 1963 c 415 §1; 1975 c 581 §24; 1985 c.673 §180]

Note: See note under 536.310.

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

(1) May, by a water resources statement referred to in ORS 536.300 (2), classify and reclassify the lakes, streams, underground reservoirs or other sources of water supply in this state as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole. The commission may so classify and reclassify portions of any such sources of water supply separately. Classification or reclassification of sources of water supply as provided in the subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390 or as accepted by the commission under ORS 536.295. Restrictions on use and quantities of use of a source of water supply resulting from a classification or reclassification under this section shall apply to the use of all waters of this state affected by the classification or reclassification, and shall apply to uses listed in ORS 537.545 that are initiated after the classification or reclassification that imposes the restriction.

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

(3) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.310 (12), prescribe preferences for the future for particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof. In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data. [1955 c.707 §10(6); 1963 c.414 §1, 1989 c.9 §2, 1989 c 833 §54]

536.350 Delivery of water resources statement to certain public bodies; effect. The Water Resources Commission shall deliver a copy of each water resources statement referred to in ORS 536.300 (2) to each state agency or public corporation of this state which may be concerned with or which may carry on activities likely to affect the use or control of the water resources of this state. Each state agency or public corporation of this state which receives a copy of a water resources statement shall give to the commission a receipt for the water resources statement. A copy of any such statement duly certified by the director to be a full, true and correct copy shall be received in evidence in any court in the state and if the certificate recites that a copy of the statement was delivered to a particular state agency or public corporation of this state, it shall be presumed that the same was actually delivered as stated in the certificate. [1955 c.707 §10(7); 1985 c.673 §16]

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

536.370 Exercise of power in conflict with state water resources policy not effective until approved by commission. (1) No exercise by any state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536.350, of any power, duty or privilege, including the promulgating or undertaking of any order, rule, regulation, plan, program, policy, project or any other activity, which would in any way conflict with the state water resources policy as set forth in the statement, shall be effective or enforceable until approved by the commission as provided in subsection (2) of this section.

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

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

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

(c) The commission grants its approval as provided in ORS 536.380 (4). [1955 c.707 §12]

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

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

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

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

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

(4) After the commission has notified the state agency or public corporation of the intention of the commission to review the proposed exercise of the power, duty or privilege as provided in subsection (2) of this section, the commission shall undertake the review and proceed therewith with reasonable diligence. At the conclusion of the review the commission shall make a determination approving the proposed exercise, approving the proposed exercise subject to conditions specified in the determination or disapproving the proposed exercise. A copy of the determination by the commission shall be delivered to the state agency or public corporation whose proposed exercise of a power, duty or privilege was reviewed and to each protestant under paragraph (b) of subsection (2) of this section, if any. [1955 c.707 §14]

536.390 Approval without filing notification. The commission may enter into agreements or provide by orders, rules or regulations whereby it approves the exercise of any one or more of the powers, duties or privileges referred to in ORS 536.370 (1) by a state agency or public corporation of this state which has received a copy of a state

water resources statement as provided in ORS 536.350, without the filing of the notification as provided in ORS 536.380 (1). Each agreement, order, rule or regulation shall specifically provide for the modification or revocation thereof at the discretion of the commission and upon reasonable notice to the state agency or public corporation, and may contain such other conditions, limitations or requirements as the commission, in its discretion, may require to insure the accomplishment of the purposes of the state water resources policy. [1955 c 707 §13]

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

(2) The commission, may apply to the circuit court of the county in which a violation is alleged to exist for the restraining by appropriate process of the commission or continuation of a violation, or for the enforcement by appropriate process of compliance with ORS 536.370 to 536.390. [1955 c.707 §15]

536.410 Withdrawal of unappropriated waters from appropriation by commission order. (1) When the Water Resources Commission determines that it is necessary to insure compliance with the state water resources policy or that it is otherwise necessary in the public interest to conserve the water resources of this state for the maximum beneficial use and control thereof that any unappropriated waters of this state, including unappropriated waters released from storage or impoundment into the natural flow of a stream for specified purposes, be withdrawn from appropriation for all or any uses including exempt uses under ORS 537.545, the commission, on behalf of the state, may issue an order of withdrawal.

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

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

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

(5) While the order of withdrawal is in effect, no application for a permit to appropriate the waters withdrawn for the uses specified in the order and no application for a preliminary permit or license involving appropriations of such waters shall be received for filing by the Water Resources Commission. [1955 c.707 §16, 1961 c.224 §11; 1985 c.673 §17; 1989 c.833 §55]

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

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

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

(4) Any state agency or public corporation of this state required or permitted by law to formulate, enter into or carry out any compact or other agreement referred to in subsection (1) of this section shall give timely and adequate notice to the commis-

sion before it undertakes any action under such requirement or permission. [1955 c.707 §17; 1961 c.298 §1; 1975 c.581 §25]

536.430 Commission to devise plans and programs for development of water resources. The commission shall devise plans and programs for the development of the water resources of this state in such a manner as to encourage, promote and secure the maximum beneficial use and control thereof. [1955 c.707 §18]

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

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

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

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

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

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

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

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

536.520 State agencies and public corporations furnishing information and services to commission. (1) In order to facilitate and assist in carrying out its functions as provided by law, the commission may:

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

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

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

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

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

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

536.540 Approval of voucher claims. All voucher claims for indebtedness or expenses authorized and incurred by the commission in carrying out its functions as provided by law shall be approved by the commission or as provided in ORS 293.330. [1955 c.707 §31]

536.550 [1955 c.707 §30; repealed by 1985 c.673 §185]

536.560 [1955 c.707 §76; 1979 c.284 §164; repealed by 1985 c.673 §185]

MISCELLANEOUS PROVISIONS

536.570 Moneys and securities of irrigation districts in possession of Water Resources Commission; deposit with State Treasurer. The Water Resources Commission may deposit with the State Treasurer for safekeeping all moneys and securities which may come into the commission's possession in connection with the reorganization, retirement or settlement of the bonds, warrants or other evidences of indebtedness of any irrigation district within the state. When so deposited the State Treasurer shall safely keep the same subject to call of the Water Resources Commission. [Formerly 544.050; amended by 1957 c.351 §3; 1985 c.673 §19]

536.580 Rights acquired prior to August 3, 1955, not affected. Nothing in ORS 509.645, 536.220 to 536.540 or 543.225, as enacted by chapter 707, Oregon Laws 1955, nor in the amendments made by chapter 707, Oregon Laws 1955, to ORS 225.290, 225.300, 261.325, 261.330, 509.605, 509.610, 509.625, 509.640, 537.170, 537.200 (1969 Replacement Part), 543.050 or 543.230, nor in sections 38, 41, 43, 45 or 50 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested and inchoate prior to August 3, 1955. [1955 c 707 §55; 1973 c.723 §125; 1985 c.673 §181]

536.590 Rights acquired prior to January 1, 1956, not affected. Nothing in the amendments made by chapter 707, Oregon Laws 1955, to ORS 182.410, 536.010 (1973 Replacement Part), 542.110, 548.365, 555.030 or 555.070, nor in sections 58 to 65, 70 or 75 of chapter 707, Oregon Laws 1955, shall be construed to take away or impair any right to any waters or to the use of any waters vested or inchoate prior to January 1, 1956. [1955 c.707 §77; 1969 c.168 §2, 1985 c 673 §182]

EMERGENCY WATER SHORTAGE POWERS

536.700 "Drainage basin" defined. As used in ORS 536.700 to 536.780, "drainage basin" means one of the 18 Oregon drainage basins identified by the Water Resources Department as shown on maps published by that department dated January 1976. [1977 c 541 §3]

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

(2) The Legislative Assembly finds it necessary in the event of an emergency described in subsection (1) of this section, to promote water conservation and to provide an orderly procedure to assure equitable curtailment, adjustment, allocation or regulation in the domestic, municipal and industrial use of water resources where more than one user is dependent upon a single source of supply. [1977 c.541 §1]

536.720 Declaration of state authority; Governor's power to order water conservation or curtailment plan. (1) Because municipal and other political subdivision boundaries do not conform with the geographic boundaries of the 18 major drainage basins, or associated subbasins in the state, and because problems caused by a severe continuing drought may exceed local ability to control, the Legislative Assembly declares that water resource conservation in time of

severe, continuing drought requires the exercise of state authority.

(2)(a) After a declaration that a severe, continuing drought exists, or is likely to exist, the Governor may order individual state agencies and political subdivisions within any drainage basin or subbasin to implement, within a time certain following the declaration, a water conservation or curtailment plan or both, approved under ORS 536.780.

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

(3) Orders provided for in subsection (2) of this section and curtailments, adjustments, allocations and regulations ordered pursuant thereto shall be designed insofar as practicable not to discriminate within any class of consumers.

(4) It is the intent of the Legislative Assembly that curtailments, adjustments, allocations and regulations ordered pursuant to subsection (2) of this section be continued only so long as a declaration by the Governor of the existence of severe, continuing drought is in effect.

(5) The Governor may direct individual state agencies and political subdivisions of this state to seek enforcement of all orders and regulations issued pursuant to ORS 536.780 and subsection (2) of this section. [1977 c 541 §2; 1985 c 673 §20; 1989 c.87 §7]

536.730 Effect of emergency powers on vested water rights. Except as provided in ORS 536.740 and 536.750, nothing in ORS 536.700 to 536.780 is intended to permit the Governor or the Water Resources Commission to hinder the ability of any holder of a vested water right to obtain and use legally assured benefits of that right. [1977 c 541 §4; 1989 c.87 §8]

536.740 Gubernatorial authority to declare drought. Upon finding that a need exists for state-wide coordination of water resource conservation measures by municipal and other political subdivisions of this state in order to minimize problems caused by a severe shortage of water, the Governor may declare that a severe, continuing drought exists or is likely to exist. [1989 c.87 §2]

536.750 Powers of commission after declaration of drought. (1) Notwithstanding any provision of ORS chapters 536 to 543, after a declaration that a severe, continuing drought exists, the Water Resources Commission may:

(a) Issue without first conducting a hearing under ORS 537.170, a temporary permit for an emergency use of water;

(b) Allow a temporary change in use, place of use or point of diversion of water without complying with the notice and waiting requirements under ORS 540.520;

(c) Notwithstanding the priority of water rights, grant preference of use to rights for human consumption or stock watering use;

(d) Waive the notice requirements under ORS 537.753 and the report required under ORS 537.762; and

(e) Allow a temporary exchange of water without giving notice as required under ORS 540.535.

(2) The commission by rule may establish procedures for carrying out the provisions of this section and a schedule of fees that must accompany a request under subsection (1) of this section. [1989 c.87 §3]

536.760 Cessation of actions taken under ORS 536.750. Any action taken under ORS 536.750 may be carried out only during the period of severe, continuing drought. After the drought, any water use undertaken under ORS 536.750 must cease or comply with the applicable provisions of ORS 537.110 to 537.250, 537.505 to 537.795 or 540.520 and 540.530. [1989 c.87 §4]

536.770 Purchase of option or agreement for use of water permit or right during declared drought. The Water Resources Commission, a local government or public corporation may purchase an option or enter an agreement for use of an existing permit or water right, for the purpose of distribution for any beneficial use during the time in which a severe, continuing drought is declared to exist. The commission, local government or public corporation holding such an option or agreement:

(1) Is not required to construct any diversion or appropriation facilities or works;

(2) May use the water acquired under the option or agreement on property or for a use different than allowed in the permit or water right; and

(3) May begin use at any time so long as the total use by the water right or permit holder and the option or agreement user is within the rate, volume and seasonal limits of the permit or water right. [1989 c.87 §5]

536.780 Water conservation or curtailment plans; contents; review; effect of failure to file or implement. (1) The Water Resources Commission, upon a finding that a severe or continuing drought is likely to occur, may order individual state agencies and political subdivisions within any drain-

age basin or subbasin to develop and file with the commission, within 30 days following the order, a water conservation or curtailment plan or both. The commission may allow the state agencies and political subdivisions more than 30 days following the order to file the plan depending on the urgency for the plan.

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

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

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

(C) To establish programs consistent with law designed to promote conservation, prevention of waste, salvage and reuse of water resources.

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

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

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

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

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

(4) If a state agency or political subdivision fails to file a water conservation or curtailment plan when so ordered, or if the commission does not approve a filed plan, the commission may develop appropriate plans. [1989 c.87 §6]

PENALTIES

536.900 Civil penalties; imposition. (1) In addition to any other liability or penalty provided by law, the Water Resources Commission may impose a civil penalty on a person for any of the following:

(a) Violation of any of the terms or conditions of a permit, certificate or license issued under ORS chapters 536 to 543.

(b) Violation of ORS 537.130 or 537.535.

(c) Violation of any rule or order of the Water Resources Commission that pertains to well maintenance.

(d) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

(2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.710, 540.720 or 540.730.

(3) A civil penalty may not be imposed until the commission prescribes a reasonable time to eliminate the violation. The commission shall notify the violator of the time allowed to correct a violation within five days after the commission first becomes aware of the violation.

(4) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the use of water under ORS 540.150 shall not be considered a violation under subsection (1) of this section. [1989 c.618 §1]

Note: 536.900 to 536.935 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

536.905 Notice; hearing. (1) Any civil penalty imposed under ORS 536.900 shall become due and payable when the person incurring the penalty receives a notice in writing from the Water Resources Commission. The notice referred to in this section shall be served personally or sent by registered or certified mail and shall include:

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

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

(c) A statement of the amount of the penalty or penalties imposed; and

(d) A statement of the right of the person to request a hearing.

(2) The person to whom the notice is addressed shall have 10 days from the date of mailing of the notice in which to make written application for a hearing before the commission.

(3) All hearings shall be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550. [1989 c.618 §2]

Note: See note under 536.900.

536.910 Amount of penalty; rules. After public hearing, the Water Resources Commission by rule shall adopt a schedule establishing the civil penalty that may be imposed under ORS 536.900 and the time allowed to correct each violation. However, the civil penalty may not exceed $5,000 for each violation. [1989 c.618 §3]

Note: See note under 536.900.

536.915 Remission or reduction of penalty. A civil penalty imposed under ORS 536.900 may be remitted or reduced upon such terms and conditions as the Water Resources Commission considers proper and consistent with the public health and safety and protection of the public interest in the waters of this state. [1989 c.618 §4]

Note: See note under 536.900.

536.920 Factors to be considered in imposition of penalty. In imposing a penalty pursuant to the schedule adopted pursuant to ORS 536.910, the Water Resources Commission shall consider the following factors:

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

(2) Any prior violations of statutes, rules or orders pertaining to water use.

(3) The economic and financial conditions of the person incurring the penalty, including any financial gains resulting from the violation.

(4) The immediacy and extent to which the violation threatens other rights to the use of water or the public health or safety or the public interest in the waters of this state. [1989 c.618 §5]

Note: See note under 536 900.

536.925 Order assessing penalty; recording. (1) If the person notified fails to request a hearing within the time specified in ORS 536.905, or if after a hearing the person is found to be in violation of a permit, certificate, statute, license, rule or order listed in ORS 536.900 (1), an order may be entered by the Water Resources Commission assessing a civil penalty.

(2) When an order assessing a civil penalty under this section becomes final by operation of law or on appeal, unless the amount of penalty is paid within 10 days after the order becomes final, it may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record. [1989 c.618 §12]

Note: See note under 536.900.

536.930 Consequence of failure to follow order; judicial review of penalty. (1) Any owner or operator who fails without sufficient cause to take corrective action as required by an order of the Water Resources Commission shall be liable for damages not to exceed the amount of all expenses incurred by the Water Resources Department in carrying out the department's enforcement duties related to the corrective action.

(2) Judicial review of a civil penalty imposed under ORS 536.900 shall be as provided under ORS 183.480. [1989 c.618 §7]

Note: See note under 536.900.

536.935 Disposition of penalties; appropriation. All penalties recovered under ORS 536.930 shall be paid into the State Treasury and credited to an account of the Water Resources Department. Such moneys are continuously appropriated to the department to carry out the provisions of ORS chapters 536 to 543. [1989 c.618 §8]

Note: See note under 536.900.

Note: Section 9, chapter 618, Oregon Laws 1989, provides:

Sec. 9. (1) The Water Resources Commission shall adopt by rule a definition of "waste" and report to the Sixty-sixth Legislative Assembly the result of adopting the definition.

(2) Notwithstanding any other provision of sections 1 to 8 of this Act [ORS 536.900 to 536.935], the commission may not impose a civil penalty for a violation of ORS 540 720 until the commission adopts a definition of "waste" under subsection (1) of this section. [1989 c.618 §9]