Chapter 537

1989 EDITION

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DEFINITIONS

537.010 Definition of "Water Rights Act." As used in this chapter, "Water Rights Act" means and embraces ORS 536.050, 537.120, 537.130, 537.140 to 537.250, 537.390 to 537.400, 538.420, 540.010 to 540.120, 540.210 to 540.230, 540.310 to 540.430, 540.510 to 540.539 and 540.710 to 540.750. [Amended by 1985 c.673 §183]

GEOTHERMAL WELLS

537.090 Laws applicable to geothermal wells. (1) The provisions of this chapter relating to appropriation and water rights do not apply to the production of fluid from a well with a bottom hole temperature of at least 250 degrees Fahrenheit.

(2) Production of fluids from a well with a bottom hole temperature of at least 250 degrees Fahrenheit shall be regulated as a geothermal resource under the applicable sections of ORS chapter 522.

(3) If the bottom hole temperature of a well that was initially less than 250 degrees Fahrenheit increases to at least 250 degrees Fahrenheit, the State Geologist and the Water Resources Commission, after consulting with the well owner, shall determine the agency with regulatory responsibility for that specific well. This determination shall be documented in writing and shall supersede a determination made under subsection (2) of this section. [1981 c.589 §3; 1985 c 673 §21]

537.095 Interference between geothermal well and other water appropriation. If interference between an existing geothermal well permitted under ORS chapter 522 and an existing water appropriation permitted under this chapter is found by either the State Geologist or the Water Resources Commission, the State Geologist and the Water Resources Commission shall work cooperatively to resolve the conflict and develop a cooperative management program for the area. In determining what action should be taken, they shall consider the following goals:

(1) Achieving the most beneficial use of the water and heat resources;

(2) Allowing all existing users of the resources to continue to use those resources to the greatest extent possible; and

(3) Insuring that the public interest in efficient use of water and heat resources is protected. [1981 c.589 §10, 1985 c.673 §22]

WATER USE REPORTING

537.097 Verification of land ownership; time limits; exception. (1) As the Water Resources Commission updates its water right and permit records with current land ownership information from county records or other sources, the commission shall request the person shown in those updated records to verify that the person owns the land to which a water right or permit is appurtenant.

(2) Any person receiving a request under subsection (1) of this section shall return the verification within 120 days.

(3) Except as provided in subsection (4) of this section, the commission shall request verification from all persons shown in updated water right and permit records on or before July 1, 1992.

(4) If the commission considers verification unnecessary for any water right perfected, transferred or adjudicated after July 16, 1987, the commission need not request verification of that water right or permit. [1987 c.649 §2]

537.099 Water use report from governmental entity. (1) Except as provided in subsection (3) of this section, any governmental entity that holds a water right shall submit an annual water use report to the Water Resources Department. The report shall include, but need not be limited to the amount of water used by the governmental entity, the period of use and the categories of beneficial use to which the water is applied.

(2) As used in this section, "governmental entity" includes any state or federal agency, local government as defined in ORS 294.004, irrigation district formed under ORS chapter 545 and a water control district formed under ORS chapter 553.

(3) A governmental entity that acquires land because of default in repayment of loans or other debts owed to the state is not required to file an annual water use report under this section. [1987 c 649 §3]

APPROPRIATION UNDER 1909 ACT; IN-STREAM WATER RIGHTS

537.110 Public ownership of waters. All water within the state from all sources of water supply belongs to the public.

537.120 Right of appropriation; vested rights protected. Subject to existing rights, and except as otherwise provided in ORS chapter 538, all waters within the state may be appropriated for beneficial use, as provided in the Water Rights Act and not otherwise; but nothing contained in the Water Rights Act shall be so construed as to take away or impair the vested right of any person to any water or to the use of any water.

537.130 Permit to appropriate water required; notification to owner of certain land. (1) Except for the use exempted under

ORS 537.142, any person intending to acquire the right to the beneficial use of any of the surface waters of this state shall, before beginning construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the Water Resources Commission for a permit to make the appropriation.

(2) Except for the use exempted under ORS 537.142, no person shall use, store or divert any waters until after the commission issues a permit to appropriate the waters.

(3) The Water Resources Commission shall not issue a permit without notifying the owner, as identified in the application, of any land to be crossed by the proposed ditch, canal or other work as set forth in the application filed pursuant to ORS 537.140. [Amended by 1985 c.310 §3; 1985 c.673 §25; 1989 c.509 §3]

537.133 Permittee's right to enter on forest land; notice. (1) A permittee may not enter upon forest land adjacent to the point of diversion designated in the permit until such person provides notice to the landowner of the permittee's intention to enter upon such property. The notice shall:

(a) Be in writing;

(b) Be mailed to the landowner 30 days prior to the commencement of any construction, maintenance or repair work; and

(c) Give a complete description of the location and duration of the work project.

(2) If a permittee fails to provide the notice required in subsection (1) of this section, the permittee shall not obtain any right to continued use of the land without the express written consent of the landowner.

(3) For purposes of determining whether a prescriptive easement or way of necessity has been established under Oregon common law, unimproved or unenclosed forest lands shall include commercial forest land parcels larger than 20 acres. [1989 c.509 §5]

Note: 537.133 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

537.135 Permit required to appropriate water for recharging ground water sources; minimum perennial stream flow required for permit; exception. (1) The appropriation of water for the purpose of recharging ground water basins or reservoirs is declared to be for a beneficial purpose. Permits for such appropriation may be granted by the Water Resources Commission on application made therefor. Any such application shall substantially comply with ORS 537.140 and shall be subject to the provisions of ORS 537.150 to 537.230, as are other applications and permits to appropriate water.

(2) Any person proposing to apply to a beneficial use the water stored artificially in any such ground water basin or reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.230. The application shall refer to the artificially recharged ground water basin or reservoir as a supply of water and shall include the written consent of the holder of the recharge permit or certificate to appropriate the artificially recharged water.

(3) The Water Resources Commission shall develop standards that an applicant must meet before the commission approves a permit to appropriate water for the purpose of recharging ground water.

(4) Before issuing a permit for the purpose of recharging ground water, the commission shall determine, under ORS 537.170, whether the proposed ground water recharge project prejudicially affects the public interest.

(5) The Water Resources Commission shall not issue a ground water recharge permit unless the supplying stream has a minimum perennial stream flow established for the protection of aquatic and fish life. The State Department of Fish and Wildlife may waive this prerequisite if a minimum perennial stream flow for protection of aquatic and fish life is not required for the supplying stream.

(6) Any permit issued under this section shall be subject to cancellation for abandonment as provided in ORS 540.610 to 540.650. [1961 c.402 §1, 1985 c.673 §26; 1987 c.499 §1]

537.139 Failure to obtain authorization for access to certain land. (1) No water right is created or established if a permittee fails to fully and accurately comply with the provisions of ORS 537.140 (1)(a)(E).

(2) Nothing in ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310 requires the Water Resources Commission to mediate or arbitrate a dispute between a permittee and a landowner with respect to the provisions of ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310. [1989 c.509 §8]

Note: 537.139 was added to and made a part of 537.110 to 537.330 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.140 Application for permit; contents; maps and drawings. (1)(a) Each application for a permit to appropriate water shall set forth the:

(A) Name and mailing address of the applicant;

(B) Source of water supply including the name and mailing address of any owner of the land upon which the source of the water supply is located;

(C) Nature and amount of the proposed use;

(D) Location and description of the proposed ditch, canal or other work, including the name and mailing address of the owner of any lands crossed by the proposed ditch, canal or other work;

(E) A statement declaring the existence of written authorization or an easement permitting access to land crossed by the proposed ditch, canal or other work;

(F) Time within which it is proposed to begin construction;

(G) Time required for completion of the construction; and

(H) Time for the complete application of the water to the proposed use.

(b) If for agricultural purposes, the application shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be.

(c) If for power purposes, the application shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied.

(d) If for construction of a reservoir, the application shall give the height of dam, the capacity of the reservoir, and the uses to be made of the impounded waters.

(e) If for municipal water supply, the application shall give the present population to be served, and, as near as may be, the future requirements of the city.

(f) If for mining purposes, the application shall give the nature of the mines to be served, and the methods of supplying and utilizing the water.

(2) Each application shall be accompanied by any map or drawing and all other data concerning the proposed project and the applicant's ability and intention to construct the project, as may be prescribed by the Water Resources Commission. The accompanying data shall be considered a part of the application.

(3) The map or maps required to accompany the application shall be prepared by a water right examiner certified under ORS 537.798. [Amended by 1985 c.673 §27; 1987 c.542 §5; 1989 c.509 §4]

537.142 Water right permit or certificate not required for egg incubation project under salmon and trout enhancement program. (1) No water right certificate or permit is required for the use of the surface waters of this state if the water is to be used for a salmon and trout enhancement project certified by the State Department of Fish and Wildlife under ORS 496.430 to 496.460.

(2) The use of water for a salmon and trout enhancement project under subsection (1) of this section is a beneficial use and such use shall be allowed on all the waters of this state, whether or not the project is located on waters of this state for which the use is restricted pursuant to any of the following:

(a) A scenic waterway designation under ORS 390.805 to 390.925.

(b) A statutory withdrawal from appropriation under ORS chapter 538.

(c) A program adopted by the Water Resources Commission under ORS 536.300 to 536.400.

(d) An administrative withdrawal from appropriation by the Water Resources Director or the Water Resources Commission.

(e) Any other statutory or administrative restriction on the use of the waters.

(3) If the use of the waters of this state under subsection (1) of this section conflicts with the use of water under a permit issued under ORS 537.240 or a use allowed under a water right certificate issued under ORS 537.250, the use permitted under subsection (1) of this section shall be subordinate. [1985 c.310 §2, 1989 c.587 §2]

537.143 Limited license to use surface water. (1) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission may establish by rule a procedure to allow a person to obtain a limited license to use surface water for the following purposes after the person complies with the notice provisions set forth in ORS 537.144:

(a) Fire-fighting storage ponds under five acre-feet and less than 10 feet high;

(b) Trucking water to be used for stock watering;

(c) Road construction and maintenance;

(d) General construction;

(e) Initial filling of or testing of waste water lagoons for leakage; or

(f) Stock ponds under five acre-feet and less than 10 feet high.

(2) The use of water under a limited license under subsection (1) of this section shall not have priority over any water right exercised according to a permit or certificate and shall be subordinate to all other permitted uses. The commission may revoke the right to use of water acquired under a lim-

ited license pursuant to subsection (1) of this section at any time if the use may harm:

(a) Any other water user;

(b) A minimum perennial streamflow; or

(c) An in-stream water right.

(3) The commission shall not issue a limited license to use surface water for a period in excess of 90 days. The commission may allow an extension of the limited license not to exceed 90 days.

(4) Nothing in this section is intended to prohibit any person from obtaining a water right certificate under ORS 537.250 or 537.630 for any use set forth in subsection (1) of this section. [1989 c 933 §2]

537.144 Request for right to use water under limited license; fee. (1) Any person requesting the right to use water under a limited license under ORS 537.143 shall notify the Water Resources Commission on a form provided by the commission.

(2) The notification required under subsection (1) of this section shall be accompanied by the fee established by rule by the commission.

(3) The commission shall notify the person whether the commission grants the limited license. [1989 c.933 §3]

537.145 Notice of filing of application to appropriate water for hydroelectric purposes. (1) Whenever an application is made for a permit to appropriate water for hydroelectric purposes, the Water Resources Commission shall give written notice of the filing of the application to the owner of any land that is:

(a) Adjacent to any portion of the stream in which the quantity of water will be decreased by the project; or

(b) Adjacent to the site of the proposed hydroelectric project.

(2) The commission shall also publish notice of the application once each week for at least four successive weeks and for such further time, if any, as the commission shall determine, in a newspaper of general circulation in each county in which the project covered by the application is located. [1985 c.569 §22]

537.150 Filing of application; curing defects; recording. (1) Upon receipt of an application the Water Resources Commission shall indorse on the application the date of its receipt and keep a record of the same. If, upon examination, the application is found to be defective, or to lack satisfactory proof of the applicant's ability to finance and construct the proposed project or of the applicant's intention in good faith to construct it with due diligence, the application shall be returned for correction or completion or for the supplying of such proof. The date of, and reasons for, the return shall be indorsed thereon and made a record in the Water Resources Department.

(2) No application shall lose its priority of filing on account of such defects, provided acceptable data, proofs, maps and drawings are filed in the Water Resources Department within 30 days from date of return to the applicant, or such further time, not exceeding one year, as may be given by the commission. All applications which comply with the provisions of law shall be recorded in a suitable book kept for that purpose. [Amended by 1985 c.673 §28]

537.160 Approval for beneficial use; agreement authorizing use of ditch for waste or seepage water; proof of ability to construct project required. (1) Subject to the provisions of subsections (2) and (3) of this section, and of ORS 537.170 to 537.190, the Water Resources Commission shall approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights.

(2) The Water Resources Commission may not approve an application for a permit to appropriate waste or seepage water, which is to be carried through an existing ditch or canal not owned wholly by the applicant until the applicant files with the commission an agreement between the applicant and the owner of the ditch or canal, authorizing its use by the applicant to carry the water.

(3) The commission shall reject every application for a permit to appropriate water in excess of a flow of 10 cubic feet per second, if the applicant fails, after 30 days' notice and demand from the commission, to furnish proof satisfactory to the commission of the applicant's ability to construct the proposed project, and of the applicant's intention in good faith to construct it with due diligence.

(4) The commission shall reject every application for a permit to appropriate water to develop hydroelectric power if the commission finds that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the commission under ORS 543.017. [Amended by 1985 c.569 §18; 1985 c.673 §197]

537.170 Reference of application to commission in certain cases; hearing; order; policy; referral to Water Resources Director. (1) If, in the judgment of the Water Resources Commission, the proposed use may prejudicially affect the public interest, or is to develop hydroelectric power in excess of 100 theoretical horsepower, the commission shall hold a public hearing on the

application on proper notice to the applicant and to anyone objecting to the proposed use.

(2) If applicable, an application to appropriate water for the generation of electricity submitted under ORS 537.140 shall be included in the consolidated review and hearings process under ORS 543.255.

(3) If, in the opinion of the commission, sufficient information is not available to enable the commission to determine whether or not the proposed use would impair or be detrimental to the public interest, the commission may enter an interim order continuing the hearing for a period not to exceed three years, unless extended by the commission, to afford all interested persons an opportunity to complete investigations to obtain the required information. The interim order may specify in particular the information required for the commission's determination.

(4) If, after the hearing, the commission determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the commission shall enter an order rejecting the application or requiring its modification to conform to the public interest, to the end that the highest public benefit may result from the use to which the water is applied. If, after the hearing, the commission determines that the proposed use would not impair or be detrimental to the public interest, the commission shall enter an order approving the application. An order approving an application or requiring its modification may set forth any of the provisions or restrictions to be included in the permit concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(5) In determining whether the proposed use would impair or be detrimental to the public interest, the Water Resources Commission shall consider:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.300 to 536.350 and 537.505 to 537.525.

(6) After the commission enters an order under subsection (4) of this section, the application for a permit shall be referred to the Water Resources Director for further proceedings consistent with the order. [Amended by 1955 c.707 §36; 1961 c.224 §12; 1963 c.378 §1; 1975 c.581 §26, 1985 c.569 §19; 1985 c.673 §30]

537.180 Hearing on proposed use. Whenever, in the opinion of the Water Resources Commission, a hearing is necessary to determine whether the proposed use described in an application will conflict with existing rights or be prejudicial to the public interest, the commission shall conduct the hearing according to the provisions for a contested case hearing under ORS 183.310 to 183.550. [Amended by 1971 c.734 §78; 1985 c 673 §31]

537.185 [1971 c.734 §80; repealed by 1985 c.673 §185]

537.190 Terms and conditions of approval; municipal water supplies; release of stored water. (1) The Water Resources Commission may approve an application for less water than applied for, or upon terms, limitations and conditions necessary for the protection of the public interest, including terms, limitations and conditions relating to the release of water from an impoundment or diversion structure necessary to prevent rapid fluctuation in the stream level below the structure which may create a hazard to life or property, if there exists substantial reason therefor. In any event the commission shall not approve an application for more water than can be applied to a beneficial use.

(2) The commission may approve an application for a municipal water supply to the exclusion of all subsequent appropriations, if the exigencies of the case demand.

(3) When conditions beyond the control of the owner or operator of an impoundment or diversion structure, to which terms, limitations and conditions made as provided in subsection (1) of this section relate, threaten the safety of the structure and the release of water from the structure contrary to such

terms, limitations and conditions is or may be necessary to remove the threat:

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

(b) The owner, operator or person in immediate charge of the structure shall immediately notify the Water Resources Department by telegraph or telephone of the situation.

(c) The owner, operator or person in immediate charge of the structure shall immediately notify, to the best of the person's ability, those persons whose life or property may be threatened by the release of water. [Amended by 1959 c.624 §3; subsection (3) enacted as 1959 c.624 §5, 1985 c.673 §32]

537.200 [Amended by 1955 c.707 §37; repealed by 1971 c.734 §21]

537.210 [Repealed by 1981 c.61 §1 (537.211 enacted in lieu of 537.210)]

537.211 Issuance of permit if application approved; contents of permit; effect; rejection of application. (1) The approval of an application referred to in ORS 537.140 or 537.400 shall be set forth in a water right permit issued by the Water Resources Commission. The permit shall specify the details of the authorized use and shall set forth any terms, limitations and conditions as the commission considers appropriate including but not limited to any applicable condition required under ORS 537.289. A copy of the permit shall be filed as a public record in the Water Resources Department. The permit shall be mailed to the applicant, and upon receipt of the permit the permittee may proceed with the construction of the necessary works and may take all action required to apply the water to the designated beneficial use and to perfect the proposed appropriation.

(2) If an application referred to in ORS 537.140 or 537.400 is rejected, the commission shall enter a written order setting forth the reasons for the rejection. The applicant shall take no action towards construction of the works or use of the water. The commission shall mail a copy of the order to the applicant. [1981 c.61 §2 (enacted in lieu of 537.210); 1985 c.392 §10; 1985 c.673 §33]

537.220 Assignment of permit. Any permit or license to appropriate water may be assigned, subject to the conditions of the permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department. [Amended by 1985 c.673 §34]

537.230 Time for beginning and completing work; extension; survey; map. (1) Except as provided in ORS 537.240 or under an application by a municipal corporation for municipal uses or purposes, actual construction work shall begin within one year from the date of approval of the application. The construction of any proposed irrigation or other work shall be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit by the Water Resources Commission, not to exceed five years from the date of approval.

(2) Except as provided in ORS 537.240, the commission, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year limit established in subsection (1) of this section within which irrigation or other works shall be completed or the right perfected. In determining the extension, the commission shall give due weight to the considerations described under ORS 539.010 (5).

(3) Upon completion of beneficial use as required under subsection (1) of this section, the permittee shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after application of water to a beneficial use or the beneficial use date allowed in the permit, the permittee shall submit a map of the survey as required by the Water Resources Department, which shall accompany the request for a water right certificate submitted to the commission under ORS 537.250. [Amended by 1985 c.617 §1; 1985 c.673 §201; 1987 c.542 §4]

537.240 Federal permit; time for obtaining; cancellation; time for beginning and completing work. (1) In any case where a permit from the Federal Energy Regulatory Commission is or shall be required in connection with the development of the applicant's proposed project, the applicant shall make application for the necessary federal permit or license within six months, or, if the applicant is a municipal corporation, within 10 years, from the date of filing application for appropriation of water with the Water Resources Commission.

(2) Upon failure of the applicant to file with the commission, within 30 days after the expiration of the period above prescribed, satisfactory proof that application for the federal permit or license has been duly made, the application to appropriate water shall be terminated and become void.

(3) Where the application for the necessary permit or license from the Federal Energy Regulatory Commission is finally rejected or disallowed, or if after being granted, the permit or license is revoked or forfeited because of failure to begin or carry on the construction work when and as required by the permit or license, then the commission shall, upon the filing in the Water Resources Department of satisfactory

proof of such fact, revoke and cancel any permit issued by the commission for appropriation of water for use in the project for which the federal permit or license was required.

(4) In case of any permit issued for the appropriation of water for the utilization of which a permit or license from the Federal Energy Regulatory Commission is necessary, the time to be allowed for the beginning and completion of construction under the permit from the commission shall be made to conform to the time fixed for such beginning and completion in the permit or license, and in any extension thereof, issued for the project by the Federal Energy Regulatory Commission. [Amended by 1985 c 673 §36]

537.250 Water right certificate; issuance; recordation; duration of rights; date of accrual. (1) After the Water Resources Commission has received a request for issuance of a water right certificate accompanied by the survey required under ORS 537.230 (3) that shows, to the satisfaction of the commission, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the commission shall issue to the applicant a certificate of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the applicant as provided in that section.

(2) Rights to the use of water acquired under the provisions of the Water Rights Act, as set forth in a certificate issued under subsection (1) of this section, shall continue in the owner thereof so long as the water shall be applied to a beneficial use under and in accordance with the terms of the certificate, subject only to loss:

(a) By nonuse as specified and provided in ORS 540.610;

(b) As provided in ORS 537.297; or

(c) By failure to fully and accurately comply with the provisions of ORS 537.140 (1)(a)(E).

(3) The right acquired by an appropriation shall date from the filing of the application with the commission. [Amended by 1985 c.392 §11; 1985 c.673 §191; 1987 c.542 §6; 1989 c.509 §6]

537.260 Cancellation of permit for failure of proof of completion of appropriation; issuance of limited certificate; contest of issuance of certificate; exception for municipalities. (1) Except as provided under subsection (4) of this section for a permit issued to a municipality, whenever the time within which any appropriation under a permit should have been perfected has expired and the owner of the permit fails or refuses within three months thereafter to submit to the Water Resources Commission proof of completion of the appropriation as required by ORS 537.230 and 537.250, the commission may, after 60 days' notice by registered mail, order the cancellation of the permit. The cancellation shall have the same force and effect as cancellation of a permit in the proceedings provided for in ORS 537.410 to 537.450.

(2) The commission may determine the extent to which an appropriation has been perfected under any permit at the time of submission of final proof provided for in ORS 537.250, and shall limit the certificate provided for in that section to a description of such appropriation as has been actually perfected to the extent that the water applied for has been actually applied to the beneficial use contemplated in the permit.

(3) Any person owning an application, permit or water right certificate subsequent in priority may jointly or severally contest before the commission the issuance of the water right certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate. The contest shall be brought upon application made, and hearing shall be had in the same manner and after notice as provided in ORS 537.420 for proceedings for cancellation of permits. The commission, in a final order, may cancel the permit or determine the extent to which the appropriation claimed thereunder has been perfected, and issue a water right certificate accordingly, or if a certificate has been issued, in the case of a contest within three months after its issuance, the commission may cancel the water right certificate, or affirm its issuance, and if the water right certificate in such case is canceled, the permit upon which it is based shall also be canceled.

(4) A municipality may partially perfect not less than 25 percent of the water authorized by its permit without loss of priority or cancellation of the municipality's permit under this section. If a municipality defers perfection of its water right under this section, the commission shall issue a certificate under ORS 537.250 only for the amount perfected. Upon perfection of the deferred amount, the municipality shall request a water right certificate for the remaining portion of the water applied for in the original permit application. As used in this section, "municipality" includes a city, a port formed under ORS 777.005 to 777.725 and 777.915 to 777.953, a domestic water supply district formed under ORS chapter 264 or a water supply authority formed under ORS chapter 450. [Amended by 1983 c.740 §211; 1985 c.673 §38; 1989 c.707 §2]

537.270 Conclusiveness of certificate. A water right certificate issued in accordance with the provisions of ORS 537.250 which, after the expiration of three months from the date it is issued, has not been contested and canceled in the manner provided in ORS 537.260, and a water right certificate, when issued under ORS 539.140, shall be conclusive evidence of the priority and extent of the appropriation therein described in any proceeding in any court or tribunal of the state, except in those cases where the rights of appropriation thereby described have been abandoned subsequent to issuance of the certificate.

537.280 [Renumbered 537 335]

537.282 Definition of "municipal applicant." As used in ORS 537.282 to 537.299, "municipal applicant" means any municipal corporation or district as defined in ORS 543.655 that has applied for a permit to appropriate water for the purpose of generating hydroelectric power under the provisions of this chapter, or that has been accorded any right or preference under ORS 543.260, 543.270 or 543.610. [1985 c 392 §2]

537.285 Municipal applicant may develop hydroelectric project jointly with private person; restrictions. A municipal applicant may contract with a private person for the purpose of generating hydroelectric power. The municipal applicant shall retain sufficient benefit and interest in, and control of a joint project as necessary for the project to be considered a municipal project. A municipal applicant and a private person developing a joint project under this chapter must comply with the rules adopted by the Water Resources Commission under ORS 537.287. [1985 c.392 §3]

537.287 Rules for joint project of municipal applicant and private person. The Water Resources Commission shall establish rules necessary to carry out the provisions of ORS 537.285. The rules shall include the amount of control over and interest in a joint project a municipal applicant must retain in order to receive the benefit of the municipal preference and proceed under the municipal application process set forth in this chapter. [1985 c.392 §4]

537.289 Conditions to be imposed on permit of municipal corporation or district. (1) Whenever the Water Resources Commission issues a permit under ORS 537.211 allowing a municipal corporation or district, as defined in ORS 543.655, to appropriate water for the purpose of generating hydroelectric power, the commission shall impose the following conditions on the permit, in addition to any other term, limitation or condition imposed under ORS 537.211:

(a) That the permit may not be assigned to any nonmunicipal entity so as to result in a loss of ownership of the permit by a municipal corporation or district.

(b) That the holder of the permit must remain qualified as a municipal applicant under ORS 537.285 and 537.287. If the municipal corporation or district proposes to generate hydroelectric power jointly with a nonmunicipal entity, that any proposed changes in the agreement between the municipal corporation and the nonmunicipal entity must be reviewed by the Water Resources Commission to determine whether or not the permittee remains qualified as a municipal applicant.

(2) If the commission determines that a permittee no longer qualifies as a municipal applicant, the commission shall notify the permittee and any nonmunicipal entity developing a project with the permittee that the parties have 90 days to amend their joint relationship to continue qualifying as a municipal corporation or district. [1985 c 392 §5; 1985 c.673 §186]

537.290 [Renumbered 537.340]

537.292 Conditions to be imposed on certificate of municipal corporation or district. (1) Whenever the Water Resources Commission issues a certificate under ORS 537.250 granting a municipal corporation or district as defined in ORS 543.655 the right to appropriate water for the purpose of generating hydroelectric power, the commission shall impose the following conditions on the certificate, in addition to any other term, limitation or condition imposed under ORS 537.250:

(a) That the water right may not be assigned to any nonmunicipal entity so as to result in a loss of ownership of the certificate by the municipal corporation or district.

(b) That the holder of the water right certificate must remain qualified as a municipal applicant under ORS 537.285 and 537.287. If the municipal corporation or district is generating the hydroelectric power jointly with a nonmunicipal entity, that any proposed changes in the agreement between the municipal corporation and the nonmunicipal entity must be reviewed by the Water Resources Commission to determine whether or not the owner of the certificate remains qualified as a municipal applicant.

(2) If the commission determines that an owner of a certificate no longer qualifies as a municipal applicant, the commission shall notify the owner of the certificate and any nonmunicipal entity developing or operating the project jointly with the owner that the parties have 90 days to amend their joint

agreement in a manner that allows the parties to continue to qualify as a municipal corporation or district. [1985 c.392 §6; 1985 c.673 §187]

537.295 Cancellation of permit when holder fails to continue to qualify as municipal applicant. (1) If the holder of a permit to appropriate water for hydroelectric purposes under this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the holder continues to qualify as a municipal applicant, or if the holder of the permit has assigned ownership of the permit to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the permit.

(2) A proceeding to cancel a permit under subsection (1) of this section shall be conducted according to the provisions under ORS 183.310 to 183.550 for a contested case hearing. [1985 c.392 §7; 1985 c.673 §188]

537.297 Cancellation of water right certificate when holder fails to continue to qualify as municipal applicant. (1) If the owner of a certificate to appropriate water for hydroelectric purposes under this chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the owner continues to qualify as a municipal applicant, or if the holder of the certificate has assigned ownership of the certificate to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the certificate.

(2) A proceeding to cancel a certificate under subsection (1) of this section shall be conducted according to the provisions under ORS 183.310 to 183.550 for a contested case hearing. [1985 c.392 §8; 1985 c.673 §189]

537.299 Consequences of cancellation of permit or certificate if holder no longer municipal applicant; conditions to protect public health and welfare. (1) If the Water Resources Commission cancels a permit or certificate under ORS 537.295 or 537.297, the municipal applicant may apply for a permit to appropriate water for hydroelectric purposes under this chapter, or the private developer may apply for a hydroelectric license under ORS chapter 543. However, the parties may not jointly apply for a permit to appropriate water for hydroelectric purposes pursuant to ORS 537.285.

(2) When a permit or certificate is canceled under ORS 537.295 or 537.297, the cancellation order may include such conditions and requirements as the commission deems necessary for the public safety and welfare, including but not limited to:

(a) Delay of the effective date of cancellation until such time as another entity is authorized to operate the facility under this chapter or ORS chapter 543; or

(b) Provision for operation of the facility during the period between cancellation and issuance of a new permit, certificate or license. [1985 c.392 §9; 1985 c.673 §190]

537.300 [Subsection (2) enacted as 1961 c.187 §2; 1985 c.673 §39; renumbered 537.345 and then 537.400 in 1987]

537.310 Acquisition of water rights for railway purposes; certificates. (1) Any corporation organized for the construction, maintenance or operation of any railway may acquire, hold and appropriate to its use for railway purposes any waters within the state. The appropriation may be accomplished by the procedure provided by ORS 537.130 and 537.140 to 537.250. A railway corporation may acquire by purchase, gift or devise, or by condemnation as provided in subsection (2) of this section, any water rights owned by any person and the rights of other persons affected by change of place or character of use of the water rights. Upon acquisition of the water rights by the corporation the right shall be severed from the land of the grantor and simultaneously transferred and become appurtenant to the operating property of the railway corporation, without losing the priority of the water right as originally established.

(2) Any such corporation may condemn and appropriate for railway operating purposes the rights of any private appropriator of waters within the state. The right of condemnation shall be exercised in the same manner as other property is condemned and appropriated for railway purposes; provided, that no water right so condemned shall exceed two cubic feet per second.

(3) Upon satisfactory proof of the acquisition of water rights by any such corporation through purchase, gift, devise or condemnation, the Water Resources Commission shall issue to the corporation a certificate of the same character as that described in ORS 539.140, which shall be recorded and transmitted to the corporation, as provided in that section. All certificates of water rights issued before May 29, 1925, by the Board of Control or the Water Resources Director to any such corporation shall be sufficient in law to convey to the corporation the water rights described in the certificates, and such certificates shall be received in evidence in all courts in this state. [Amended by 1985 c.673 §40]

537.320 Entry on land for survey purposes, preliminary to appropriation and diversion of waters. Any person may enter upon any land for the purpose of locating a point of diversion of the water intended to

be appropriated, and upon any land lying between such point and the lower terminus of the proposed ditch, canal or flume of the person, for the purpose of examining the same and of locating and surveying the line of such ditch, canal or flume, together with the lines of necessary distributing ditches and feeders, and to locate and determine the site for reservoirs for storing water.

537.330 Disclosure required in real estate transaction involving water right for irrigation purposes; exception; delivery of available certificate; effect of failure to comply. (1) In any transaction for the conveyance of real estate that includes a surface water right for irrigation purposes, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether or not a certificate or certificates of water rights are available and that the seller will deliver the certificate or certificates to the purchaser at closing, if the certificate or certificates are available.

(2) Upon closing and delivery of the instrument of conveyance in a real estate transaction involving the transfer of a surface water right for irrigation purposes, the seller shall also deliver to the purchaser the certificate of water rights if the certificate is available.

(3) The failure of a seller to comply with the provisions of this section does not invalidate an instrument of conveyance executed in the transaction.

(4) This section does not apply to any transaction for the conveyance of real estate that includes a surface water right when the certificate of water rights is held in the name of a district or corporation formed pursuant to ORS chapter 545, 547, 552, 553 or 554.

(5) As used in this section, "certificate of water rights" means a certificate issued pursuant to ORS 537.250 (1) or 539.140. [1979 c.535 §4; 1981 c.448 §1]

IN-STREAM WATER RIGHTS

537.332 Definitions for ORS 537.332 to 537.360. As used in ORS 537.332 to 537.360:

(1) "In-stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(2) "In-stream water right" means a water right held in trust by the Water Resources Department for the benefit of the people of the State of Oregon to maintain water in-stream for public use. An in-stream water right does not require a diversion or any other means of physical control over the water.

(3) "Public benefit" means a benefit that accrues to the public at large rather than to a person, a small group of persons or to a private enterprise.

(4) "Public use" includes but is not limited to:

(a) Recreation;

(b) Conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement; or

(d) Navigation. [1987 c.859 §2]

537.334 Findings. The people of the State of Oregon find and declare that:

(1) Public uses are beneficial uses.

(2) The recognition of an in-stream water right under ORS 537.336 to 537.348 shall not diminish the public's rights in the ownership and control of the waters of this state or the public trust therein. The establishment of an in-stream water right under the provisions of ORS 537.332 to 537.360 shall not take away or impair any permitted, certificated or decreed right to any waters or to the use of any waters vested prior to the date the in-stream water right is established pursuant to the provisions of ORS 537.332 to 537.360. [1987 c.859 §3]

537.335 [Formerly 537.280; renumbered 537.390 in 1987]

537.336 State agencies authorized to request in-stream water rights. (1) The State Department of Fish and Wildlife may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to the conservation, maintenance and enhancement of aquatic and fish life, wildlife and fish and wildlife habitat. The request shall be for the quantity of water necessary to support those public uses as recommended by the State Department of Fish and Wildlife.

(2) The Department of Environmental Quality may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state to protect and maintain water quality standards established by the Environmental Quality Commission under ORS 468.735. The request shall be for the quantity of water necessary for pollution abatement as recommended by the Department of Environmental Quality.

(3) The State Parks and Recreation Department may request the Water Resources Commission to issue water right certificates for in-stream water rights on the waters of this state in which there are public uses relating to recreation and scenic attraction.

The request shall be for the quantity of water necessary to support those public uses as recommended by the State Parks and Recreation Department. [1987 c 859 §4; 1989 c.904 §68]

537.338 Rules for state agency request for in-stream water right. The Water Resources Commission by rule shall establish standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336. [1987 c.859 §5]

537.340 [Formerly 537.290; renumbered 537.395 in 1987]

537.341 Certificate for in-stream water right. Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. [1987 c.859 §6]

537.343 Hearing on request for in-stream water right; order. (1) If in the judgment of the Water Resources Commission, the issuance of a certificate for an in-stream water right may impair or be detrimental to the public interest, or upon petition by any person, the commission may hold a public hearing on the request received under ORS 537.336.

(2) A hearing required under subsection (1) of this section shall be conducted in accordance with ORS 537:170.

(3) After the public hearing under subsection (2) of this section, the commission shall enter an order which may include any condition the commission considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The order may:

(a) Approve the in-stream water right for the quantity of water requested;

(b) Approve the requested in-stream water right for a lesser quantity of water; or

(c) Reject the requested in-stream water right.

(4) If the commission reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the commission shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The commission shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(5) After the commission issues an order approving an in-stream water right, the commission shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c 859 §7]

537.345 [Formerly 537.300; renumbered 537.400 in 1987]

537.346 Conversion of minimum perennial streamflows to in-stream water rights. All minimum perennial streamflows established on any waters of this state before September 27, 1987, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow. The provisions of ORS 536.325 shall not apply to a review conducted under this section. [1987 c.859 §8]

537.348 Purchase, lease or gift of water right for conversion to in-stream water right; priority dates. (1) Any person may purchase or lease an existing water right or portion thereof or accept a gift of an existing water right or portion thereof for conversion to an in-stream water right. Any water right converted to an in-stream water right under this section shall retain the priority date of the water right purchased, leased or received as a gift. At the request of the person the Water Resources Commission shall issue a new certificate for the in-stream water right showing the original priority date of the purchased, gifted or leased water right. A person who transfers a water right by purchase, lease or gift under this subsection shall comply with the requirements for the transfer of a water right under ORS 540.510 to 540.530.

(2) Any person who has an existing water right may lease the existing water right or portion thereof for use as an in-stream water right for a specified period without the loss of the original priority date. During the term of such lease, the use of the water right as an in-stream water right shall be considered a beneficial use. [1987 c 859 §9]

537.350 Legal status of in-stream water right. (1) After the Water Resources Commission issues a certificate for an in-stream water right under ORS 537.341 to 537.348, the in-stream water right shall have the same legal status as any other water right for which a certificate has been issued.

(2) An in-stream water right is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 but an in-stream water right may be canceled under ORS 540.610 to 540.650. [1987 c.859 §10]

537.352 Precedence of uses. Notwithstanding any provision of ORS 537.332 to 537.343 and 537.350, the right to the use of the waters of this state for a project for multipurpose storage or municipal uses or by a municipal applicant, as defined in ORS 537.282, for a hydroelectric project, shall take precedence over an in-stream water right when the commission conducts a review of the proposed project in accordance with ORS 537.170. The precedence given under this section shall not apply if the in-stream water right was established pursuant to ORS 537.346 or 537.348. [1987 c 859 §11]

537.354 In-stream water right subject to emergency water shortage provisions. An in-stream water right established under the provisions of ORS 537.332 to 537.360 shall be subject to the provisions of ORS 536.700 to 536.780. [1987 c 859 §12]

537.356 Request for reservation of unappropriated water for future economic development. Any state agency may request the Water Resources Commission to reserve unappropriated water for future economic development. [1987 c.859 §13]

537.358 Rules for reservation for future economic development. The Water Resources Commission shall adopt rules to carry out the provisions of ORS 537.356. The rules shall include a provision for a review under ORS 537.170 to be conducted:

(1) At the time a reservation for future economic development is made; and

(2) At the time the reserved water is applied to consumptive use or out-of-stream use. [1987 c 859 §14]

537.360 Relationship between application for in-stream water right and application for certain hydroelectric permits. If an application is pending under ORS chapter 537 for a water right permit to use water for hydroelectric purposes or under ORS 543.010 to 543.620 for a hydroelectric permit or license at the time the Water Resources Commission receives an application for an in-stream water right under ORS 537.336 for the same stream or reach of the stream, the commission shall not take any action on the application for an in-stream water right until the commission issues a final order approving or denying the pending hydroelectric application. [1987 c 859 §15]

MISCELLANEOUS

537.390 Valuation of water rights. In any valuation for rate-making purposes, or in any proceeding for the acquisition of rights to the use of water and the property used in connection therewith, under any license or statute of the United States or under the laws of Oregon, no value shall be recognized or allowed for such rights in excess of the actual cost to the owner of perfecting them in accordance with the provisions of the Water Rights Act. [Formerly 537 280; and then 537.335]

537.395 Public recapture of water power rights and properties; no recapture of other rights. (1) Any certificate issued for power purposes to a person other than the United States, or the State of Oregon or any municipality thereof, shall provide that after the expiration of 50 years from the granting of the certificate or at the expiration of any federal power license, and after not less than two years' notice in writing to the holder of the certificate, the State of Oregon, or any municipality thereof, may take over the dams, plants and other structures, and all appurtenances thereto, which have been constructed for the purpose of devoting to beneficial use the water rights specified in the certificate. The taking over shall be upon condition that before taking possession the state or municipality shall pay not to exceed the fair value of the property taken, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the certificate, not taken over, as may be caused by the severance therefrom of the property taken.

(2) The fair value of the property taken and the severance damages, if any, shall be determined by agreement between the holder of the certificate and the state or municipality, or, in case they cannot agree, by proceedings in equity instituted by the state or municipality in the circuit court of the county in which the largest portion of the property is located.

(3) The right of the state or any municipality to take over, maintain and operate any property which has devoted to beneficial use water rights specified in the certificate, by condemnation proceedings upon payment of just compensation, is expressly reserved.

(4) The provision for the recapture of any rights other than for power purposes, as provided in this section, contained in any certificate issued before June 14, 1939, shall be of no force and effect and may be canceled from the records wherever recorded and a new certificate issued with the recapture clause eliminated.

(5) The owner of any certificate issued before June 14, 1939, for such rights may, upon surrendering the certificate, receive a new certificate therefor issued under and subject to the provisions of this section. [Formerly 537.290; and then 537.340]

537.400 Reservoir permits. (1) All applications for reservoir permits shall be sub-

ject to the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240, except that an enumeration of any lands proposed to be irrigated under the Water Rights Act shall not be required in the primary permit. But the party proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130, 537.140, 537.142 and 537.145 to 537.240. The application shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in the reservoir to impound enough water for the purposes set forth in the application. When beneficial use has been completed and perfected under the secondary permit, the Water Resources Commission shall take the proof of the water user under the permit. The final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit.

(2) Whenever application is made for permit to store water in a reservoir or pond for any beneficial use which does not contemplate future diversion of the stored water except by livestock drinking from stock water ponds, the extent of utilization thereof may be included in the reservoir permit and no secondary permit shall be required. However, in cases where water from a stream is required to maintain a reservoir or pond by replacing evaporation and seepage losses, or is required to maintain suitable fresh water conditions for the proposed use and to prevent stagnation, the applicant for permit to store water in such reservoir or pond shall also file an application for permit to appropriate the waters of the stream. [Formerly 537 300; and then 537.345]

CANCELLATION OF PERMIT FOR APPROPRIATION

537.410 Failure to commence or complete work, or to properly apply water, as grounds for cancellation of permit; irrigation districts and municipalities excepted. (1) Whenever the owner of a permit to appropriate the public waters of Oregon fails to commence actual construction work within the time required by law, or having commenced construction work as required by law, fails or neglects to prosecute the construction work with reasonable diligence, or fails to complete the construction work within the time required by law, or as fixed in the permit, or within such further time as may be allowed under ORS 537.230, or having completed construction work, fails or neglects to apply the water to beneficial use within the time fixed in the permit, the Water Resources Commission may cancel the permit on the records in the Water Resources Department as provided in ORS 537.410 to 537.450.

(2) However, permits issued by the commission to irrigation districts for reclamation purposes under the irrigation district laws of this state, or to municipal corporations for municipal uses or purposes, are not subject to cancellation under the provisions of ORS 537.410 to 537.450. [Amended by 1985 c 673 §41]

537.420 Notice of hearing; affidavits; service. (1) Whenever it appears to the Water Resources Commission that there are permits in the Water Resources Department, the owners or holders of which have failed or neglected to comply with the laws of the state and the requirements of the permits as to commencing or prosecuting work with due diligence, or completion of the work of construction, or the application of the water for a beneficial use, and the commission has reason to believe that any such permit is subject to cancellation as provided in ORS 537.410 to 537.450, the commission may, not less than 30 nor more than 60 days prior to the hearing provided for in ORS 537.445, notify by registered mail each person having any claim or interest in the permit sought to be canceled, who appears from the records in the Water Resources Department to have such claim or interest. The notice shall require the holder of the permit to appear before the commission at the time and place designated in the notice, to show cause why the permit described in the notice should not be canceled for the reasons therein specified, and shall contain a brief statement of the grounds for cancellation.

(2) Service of the notice shall be complete upon depositing it within the time required in a post office within the state as registered mail, plainly addressed to each permit holder named in the notice at the last-known post-office address of the permit holder, so far as the same can be ascertained, or as such post-office address is set forth in the permit sought to be canceled, or in any assignment of the same on record in the Water Resources Department.

(3) The commission shall also within the same period of time notify, by registered mail, each holder or owner of a permit having subsequent priority to the permit sought to be canceled, which notice shall designate the time and place of the hearing upon the permit sought to be canceled. Any such holder or owner of a permit having subsequent priority may, at least 10 days before the time designated in the notice for the hearing, file with the commission affidavits

in favor of cancellation with proof of service of a copy of each of the affidavits upon the holder of the permit sought to be canceled, or the attorney of the permit holder. Prior to the time fixed for the hearing, the holder of any permit sought to be canceled may file with the commission affidavits against cancellation of the permit, which affidavits shall be served upon any holder or owner of a permit having subsequent priority who has served and filed affidavits upon the holder or owner in favor of cancellation of the permit. The affidavits may be served either personally or by registered mail. Service shall be deemed complete when the affidavit has been deposited in a post office within the state as registered mail. [Amended by 1983 c.740 §212, 1985 c.673 §42]

537.430 [Repealed by 1971 c.734 §21]

537.440 Cancellation of permit; priorities of other permits. If the decision of the Water Resources Commission requires the cancellation of a permit, then the commission shall at once cancel, or have canceled, the permit. Thereafter the permit shall be of no further force or effect, and shall not be recognized or admitted as evidence of any right or interest in or to the waters covered by it in any proceeding in the courts or before other tribunals of the state. Permits having subsequent priority shall upon such cancellation have priority in the order of the filing of the applications upon which subsequent permits are based, as if the canceled permit, or the application upon which it was based, had never existed. [Amended by 1985 c 673 §43]

537.445 Hearing upon proposal to cancel permit or appropriation; cancellation suspended pending review. (1) If the Water Resources Commission proposes to cancel a permit or appropriation under ORS 537.410 to 537.450, opportunity for hearing shall be accorded as provided in ORS 183.310 to 183.550.

(2) If a petition for review of an order canceling a permit or appropriation is filed under ORS 536.075, the commission shall not cancel the permit or appropriation under ORS 537.440 until the petitioner's right of review is exhausted and the order is finally approved. [1971 c.734 §82, 1985 c 673 §44]

537.450 Rules for proof as to work and use of water under permits; noncompliance as evidence in cancellation proceedings. The Water Resources Commission may by rule provide that the owners of permits shall submit or furnish proofs of commencement of work, prosecution of work with due diligence, completion of work, and of the application of water to a beneficial use under the permits. Failure to comply with the commission's rules in respect to the proofs shall be considered prima facie evidence of failure to commence work, prosecute work with due diligence, complete work, or apply water to the beneficial use contemplated by the permit in proceedings under ORS 537.410 to 537.440 for the cancellation of permits. [Amended by 1985 c.673 §45]

CONSERVATION AND USE OF CONSERVED WATER

537.455 Definitions for ORS 537.455 to 537.500 and 540.510. As used in ORS 537.455 to 537.500 and 540.510:

(1) "Conservation" means the reduction of the amount of water consumed or irretrievably lost in the process of satisfying an existing beneficial use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.

(2) "Conserved water" means that amount of water, previously unavailable to subsequent appropriators, that results from conservation measures.

(3) "In stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.

(4) "Managed as stored water" means to protect water from diversion until the water has served its intended purpose.

(5) "Public use" includes but is not limited to:

(a) Recreation;

(b) Protection and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement;

(d) Navigation;

(e) Scenic attraction; or

(f) Any other similar or related use or use protected by the public trust. [1987 c 264 §1]

Note: 537 455 to 537.500 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

537.460 Legislative findings; policy. (1) The Legislative Assembly finds and declares that conservation and efficient utilization of water benefits all water users, provides water to satisfy current and future needs through reduction of consumptive waste, improves water quality by reducing contaminated return flow, prevents erosion and allows increased in-stream flow; and

(2) It is therefore declared to be the policy of the State of Oregon to:

(a) Aggressively promote conservation; and

(b) Encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water.

(3) As used in this section, "efficient utilization" means use without waste, upgrading of irrigation equipment to comply with modern practices within a reasonable time period or other methods used to meet both current and future water needs at the least cost. [1987 c.264 §2]

Note: See note under 537.455.

537.465 Conservation proposal; submission; contents. (1) Any person holding a water right certificate issued under ORS 537.250, 537.630 or 539.140 may submit a conservation proposal to the Water Resources Commission for approval.

(2) A conservation proposal submitted under subsection (1) of this section shall include:

(a) A description of the conservation measures the person proposes to implement;

(b) A statement of the amount of water the holder of the water right is currently using beneficially each year;

(c) The amount of conserved water the holder expects to result from implementation of the conservation measures; and

(d) Any other information the commission considers necessary to evaluate the effectiveness of the proposal.

(3) If a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the proposal, the person also must submit evidence that the district has approved the conservation proposal. [1987 c.264 §3]

Note: See note under 537.455.

537.470 Allocation of conserved water by commission; criteria; percentage to state. (1) Upon receipt of a conservation proposal under ORS 537.465, the Water Resources Commission shall review the proposal and allocate conserved water according to subsections (2) and (3) of this section and the rules and standards adopted by the commission under ORS 537.480.

(2) The commission shall allocate conserved water if the commission finds that the proposed conservation measure:

(a) Is feasible;

(b) Will produce conserved water;

(c) Can be effected without injury to existing water rights;

(d) Adequately mitigates any effects on other water users; and

(e) Will not adversely affect the public interest.

(3) In allocating conserved water, the commission shall allocate 25 percent of the conserved water to the state, unless the commission finds that more or less water should be allocated to the state under the criteria established by rule by the commission pursuant to ORS 537.480.

(4) The commission shall notify the applicant of its intended action under subsections (2) and (3) of this section. An applicant or anyone objecting to the application may request a contested case hearing before the commission. [1987 c.264 §4; 1989 c.62 §1]

Note: See note under 537.455.

537.475 Allocation of quantity of conserved water; request by water right holder; certificates showing changes in original water right. (1) Upon completion of the conservation measures proposed under ORS 537.465, the water right holder shall request the Water Resources Commission to determine the quantity of conserved water allocated to the state and to the water right holder according to the percentages established by the commission under ORS 537.470.

(2) Any person requesting the commission to allocate a quantity of conserved water under subsection (1) of this section must demonstrate:

(a) The amount of water consumed beneficially by the water right holder before implementation of the conservation measures;

(b) The amount of water the water right holder now requires for the same beneficial use after implementation of the conservation measures;

(c) The use the holder intends to put the portion of conserved water to which the holder is allocated; and

(d) That the use of the conserved water by the holder would not harm any other appropriator.

(3) After the commission completes the allocation of conserved water under subsection (1) of this section, the commission shall issue new certificates covering the changes in the original water right. A separate new certificate preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water right and a separate new certificate indicating the priority of rights as set forth in ORS 537.485 shall be issued to cover the right to the use of the conserved water. [1987 c.264 §5]

Note: See note under 537.455.

537.480 Rules; criteria for allocation and management. The Water Resources Commission shall adopt rules and standards necessary to carry out the provisions of ORS 537.455 to 537.500. The rules shall include at least the following:

(1) A procedure for managing the state's portion of conserved water as stored water.

(2) Criteria the commission shall consider in allocating more or less than 25 percent of conserved water to the state. Such criteria shall include, but need not be limited to:

(a) The source of funds used for implementing the conservation measure;

(b) The amount of conserved water to be managed as stored water as necessary to satisfy identified in-stream needs as determined by the commission;

(c) Whether or not the water right is located in a critical ground water area; and

(d) Any pertinent provisions of the applicable basin plan.

(3) Criteria for determining how the state manages the portion of conserved water allocated to the state.

(4) Criteria for determining the stream reach within which conserved water must be managed as stored water.

(5) The procedure for allocating percentages of conserved water under ORS 537.470.

(6) The procedure for determining quantities of conserved water under ORS 537.475. [1987 c.264 §6]

Note: See note under 537.455.

537.485 Priority of right to use conserved water. Notwithstanding any other provision of ORS chapter 536, 537, 538, 539, 540, 541, 542 or 543, the priority of any right to the use of conserved water under a proposal submitted and approved by the Water Resources Commission under ORS 537.465 and 537.470 shall be one minute after the priority of the water right held by the person implementing the conservation measures. [1987 c.264 §7]

Note: See note under 537.455.

537.490 Use of conserved water; notice of dispensation of right to use. (1) Any person or agency allocated conserved water under ORS 537.475 may reserve the water in stream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the commission of the dispensation of the right to the use of conserved water. The notice shall include:

(a) The name and address of the person buying or leasing the right to the use of conserved water;

(b) The use to which the conserved water is to be put; and

(c) The terms of any agreement between the appropriator and the person using the conserved water.

(2) Notwithstanding any other provision of law, a person who holds a water right permit or certificate having a subsequent priority to a certificate issued under ORS 537.475 may not acquire a vested right to any water or return flow of water that results from either the lease of the right to the use of conserved water or the reservation of conserved water in stream for future use under subsection (1) of this section.

(3) Any right to the use of conserved water sold under subsection (1) of this section:

(a) Shall become appurtenant to the premises upon which the purchaser uses the water; and

(b) Shall be subject to the provisions of ORS 540.510 to 540.539 and 540.610 to 540.650.

(4) When the commission receives notice of the sale of the right to the use of conserved water under subsection (1) of this section, the commission shall issue to the purchaser a new water right certificate covering the right to the use of conserved water that was sold. The certificate shall indicate the priority of the water right according to the provisions of ORS 537.485. [1987 c.264 §8]

Note: See note under 537.455.

537.495 Receipt by state agency or political subdivision of right to use conserved water. Any agency or political subdivision of this state may purchase a right to the use of conserved water, as defined under ORS 537.455, or accept a gift of a right to the use of conserved water as defined under ORS 537.455. If an agency or political subdivision requests that the conserved water remain in the stream, the commission shall manage the conserved water in a manner that results in the conserved water remaining in the stream. [1987 c.264 §9]

Note: See note under 537.455.

537.500 Legal status of conserved water right. (1) A water right for conserved water under ORS 537.455 to 537.500 and 540.510 shall have the same legal status as any other water right for which a certificate has been issued.

(2) A water right for conserved water that is reserved in stream for future out-of-stream use under ORS 537.490 or that the commission manages under ORS 537.495 is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 or to abandon-

ment or forfeiture under ORS 540.610 to 540.650. [1987 c.264 §10; 1989 c.699 §3]

Note: See note under 537.455.

APPROPRIATION OF UNDERGROUND WATERS (GROUND WATER ACT OF 1955)

(Generally)

537.505 Short title. ORS 537.505 to 537.795 shall be known as the "Ground Water Act of 1955." [1955 c.708 §1; 1963 c.293 §1]

537.510 [Repealed by 1955 c.708 §38]

537.515 Definitions for ORS 537.505 to 537.795. As used in ORS 537.505 to 537.795, unless the context requires otherwise:

(1) "Altering" a well means the deepening, recasing, perforating, reperforating, the installation of packers or seals and other material changes in the design of the well.

(2) "Constructing" a well includes boring, digging, drilling or excavating and installing casing or well screens.

(3) "Geothermal fluid" means any ground water used for its thermal characteristics that is encountered in a well with a bottom hole temperature of less than 250 degrees Fahrenheit or any other fluid that is circulated within a well with a bottom hole temperature of less than 250 degrees Fahrenheit and used for its acquired thermal characteristics.

(4) "Ground water" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(5) "Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(6) "Pollution" of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(7) "Public agency" means the United States or any agency thereof, the State of Oregon or any agency thereof or any county, city, district organized for public purposes or other public corporation or political subdivision of this state.

(8) "Spring" means a point where water emerges naturally from the earth as a result of gravity flow or artesian pressure.

(9) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn. "Well" does not include a natural spring or a natural spring that has been altered by means other than those normally used in drilling wells, or wells drilled for the purpose of:

(a) Prospecting, exploration or production of oil or gas;

(b) Prospecting or exploration for geothermal resources, as defined in ORS 522.005; or

(c) Production of geothermal resources, as defined in ORS 522.005, derived from a depth of greater than 2,000 feet; or

(d) Exploration for minerals as defined in ORS 517.750 and 517.910.

(10) "Well drilling machine" means any power driven percussion, rotary, boring, digging or augering machine used in the construction of water wells. [1959 c.708 §3; 1961 c.334 §6; 1975 c.552 §35; 1989 c.201 §1; 1989 c.939 §1]

537.520 [Repealed by 1955 c.708 §38]

537.525 Policy. The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, alteration of ground water temperatures that may adversely affect priorities or impair the long-term stability of the thermal properties of the ground water, interference among wells, thermal interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the Water Resources Commission and the ground water users concerned whenever possible, but by the commission under the police power of the state except as specified in ORS 537.796, when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section.

(11) All activities in the state that affect the quality or quantity of ground water shall be consistent with the goal set forth in ORS 468.692. [1955 c.708 §2; 1985 c.673 §46; 1989 c.201 §2, 1989 c.833 §56]

537.530 [Repealed by 1955 c.708 §38]

537.535 Unlawful use or appropriation of ground water, including well construction and operation. (1) No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795.

(2) Except for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water. [1955 c.708 §4; 1957 c.341 §5; subsection (2) enacted as 1961 c.668 §2; 1985 c.673 §47]

537.540 [Repealed by 1955 c.708 §38]

537.545 Exempt uses. (1) Except as provided in subsection (4) of this section, no registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 is required for the use of ground water for:

(a) Stockwatering purposes;

(b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;

(c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;

(d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;

(e) Down-hole heat exchange purposes; or

(f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.

(2) The use of ground water for a use exempt under subsection (1) of this section, to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. The Water Resources Commission may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof.

(3) If it is necessary for the Water Resources Department to regulate the use or distribution of ground water, including uses exempt under subsection (1) of this section, the department shall use as a priority date for the exempt uses the date indicated in the log for the well filed with the department under ORS 537.765 or other documentation provided by the well owner showing when water use began.

(4) After declaration of a ground water management area, any person intending to make a new use of ground water that is exempt under subsection (1) of this section shall apply for a ground water permit under ORS 537.505 to 537.795 to use the water. Any person applying for a permit for an otherwise exempt use shall not be required to pay a fee for the permit. [1955 c.708 §5; 1983 c.372 §1; 1983 c.698 §1; 1985 c.673 §48; 1989 c.99 §1, 1989 c.833 §57]

537.550 [Repealed by 1955 c.708 §38]

537.560 [Repealed by 1955 c.708 §38]

537.570 [Repealed by 1955 c.708 §38]

537.575 Permits granted, approved or pending under former law. Any permit granted or application for a permit approved under ORS 537.510, 537.520, 537.530, 537.540,

537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to and still valid and in effect on August 3, 1955, is considered to be a permit issued under ORS 537.625. Any application for a permit under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to, pending and not yet approved on August 3, 1955, shall be governed as an application for a permit under ORS 537.615 to 537.625. [1955 c.708 §6(1)]

537.580 [Repealed by 1955 c.708 §38]

537.585 Beneficial use of ground water prior to August 3, 1955, recognized as right to appropriate water when registered. Except as otherwise provided in ORS 537.545 or 537.575 or 537.595 and subject to determination under ORS 537.670 to 537.695, actual and lawful application of ground water to beneficial use prior to August 3, 1955, by or under the authority of any person or public agency or by or under the authority of a predecessor in interest of such person or public agency, when registered under ORS 537.605 and 537.610, is recognized as a right to appropriate ground water to the extent of the maximum beneficial use thereof at any time within two years prior to August 3, 1955. [1955 c.708 §6(2)]

537.590 [Repealed by 1955 c 708 §38]

537.595 Construction or alteration of well commenced prior to August 3, 1955, recognized as right to appropriate water when registered. Except as otherwise provided in ORS 537.545 or 537.575 or 537.585 and subject to determination under ORS 537.670 to 537.695, when any person or public agency on August 3, 1955, is lawfully engaged in good faith in such construction, alteration or extension of a well for the application of ground water to beneficial use, the right to appropriate such ground water, upon completion of such construction, alteration or extension and application of the ground water to beneficial use within a reasonable time fixed by the Water Resources Commission, when registered under ORS 537.605 and 537.610, is recognized to the extent of the beneficial use of the ground water. [1955 c.708 §6(3); 1985 c 673 §49]

537.597 Application for certificate of registration for right to use seepage or spring water; statement; fee. (1) Any person claiming a preexisting right to use of seepage or spring water under ORS 537.800 (2) may file a request for a certificate of registration as evidence of that right.

(2) Any person claiming a preexisting right to use of seepage or spring water under ORS 537.800 (2) shall file a request for a certificate of registration as evidence of that right within a reasonable time as established by the commission if the seepage or spring water crosses the property boundary of the person claiming the right, and before subdividing or partitioning the property upon which the seepage or spring arises. Failure of a person to apply for a certificate of registration after such spring or seepage water crosses the boundary or before subdividing or partitioning creates a presumption that any claim to the use of spring or seepage water has been abandoned.

(3) Each person requesting a certificate of registration shall file under oath a registration statement in the form prescribed by the commission. The registration statement shall contain:

(a) The name and address of the registrant.

(b) The nature of the use by the registrant of the seepage of spring water upon which the claim is based.

(c) The date the seepage or spring water was first applied to beneficial use and a listing of the evidence the registrant intends to rely on to establish that date at the time of adjudication of the right.

(d) The amount of seepage or spring water claimed.

(e) If the water is used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision.

(f) The location of the seepage or spring described according to the standards and methods established by the Water Resources Commission.

(g) The rate of flow of the seepage or spring, estimated in the manner prescribed by the commission.

(h) If the seepage or spring water is supplemental to an existing water supply, identification of any application for a permit, permit, certification or adjudicated right to appropriate water made or held by the registrant.

(i) Any other information the commission requires.

(4) Each person requesting a certificate of registration shall pay an application fee. This fee shall be paid at the time the registration statement is filed and shall cover the costs of the Water Resources Commission and Water Resources Department associated with processing the application. The amount of the fee shall be established by rule by the Water Resources Commission. [1989 c.939 §4]

537.599 Issuance of certificate; rights granted by certificate. (1) The Water Resources Commission shall accept all registration statements referred to in ORS 537.597

that the commission finds to be complete, indorse the date of receipt on the registration statement, record the statement in the commission's records and issue to the registrant a certificate as evidence that the registration is completed.

(2) Upon issuance of the certificate of registration, the registrant is prima facie entitled to a right to appropriate the seepage or spring water and apply it to beneficial use to the extent and in the manner disclosed in the registration statement and the certificate.

(3) No certificate of registration issued under this section shall be construed as a final determination of any matter stated therein. The right of the registrant to appropriate seepage or spring water under a certificate of registration is subject to determination under ORS 537.670 to 537.695 or ORS chapter 539, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate seepage or spring water under a certificate of registration has a tentative priority from the date when the construction of the well was begun. [1989 c 939 §5]

537.600 [Repealed by 1955 c 708 §38]

537.605 Registration of right to appropriate ground water claimed under ORS 537.585 or 537.595; registration statement. (1) Any person or public agency claiming any right to appropriate ground water under ORS 537.585 or 537.595, except for any purpose exempt under ORS 537.545, is entitled to receive from the Water Resources Commission within three years after August 3, 1955, a certificate of registration as evidence of a right to appropriate ground water as provided in ORS 537.585 or 537.595. Failure of such person or public agency to file a registration statement within such period creates a presumption that any such claim has been abandoned.

(2) Upon receipt of a request for registration by any person or public agency referred to in subsection (1) of this section within the period specified, the commission shall provide such person or public agency with a separate registration statement for each well, which shall be completed and returned to the commission.

(3) Each registration statement shall be in a form prescribed by the commission, shall be under oath and shall contain:

(a) The name and post-office address of the registrant.

(b) The nature of the use by the registrant of the ground water upon which the claim of the registrant is based.

(c) The dates when the ground water was or will be first applied to beneficial use and the dates when construction of the well was begun and completed.

(d) The amount of ground water claimed.

(e) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision, the dates of reclamation of each such legal subdivision and the date when the ground water was or will be completely applied.

(f) The depth to the water table.

(g) The location of the well with reference to government survey corners or monuments or corners of recorded plats.

(h) The depth, diameter and type of the well, and the kind and amount of the casing.

(i) The capacity of the well and well pump in gallons per minute, and the horsepower of the well pump motor.

(j) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the commission may prescribe.

(k) The amount of ground water pumped or otherwise taken from the well each year.

(L) A copy of the log of the completed well, if such log is available.

(m) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certification or adjudicated right to appropriate water made or held by the registrant.

(n) Such other information as the commission considers necessary.

(4) Each registration statement shall be accompanied by maps, drawings and other data as the commission considers necessary.

(5) The commission may require that any registration statement be supplemented after any well is fully completed by a statement containing such additional information as the commission considers necessary.

(6) Any person or public agency who failed to file a registration statement within the period set forth in subsection (1) of this section may file within one year after May 29, 1961, a petition with the commission requesting that the person be given an opportunity to rebut the presumption that the person has abandoned the claim. Upon the filing of such a petition the commission may schedule a hearing to take testimony and evidence on the date of well construction and the use of ground water or the commission may accept sworn statements in writing in support of such petition. No petition shall be

denied without a public hearing. If it appears after hearing or from such sworn statements, that the person or public agency has a use of ground water that would be subject to determination under ORS 537.670 to 537.695 as defined in ORS 537.585 and 537.595, the commission shall issue an order authorizing the petitioner to file a registration statement as described under subsection (3) of this section. Upon receipt of the completed registration statement the commission shall issue to the registrant a certificate of registration, as provided in ORS 537.610. [1955 c 708 §7; 1957 c.341 §6; 1961 c 668 §3, 1985 c 673 §50]

537.610 Recording registration statement; issuing certificate of registration; effect of certificate. (1) The Water Resources Commission shall accept all registration statements referred to in ORS 537.605 completed and returned to the commission in proper form, indorse on the registration statement the date of the return and record each statement in a book kept for that purpose. Upon such recording the commission shall issue to the registrant a certificate as evidence that the registration is completed.

(2) Upon issuance of the certificate of registration the registrant is prima facie entitled to a right to appropriate the ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and the certificate of registration.

(3) No certificate of registration issued under this section shall be construed as a final determination of any matter stated therein. The right of the registrant to appropriate ground water under a certificate of registration is subject to determination under ORS 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate ground water under a certificate of registration has a tentative priority from the date when the construction of the well was begun. [1955 c.708 §8; 1985 c.673 §51]

537.615 Application for permit to acquire new right or enlarge an existing right to appropriate ground water. (1) Any person or public agency intending to acquire a wholly new right to appropriate ground water or to enlarge upon any existing right to appropriate ground water, except for any purpose exempt under ORS 537.545, shall apply to the Water Resources Commission for and be issued a permit before withdrawing or using the ground water.

(2) The application for a permit shall be in a form prescribed by the commission and shall contain:

(a) The name and post-office address of the applicant.

(b) The nature of the use by the applicant of the ground water for which the application is made.

(c) The dates of the beginning and completion of the construction of any well or other means of developing and securing the ground water.

(d) The date when the ground water will be completely applied to the proposed beneficial use.

(e) The amount of ground water claimed.

(f) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.

(g) The depth to the water table, if known.

(h) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.

(j) The estimated capacity of each well and each well pump in gallons per minute, and the horsepower of each well pump motor.

(k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the commission may prescribe.

(L) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant.

(m) Any other information as the commission considers necessary.

(3) Each application for a permit shall be accompanied by any maps and drawings the commission considers necessary.

(4) The map or maps required to accompany the application shall be prepared by a water right examiner certified under ORS 537.798. [1955 c.708 §9; 1959 c.437 §3; 1985 c.673 §54; 1987 c.542 §7]

Note: See note under 537.140.

537.620 Acceptance, recordation and approval of applications. (1) The Water Resources Commission shall accept all applications for permits submitted under ORS 537.615 in proper form, indorse thereon the date of receipt and record each application in a book kept for that purpose.

(2) If the application is found to be defective, the commission shall return the application to the applicant to remedy the defect. The date of and the reasons for the return shall be indorsed on the application

and the indorsement shall be made a record in the Water Resources Department. No application shall lose its priority of filing on account of any such defect, if an acceptable application is submitted to the commission within 30 days from the date of the return of the application to the applicant, or such further time, not exceeding one year, as may be allowed by the commission.

(3) When an application discloses the probability of wasteful use or undue interference with existing wells or that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water by others, or that any proposed use or well will impair or substantially interfere with existing rights to appropriate ground water for the beneficial use of the water for its thermal characteristics, the commission may impose conditions or limitations in the permit to prevent the same or reject the same after hearing, or, in the commission's discretion, initiate a proceeding for the determination of a critical ground water area under ORS 537.730 to 537.740.

(4)(a) When an application discloses the probability that a proposed use or well will impair or interfere with the ability to extract heat from a well with a bottom hole temperature of at least 250 degrees Fahrenheit, the commission may:

(A) Approve the permit;

(B) Impose conditions or limitations in the permit to prevent the probable interference or impairment;

(C) After a hearing, reject the application; or

(D) Initiate a proceeding for the determination of a critical ground water area under ORS 537.730 to 537.740.

(b) In deciding whether to issue, deny or condition a permit under this subsection, the commission shall consider any orders or permits applicable to the reservoir issued by the governing board or State Geologist of the State Department of Geology and Mineral Industries under ORS chapter 522.

(5) The Water Resources Commission may approve an application for less ground water than applied for or upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health. In any event the commission shall not approve the application for more ground water than is applied for or than can be applied to a beneficial use. No application shall be approved when the same will deprive those having prior rights of appropriation for a beneficial use of the amount of water to which they are lawfully entitled. [1955 c.708 §10, 1981 c.589 §4; 1985 c.673 §55; 1989 c.201 §3]

537.622 Protest against issuance of permit; hearing. (1) Any owner of or claimant to a right to appropriate surface or ground water may file, jointly or severally, with the Water Resources Commission at any time before the issuance of a permit to appropriate ground water under ORS 537.625, a protest against the issuance of the permit.

(2) Whenever, in the opinion of the commission, a hearing is necessary to determine whether the proposed use or well described in an application under ORS 537.615 will result in wasteful use of ground water or conflict with existing rights to appropriate surface or ground water the commission shall conduct the hearing as a contested case. [1957 c.341 §2; 1983 c.740 §213, 1985 c 673 §56]

537.625 Issuance of permit if application approved; contents of permit; effect; rejection of application. (1) The approval of an application submitted under ORS 537.615 shall be set forth in a ground water right permit issued by the Water Resources Commission. The permit shall specify the details of the authorized use and shall set forth all terms, limitations and conditions as the commission considers appropriate. A copy of the permit shall be filed as a public record in the Water Resources Department. The commission shall mail the permit to the applicant, and upon receipt of the permit the permittee may proceed to take all action required to apply the water to the designated beneficial use and to perfect the proposed appropriation.

(2) If an application referred to in ORS 537.615 is rejected, the commission shall enter a written order setting forth the reasons for the rejection and the applicant shall take no action towards construction of the works or use of the water. A copy of the order shall be mailed to the applicant.

(3) A right to appropriate ground water under a permit has a priority from the date when the application was filed with the commission. [1955 c.708 §11; 1959 c.437 §4; 1981 c.61 §3, 1985 c.673 §57]

537.630 Construction work under permit; certificate of completion; survey; ground water right certificate. (1) Actual construction of a well or other means of developing and securing the ground water shall begin not later than one year after the date of approval of the application for a permit under ORS 537.625. The construction shall be prosecuted with reasonable diligence and be completed within a reasonable time fixed in the permit by the Water Resources Commission, not to exceed five years after the date of approval of the application. The commission, for good cause shown, shall order and allow an extension of time, including an extension beyond the five-year period, for the

completion of the well or other means of developing and securing the ground water or for complete application of water to beneficial use.

(2) If the construction of any well or other means of developing and securing the ground water is completed after the date of approval of the application for a permit under ORS 537.625, within 30 days after the completion, or if the construction is completed before the date of approval, within 30 days after the date of approval, the permit holder shall file a certificate of completion with the commission, disclosing:

(a) The depth to the water table;

(b) The depth, diameter and type of each well, and the kind and amount of the casing;

(c) The capacity of the well pump in gallons per minute and the drawdown thereof; and

(d) Any other information the commission considers necessary.

(3) Upon completion of beneficial use necessary to secure the ground water as required under subsection (1) of this section, the permit holder shall hire a water right examiner certified under ORS 537.798 to survey the appropriation. Within one year after applying the water to beneficial use or the beneficial use date allowed in the permit, the permit holder shall submit the survey as required by the Water Resources Department to the commission along with the certificate of completion required under subsection (2) of this section.

(4) After the commission has received a certificate of completion and a copy of the survey as required by subsections (2) and (3) of this section that show, to the satisfaction of the commission, that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795, the commission shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certificate shall be recorded and transmitted to the applicant as provided in ORS 537.700.

(5) The procedure for cancellation of a permit shall be as provided in ORS 537.260. [1955 c.708 §12; 1959 c.437 §5; 1985 c.617 §2; 1985 c 673 §202; 1987 c 542 §8]

537.632 [1959 c.437 §2; 1961 c.334 §10; renumbered 537.762]

537.635 Assignment of certificate of registration or permit. Any certificate of registration issued under ORS 537.610 or permit issued under ORS 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but no such assignment shall be binding, except upon the parties to the assignment, unless filed for record in the Water Resources Department. [1955 c.708 §13; 1985 c 673 §59]

537.665 Investigation of ground water reservoirs; defining characteristics and assigning names and numbers. (1) Upon its own motion, or upon the request of another state agency or local government, the Water Resources Commission, within the limitations of available resources, shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The commission may make any investigation and gather all data and information essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water from each ground water reservoir.

(2) In identifying the characteristics of each ground water reservoir under subsection (1) of this section, the commission shall coordinate its activities with activities of the Department of Environmental Quality under ORS 468.699 in order that the final characterization may include an assessment of both ground water quality and ground water quantity.

(3) Before the commission makes a final determination of boundaries and depth of any ground water reservoir, the director shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695.

(4) The commission shall forward copies of all information acquired from an assessment conducted under this section to the central repository of information about Oregon's ground water resource established pursuant to ORS 536.125. [1955 c.708 §14; 1985 c.673 §60, 1989 c.833 §58]

537.670 Determination of rights to appropriate ground water of a ground water reservoir. (1) The Water Resources Director upon the motion of the director or, in the discretion of the director, upon receipt of a petition therefor by any one or more appropriators of ground water from such ground water reservoir, may proceed to make a final determination of the rights to appropriate the ground water of any ground water reservoir in this state.

(2) The director shall prepare a notice of intent to begin a determination referred to in subsection (1) of this section. The notice shall set forth a place and time when the director or the authorized assistant of the director shall begin the taking of testimony as to the rights of the various claimants to ap-

propriate the ground water of the ground water reservoir and as to the boundaries and depth thereof. A copy of the notice shall be delivered to each person or public agency known to the director from an examination of the records in the office of the director to be a claimant to a right to appropriate ground water of the ground water reservoir or any surface water within the area in which the ground water reservoir is located. The notice shall also be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in each county in which the ground water reservoir or any part thereof is located. If the ground water reservoir is located in whole or in part within the limits of any city, the notice shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and copies of the notice shall be delivered to the mayor or chairman of the governing body of the city. Copies of the notice shall be delivered and the last publication date of published notices shall be at least 30 days prior to the taking of any testimony.

(3) The director shall inclose with each copy of the notice referred to in subsection (2) of this section delivered to each person or public agency known to be a claimant to a right to appropriate ground water of the ground water reservoir a blank form on which such claimant shall present in writing all the particulars necessary for determination of the right of the claimant as may be prescribed by the director. The director may require each claimant to certify to the statements of the claimant under oath, and the director or the authorized assistant of the director may administer such oaths. [1955 c.708 §15]

537.675 Determination of rights in several reservoirs or of a critical ground water area in same proceeding. (1) Whenever the Water Resources Director has reason to believe that two or more ground water reservoirs overlie one another wholly or in part, the director may proceed to a final determination of the rights to appropriate the ground water of each of such ground water reservoirs in the same proceeding under ORS 537.670 to 537.695.

(2) The director may include in a determination proceeding under ORS 537.670 to 537.695 a determination of a critical ground water area under ORS 537.730 to 537.740. [1955 c.708 §16]

537.680 Taking testimony; inspecting evidence; contesting claim. Testimony shall be taken, evidence shall be open to inspection and claims shall be subject to contest in a proceeding to determine rights to appropriate the ground water of any ground water reservoir initiated under ORS 537.670 as nearly as possible in the same manner as provided in ORS 539.070, 539.090, 539.100 and 539.110 for the determination of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §17]

537.685 Findings of fact and order of determination. As soon as practicable after compilation of the evidence obtained in proceedings under ORS 537.665 to 537.680, the Water Resources Director shall make and cause to be entered of record in the office of the director findings of fact and an order of determination, determining and establishing the several rights to appropriate the ground water of the ground water reservoir. The findings of fact and order of determination shall also include:

(1) The boundaries and depth of each ground water reservoir.

(2) The lowest permissible water level in each ground water reservoir.

(3) The location, extent, quality and other pertinent characteristics of the ground water supply.

(4) The serviceable methods of withdrawal of the ground water from each ground water reservoir.

(5) Rules for controlling the use of the ground water from each ground water reservoir.

(6) Such general or special rules or restrictions with respect to the construction, operation and protection of wells and the withdrawal of ground water thereby as in the judgment of the director the public welfare, health and safety may require.

(7) The name and post-office address of each claimant.

(8) The nature of the use of the ground water allowed for each well, together with the maximum permissible use of the ground water, the place of use of the ground water and the date of priority of each use.

(9) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision.

(10) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(11) The depth, diameter and type of each well, the kind and amount of the casing, the capacity of each well in gallons per minute and such other information concerning each well as in the opinion of the director may be pertinent. [1955 c.708 §18]

537.690 Filing evidence, findings and determinations; court proceedings. The evidence relied upon by the Water Resources Director in the entry of the findings of fact and order of determination under ORS 537.685, together with a copy of such findings and order, shall be certified to by the director and filed with the clerk of the circuit court wherein the determination is to be heard, which shall be the circuit court of any county in which the ground water reservoir or any part thereof is located. A certified copy of the findings of fact and the order of determination shall also be filed with the county clerk of every other county in which the ground water reservoir or any part thereof is located. Thereafter, proceedings shall be had as nearly as possible in the same manner as provided in ORS 539.130 (2), (3) and (4), 539.150, 539.160, 539.170, 539.180, 539.190 and 539.210 for the final adjudication of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §19]

537.695 Conclusive adjudication. The determination of the Water Resources Director under ORS 537.685, as confirmed or modified by the circuit court or Supreme Court, shall be a conclusive adjudication as to all claimants of rights to appropriate the ground water of each ground water reservoir included within the order of determination. [1955 c 708 §20]

537.700 Issuing ground water right certificate. Upon the final determination under ORS 537.670 to 537.695 of the rights to appropriate the ground water of any ground water reservoir, the Water Resources Director shall issue to each person or public agency represented in the determination proceedings and who is determined to have such a right a ground water right certificate, setting forth the name and post-office address of the owner of the right; the priority of the date, extent and purpose of the right; and, if the ground water is for irrigation purposes, a description of the legal subdivisions of land to which the ground water is appurtenant. [1955 c.708 §21, 1957 c 341 §7; 1969 c.629 §2, 1971 c.621 §36; 1975 c.607 §39, 1979 c.67 §1]

537.705 Ground water appurtenant; change in use, place of use or point of appropriation. All ground water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any ground water for any purpose may be made without compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530. However, the owner of any ground water right may, upon compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530, change the use and place of use, the point of appropriation or the use theretofore made of the ground water in all cases without losing priority of the right theretofore established. [1955 c.708 §22]

537.710 [Renumbered 537.800]

537.715 [1955 c.708 §23, repealed by 1957 c.341 §12]

537.720 Violation of terms of law or permit or certificate; action by Water Resources Commission. Whenever, after notice to and opportunity to be heard by such holder, the Water Resources Commission finds that the holder of any permit or certificate of registration issued under ORS 537.505 to 537.795 is wilfully violating any provision of the permit or certificate of registration or any provision of ORS 537.505 to 537.795, the commission may cancel or suspend the permit or certificate of registration or impose conditions on the future use thereof to prevent such violation. [1955 c.708 §24; 1985 c 673 §61]

537.730 Initiation of proceeding for determination of critical ground water area; hearing. (1) In addition to initiation under ORS 537.620 (3) and (4) of a proceeding for the determination of a critical ground water area, the Water Resources Commission upon the commission's own motion or, in the commission's discretion, upon receipt of a petition therefor from the State Geologist of the State Department of Geology and Mineral Industries or any ground water claimant or appropriator within the area in question, may also initiate such a proceeding if the commission has reason to believe that:

(a) Ground water levels in the area in question are declining or have declined excessively;

(b) The wells of two or more ground water claimants or appropriators within the area in question interfere substantially with one another;

(c) The wells of ground water claimants or appropriators within the area in question interfere or are likely to interfere with the production of geothermal resources from an area regulated under ORS chapter 522 or the production of geothermal resources from an area regulated under ORS chapter 522 interferes or is likely to interfere with an existing ground water appropriation;

(d) The well of a ground water claimant or appropriator within the area in question interferes with, or is about to interfere, with:

(A) An appropriator of surface water whose water right has an earlier priority date; or

(B) A restriction imposed on surface water appropriation or a minimum perennial stream flow that has an effective date earlier

than the priority date of the ground water appropriation;

(e) The available ground water supply in the area in question is being or is about to be overdrawn;

(f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or

(g) Ground water temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(2) The commission shall hold a public hearing on the question of the determination of a critical ground water area. Written notice of the hearing shall be given to each water well contractor and each well drilling machine operator licensed under ORS 537.747 whose address, as shown on the license, is within any county in which any part of the area in question is located, and to each person or public agency known to the commission from an examination of the records in the Water Resources Department to be a claimant or appropriator of ground water in the area in question. Notice of the hearing shall also be published in at least one issue each week for at least two consecutive weeks in at least one newspaper of general circulation in the area in question. If the area in question is located in whole or in part within the limits of any city, notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and written notice of the hearing shall be given to the mayor or chairperson of the governing body of the city. Written notices shall be given and the last publication date of published notices shall be at least 30 days prior to the hearing.

(3) Oral and documentary evidence may be taken at the public hearing. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair and orderly proceeding and to permit all relevant evidence to be received. [1955 c.708 §26; 1957 c.341 §8; 1981 c.589 §5, 1985 c 673 §62, 1987 c.442 §1, 1989 c.201 §4]

537.735 Order declaring critical ground water area; contents of order. (1) If, at the conclusion of the public hearing held under ORS 537.730, the Water Resources Commission finds that any of the circumstances set forth in ORS 537.620 (3) and (4) if the proceeding is initiated thereunder, or in ORS 537.730 (1) if the proceeding is initiated thereunder, are true, and further finds that the public welfare, health and safety require that any one or more corrective controls be adopted, the commission shall by order declare the area in question to be a critical ground water area.

(2) The order of the commission shall define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.

(3) If the order is based completely or in part on actual or likely interference between ground water users and geothermal resources regulated under ORS chapter 522, the order shall demonstrate consideration of any orders or permits applicable to the reservoir issued by the governing board or State Geologist of the State Department of Geology and Mineral Industries under ORS chapter 522.

(4) The order of the commission may include any one or more of the following corrective control provisions:

(a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area.

(b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year, and, insofar as may be reasonably done, the commission shall apportion such permissible total withdrawal among the appropriators holding valid rights to the ground water in the critical area in accordance with the relative dates of priority of such rights.

(c) A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for residential and livestock watering purposes first. Thereafter the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer.

(d) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.

(e) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.

(f) A provision requiring the abatement, in whole or in part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.

(g) A provision requiring and specifying a system of rotation of use of ground water in the critical area.

(h) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795.

(i) A provision closing all or part of the critical ground water area to further appropriation of ground water for its thermal characteristics.

(j) A provision determining the permissible change in thermal characteristics of ground water in all or part of the critical ground water area each day, month or year. Insofar as may be reasonably done, the director shall apportion the permissible total temperature impact among those appropriators whose exercise of valid rights in the critical area affect the thermal characteristics of the ground water, in accordance with the relative dates of priority of such rights.

(5) As used in this section, "residential purposes" means:

(a) Single family residence use, including watering lawns or noncommercial gardens one-half acre or less in size, in an amount not to exceed 5,000 gallons per day; or

(b) Use by a dwelling owner or tenant who is billed by a municipality for water received at the dwelling. [1955 c.708 §27, 1981 c 589 §6; 1981 c.919 §1; 1985 c.673 §63; 1989 c 201 §5]

537.740 Filing findings of fact and order; copy to parties; changing order. (1) The Water Resources Commission shall file in the Water Resources Department the commission's findings of fact based upon the evidence and the commission's order based upon such findings made as provided in ORS 537.735. The commission shall deliver copies of such findings and order to all parties in the proceeding for the determination of a critical ground water area. The commission shall file a copy of the order with the county clerk of each county within which any part of the critical ground water area lies, and the county clerk shall record the order in the deed records of the county.

(2) The commission may suspend, modify or cancel any order made as provided in ORS 537.735 upon such notice and in the manner as the commission considers proper. A certified copy of each suspension, modification or cancellation shall be filed and recorded as provided for orders in subsection (1) of this section. [1955 c 708 §28, 1985 c 673 §64]

537.745 Voluntary agreements among ground water users from same reservoir. (1) In the administration of ORS 537.505 to 537.795, the Water Resources Commission may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir. When the commission finds that any such agreement, executed in writing and filed with the commission, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, the commission shall approve the agreement. Thereafter the agreement, until terminated as provided in this subsection, shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795. Any agreement approved by the commission may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the commission if the commission finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the commission may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the commission shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section. [1955 c.708 §31; 1985 c.673 §65]

(Water Well Constructors)

537.747 Water well constructor license; fees. (1) No person shall advertise services for construction or alteration of wa-

ter wells, offer to, or enter into a contract with another person or public agency to construct or alter a well for such other person or cause any well construction or alteration to be performed under such a contract or operate well drilling machinery without possessing a water well constructor's license therefor in good standing issued by the Water Resources Department.

(2) Notwithstanding subsection (1) of this section, a person may operate a well drilling machine without a water well constructor's license if supervised by one who possesses such a license.

(3) A person shall be qualified to receive a water well constructor's license if the person:

(a) Is at least 18 years of age.

(b) Has passed a written examination conducted by the department to determine fitness to operate as a water well constructor.

(c) Has paid a license fee and an examination fee according to the fee schedule set forth under subsection (6) of this section.

(d) Has one year or more experience in the operation of well drilling machinery.

(4) Upon fulfillment of all the requirements set out in subsection (3) of this section, the department shall issue the applicant a water well constructor's license in a form prescribed by the department. The license may be issued for a period of either one year or five years.

(5) A water well constructor's license shall expire on June 30. A license may be renewed by submitting an application and the appropriate fees any time before the license expires but not later than one year after the license expires. A person who renews a license within the 12 months after the license expires may either pay a penalty fee set forth under paragraph (d) of subsection (6) of this section or requalify for a water well constructor's license in accordance with subsection (3) of this section. If a person fails to renew a license within 12 months after expiration the person must comply with the requirements of subsection (3) of this section for a new water well constructor's license.

(6) The department shall collect in advance the following fees:

(a) An examination fee of $20.

(b) A license fee of $50 for a license issued for one year, or $200 for a license issued for a period of five years.

(c) A renewal fee of $50 for a one-year license renewed before the license expires or $200 for a five-year license renewed before the license expires.

(d) Unless a person requalifies for a water well constructor's license in accordance with subsection (3) of this section, a water well constructor shall pay a renewal fee of $100 for a one-year license if the license is renewed within 12 months after expiration or $250 for a five-year license if the license is renewed within 12 months after expiration.

(e) If a person requalifies for a water well constructor's license under subsection (3) of this section, the person shall pay the renewal fee established under paragraph (c) of this subsection.

(7) The department may revoke, suspend or refuse to renew any water well constructor's license when it appears to the satisfaction of the department, after notice and opportunity to be heard by the licensee, that the licensee has failed to comply with the provisions of ORS 537.505 to 537.795 applicable to such licensee or any order or rule adopted thereunder applicable to such licensee, or has made a material misstatement of fact on an application for a license or well log or established a pattern of conduct that wilfully or negligently violates any provision of ORS 537.505 to 537.795, or any rule adopted pursuant thereto, applicable to such licensee.

(8) The provisions of subsection (3) of this section requiring one year or more experience in the operation of well drilling machinery do not apply to any person who, on July 1, 1981, holds the license required by this section and who continues thereafter to maintain the license in good standing.

(9) The fees collected under subsection (6) of this section shall be paid into the Water Resources Department Operating Account to the credit of 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 water well constructor's licensing program. [1961 c.334 §2; 1971 c 591 §1, 1973 c.827 §58; 1981 c.416 §2; 1985 c 615 §2; 1985 c.673 §66, 1987 c.109 §1; 1989 c.758 §2]

537.750 Examination for license. (1) The written examination required under ORS 537.747 (3)(b) shall be prepared to test the applicant's knowledge and understanding of the following subjects:

(a) Laws of the state pertaining to the appropriation and use of ground water, the licensing requirements of ORS 537.747 to 537.765, the construction of wells and the preparation and filing of well logs.

(b) Rules of the Water Resources Commission pertaining to the appropriation and use of ground water, the construction of wells and the preparation and filing of well logs.

(c) Basic information on ground water geology, the occurrence and movement of ground water, and the design, construction and development of wells.

(d) Types, uses and maintenance of drilling tools and equipment, drilling problems and corrective procedures, repair of faulty wells, sealing of wells and safety rules and practices.

(2) Examinations shall be given during the months of January, April, July and October. The date, time and place of the examination are to be established by the commission. The examination shall be given only to those applicants who have met the requirement set out in ORS 537.747 (3)(a) and have paid the $20 examination fee. An applicant who fails to pass the examination by not attaining a grade of 70 or better may retake the examination after three months and the payment of another $20 examination fee. [1961 c.334 §3; 1981 c 416 §3, 1985 c.673 §67]

537.753 Bond; landowner's permit and bond. (1) Any person who contracts or offers services to contract for the construction or alteration of water wells shall have in effect a surety bond running to the State of Oregon in the sum of $4,000. The bond shall be filed with the Water Resources Commission in accordance with the following conditions: In the construction or alteration of wells, the principal shall comply with all the provisions of ORS 537.505 to 537.795 that are applicable to such construction or alteration and to the rules and standards of well construction, alteration and well abandonment that have been prescribed by the Water Resources Commission.

(2) The Water Resources Commission or any person injured by failure of a water well constructor to comply with the provisions of the bond has a right of action on the bond in the name of the injured person. However, the aggregate liability of the surety to all such persons shall in no event exceed the sum of the bond.

(3) In no event shall a proceeding against the bond under subsection (2) of this section be commenced unless the commission notifies the water well constructor of the alleged violation within three years after the date the water well report is filed with the commission.

(4) If a well is to be constructed or altered by a person on property owned by that person, by means of a well drilling machine, the person shall obtain a permit from the commission before beginning construction. Application for the permit shall be in the form prescribed by the commission and must be accompanied by a fee of $25. At the time the permit is obtained the applicant also shall file with the commission, a bond running to the State of Oregon in the sum of $2,000, insuring that in the construction or alteration of the well the landowner shall comply with all the provisions of ORS 537.505 to 537.795 that are applicable to the construction or alteration of wells and to the rules and standards of well construction, alteration, and well abandonment that have been prescribed by the commission. Before the person who constructs or alters a well referred to in this subsection seals the well, the person must give 10 days' written notice of the construction or alteration to the commission. After expiration of the notice period, the well may be sealed even if the commission has not caused the well to be inspected. [1961 c 334 §4; 1971 c.591 §2, 1981 c.416 §4; 1985 c.615 §1; 1985 c.673 §19B]

537.756 [1961 c 334 §7, 1971 c.591 §3; repealed by 1981 c 416 §10]

537.759 [1961 c.334 §8, repealed by 1981 c.416 §10]

537.762 Report of constructor before commencing construction; fees. (1) Each person required to possess a license under ORS 537.747 who has entered into a contract to construct, alter, abandon or convert a well or cause a well to be constructed, altered, abandoned or converted shall, before commencing the construction of the well, make a report to the Water Resources Commission containing:

(a) The name and post-office address of the owner of the proposed well.

(b) The approximate location of the proposed well.

(c) The proposed depth and diameter of the proposed well.

(d) The proposed purpose or use of the ground water from the proposed well.

(2) The commission shall furnish a convenient means for reports referred to in subsection (1) of this section to each person who possesses a license under ORS 537.747.

(3) A separate report shall be furnished under subsection (1) of this section for each well that is constructed, altered, abandoned or converted.

(4) The report furnished under subsection (1) of this section shall be confidential and maintained as such for one year or until the well log required under ORS 537.765 is received by the commission, whichever is earlier. Nothing in this subsection prohibits the commission from using the report for enforcement actions during the period the report is considered confidential.

(5) Each report form submitted under subsection (1) of this section for the construction of a new well or conversion of a well shall be accompanied by a fee of $75.

(6) The moneys paid to the department under subsection (5) of this section shall be paid into the Water Resources Department Operating Fund. All interest, if any, from moneys received under subsection (5) of this section shall inure to the benefit of the Water Resources Department. Such moneys and interest earned on such moneys are continuously appropriated to the department to be used to pay the costs of the Water Resources Department to employ personnel to inspect wells and well construction.

(7) As used in this section, "convert" means to change the use of an existing well or hole not previously used to withdraw water to be used to seek or withdraw water. [Formerly 537.632, 1981 c.416 §5; 1985 c.615 §7, 1985 c.673 §69; 1987 c.109 §2; 1989 c.129 §1]

537.763 Water Resources Department Operating Fund. (1) There is established in the State Treasury the Water Resources Department Operating Fund to provide for the payment of the administrative expenses of the Water Resources Commission in carrying out the provisions of ORS 537.762.

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

(a) Fees received pursuant to ORS 537.762.

(b) All moneys received on behalf of this account by gift, grant or appropriation, from whatever source.

(3) The fund established by this section shall be separate and distinct from the General Fund. All interest, if any, shall inure to the benefit of this fund. [1989 c.129 §4]

Note: 537.763 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

537.765 Log of new or altered wells; furnishing samples to Water Resources Commission. (1) The business or activity of constructing new wells or altering existing wells is declared to be a business or activity affecting the public welfare, health and safety. In order to enable the state to protect the welfare, health and safety of its citizens, any person licensed under ORS 537.747, person or public agency constructing or altering a well, shall keep a log of each well constructed or altered and shall furnish a certified copy of the log to the Water Resources Commission within 30 days after the completion of the construction or alteration.

(2) Each log required under subsection (1) of this section shall be in a form prescribed by the commission and shall show:

(a) The name and post-office address of the owner of the well and the person or public agency performing or causing the performance of the work of constructing or altering the well.

(b) The location of the well by section, township and range or with reference to government survey corners or monuments or corners of recorded plats.

(c) The dates of commencement and completion of the work of constructing or altering the well.

(d) The depth, diameter and type of the well.

(e) The kind and amount of the casing and where placed in the well, including the number and location of perforations or screens.

(f) The flow in cubic feet per second or gallons per minute of a flowing well, and the shut-in pressure in pounds per square inch.

(g) The static water level with reference to the land surface, and the drawdown with respect to the amount of water pumped per minute, when a pump test is made.

(h) The kind and nature of the material in each stratum penetrated, with at least one entry for each change of formation, and the thickness of aquifers.

(i) The temperature of the ground water encountered and other characteristics of the ground water in detail as required by the commission.

(3) If required by the commission, the person, public agency or licensee referred to in subsection (1) of this section shall furnish to the commission samples of the ground water and of each change of formation in containers furnished and transportation expense paid by the commission. [1955 c.708 §29; 1961 c.334 §11; 1981 c.416 §6; 1985 c.673 §70]

(Local Regulation)

537.769 Local regulation of wells and water well constructors. The Legislative Assembly finds that ground water protection is a matter of state-wide concern. No ordinance, order or regulation shall be adopted by a local government to regulate the inspection of wells, construction of wells or water well constructors subject to regulation by the Water Resources Commission or the Water Resources Department under ORS 537.747 to 537.795. [1989 c.129 §3]

537.770 [1955 c.708 §30; 1957 c.341 §9; repealed by 1961 c.334 §12]

(Regulation of Ground Water Wells)

537.772 Pump tests; report; rules for waiver. (1) The owner or operator of any well, except wells used for purposes listed in ORS 537.545, shall conduct a pump test at least once every 10 years and report the results of that test to the Water Resources

Commission. The owner or operator may conduct the test in conjunction with normal pump service and testing or at any time more convenient to the owner or operator of the well.

(2) The owner or operator shall report the results of the pump test on a form provided by the commission. The form shall include but need not be limited to the duration of the test, rate of pumping, total water level decrease and time required for 90 percent recovery of water level.

(3) The commission may establish by rule criteria for waiver of the pump test requirement. [1987 c.649 §5]

537.775 Wasteful or defective wells. (1) Whenever the Water Resources Commission finds that any well, including any well exempt under ORS 537.545, is by the nature of its construction, operation or otherwise causing wasteful use of ground water, is unduly interfering with other wells or surface water supply, is a threat to health, is polluting ground water or surface water supplies, is causing substantial alteration of ground water temperatures or is causing substantial thermal interference with other wells contrary to ORS 537.505 to 537.795, the commission may order discontinuance of the use of the well, impose conditions upon the use of such well to such extent as may be necessary to remedy the defect or order permanent abandonment of the well according to specifications of the commission.

(2) In the absence of a determination of a critical ground water area, any order issued under this section imposing conditions upon interfering wells shall provide to each party all water to which the party is entitled, in accordance with the date of priority of the water right. [1955 c.708 §25; 1981 c.919 §2, 1985 c.673 §71, 1987 c.442 §2; 1989 c.201 §6, 1989 c.833 §59]

537.777 Regulation of controlling works of wells and distribution of ground water. (1) The Water Resources Commission shall regulate or cause to be regulated the controlling works of wells and distribute ground water to secure compliance or equal and fair distribution if the commission finds that:

(a) Any person or public agency is using or attempting to use any ground water or is operating or permitting the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and any applicable order or rule of the commission under ORS 537.505 to 537.795; or

(b) It is necessary in order to secure the equal and fair distribution of ground water in accordance with the rights of the various ground water users.

(2) The regulation of controlling works and distribution of ground water under subsection (1) of this section shall be as nearly as possible in the same manner as provided in ORS 540.010 to 540.130. [1957 c.341 §4; 1985 c.673 §72]

537.780 Powers of Water Resources Commission. In the administration of ORS 537.505 to 537.795, the Water Resources Commission may:

(1) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(2) Enforce:

(a) General standards for the construction and maintenance of wells and their casings, fittings, valves, pumps and backsiphoning prevention devices; and

(b) Special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.

(3)(a) Adopt by rule and enforce when necessary to protect the ground water resource, standards for the construction, maintenance, abandonment or use of any hole through which ground water may be contaminated; or

(b) Enter into an agreement with, or advise, other state agencies that are responsible for holes other than wells through which ground water may be contaminated in order to protect the ground water resource from contamination.

(4) Enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.

(5) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps, measuring devices and backsiphoning prevention devices.

(6) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to the satisfaction of the commission that the determination of the action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

(7) Call upon and receive advice and assistance from the Environmental Quality Commission or any other public agency or any person, and enter into cooperative agreements with a public agency or person.

(8) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to

537.795 including but not limited to rules governing:

(a) The form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses;

(b) Procedure in hearings held by the commission; and

(c) The circumstances under which the helpers of persons operating well drilling machinery may be exempt from the requirement of direct supervision by a licensed water well constructor.

(9) In accordance with applicable law regarding search and seizure, apply to any court of competent jurisdiction for a warrant to seize any well drilling machine used in violation of ORS 537.747 or 537.753. [1955 c.708 §32; 1981 c.416 §7; 1985 c.673 §73, 1989 c.833 §60]

537.783 Reinjection of geothermal fluids; rules and standards; water pollution control facility permit. (1) The Water Resources Commission shall adopt rules which govern the disposal by reinjection or other means of geothermal fluids derived from:

(a) Geothermal or hot water wells less than 2,000 feet deep producing fluids of less than 250 degrees Fahrenheit bottom hole temperature; or

(b) Geothermal or hot water wells less than 2,000 feet deep producing fluids that have been appropriated pursuant to ORS 537.505 to 537.795.

(2) The rules adopted under subsection (1) of this section shall include standards whereby contamination may be determined, construction standards for reinjection wells, testing procedures for identifying aquifers, standards and procedures for determining whether adjacent aquifers are being degraded by the reinjection process, guidelines for conservation of the resource, criteria for evaluating reservoirs or zones for geothermal fluid disposal and requirements for prior approval of all geothermal fluid reinjection proposals.

(3) A water pollution control facilities permit shall be obtained from the Department of Environmental Quality under ORS 468.740 before reinjection is commenced. The Department of Environmental Quality may, by agreement with the Water Resources Commission, waive this requirement for reinjection into the reservoir from which the fluid came where adequate standards and tests have been adopted to insure the fluid and its residues are uncontaminated. [1979 c.547 §3; 1985 c.673 §74]

537.785 Fees. (1) In the administration of ORS 537.505 to 537.795, the Water Resources Commission shall collect in advance, the fees set forth in ORS 536.050 and 539.081 for any service similar to any of those referred to in ORS 536.050 or 539.081.

(2) All fees collected by the commission under subsection (1) of this section shall be paid into the General Fund of the State Treasury. [1955 c.708 §33; 1969 c.629 §1; 1979 c.67 §2; 1985 c.673 §75]

537.786 [1957 c.341 §3; repealed by 1969 c.629 §3]

537.787 Investigation of violation of ground water laws; remedies for violation. (1) The Water Resources Commission, upon the commission's own initiative, or upon complaint alleging violation of any provision of ORS 537.505 to 537.795, or any rule adopted pursuant thereto, may investigate to determine whether a violation has occurred. If the investigation indicates that a violation has occurred, the commission shall notify the persons responsible for the violation, including:

(a) Any well constructor involved; and

(b) The landowner, if the violation involves construction, alteration, operation or abandonment of a well.

(2) If, after notice and opportunity for hearing under ORS 183.310 to 183.550 the commission determines that one or more violations have occurred, the commission may:

(a) Provide additional time for remedy of the violation if the commission has reason to believe adequate repair or other remedy will be carried out within the specified period.

(b) If one or more persons responsible for the violation hold a water well constructor's license, suspend, revoke or refuse to renew the license.

(c) Assess a civil penalty under ORS 537.792, on the well constructor or other responsible party, including the landowner if the landowner was involved in the well construction.

(d) If an involved constructor or landowner has a surety bond required by ORS 537.753 (1) or (4) in effect, make demand on the bond in an amount not to exceed the cost of remedying the violation.

(e) Impose any reasonable condition on the water well constructor's license to insure compliance with applicable laws and provide protection to the ground water of the State of Oregon. Such action shall be conducted as a contested case proceeding according to the applicable provisions of ORS 183.310 to 183.550.

(f) Any other action authorized by law.

(3) The commission may terminate proceedings against a person if:

(a) The landowner does not permit the person involved in proceedings to be present at any inspection made by the commission; or

(b) The commission determines that the person involved in proceedings is capable of complying with recommendations made by the commission, but the landowner does not permit the person to comply with the recommendations. [1985 c.615 §5; 1985 c.673 §199]

537.790 [1955 c.708 §34; 1973 c.612 §15; repealed by 1985 c 673 §185]

537.792 Imposition of civil penalty; schedule of penalties; lien. (1) In addition to any other remedy provided by law, the Water Resources Commission may impose a civil penalty against any person who, in the construction of a well, violates any provision of ORS 537.747 to 537.795, or any rule promulgated pursuant thereto. A civil penalty may be imposed after notice and opportunity for hearing according to ORS 183.310 to 183.550, and shall be in an amount determined by the commission in accordance with the rules adopted under subsection (2) of this section. However, the commission shall not impose a civil penalty under this section if the commission, by exercising other authority granted under ORS 537.505 to 537.795, causes the person to comply with the provisions of ORS 537.747 to 537.795 or rules adopted thereunder.

(2) The commission shall adopt by rule a schedule of penalties for violation of ORS 537.747 to 537.795, not to exceed $1,000 for each occurrence defined in the rules as a major violation, and not to exceed $250 for each occurrence defined in the rules as a minor violation. Under no circumstances may a penalty for a violation of ORS 537.762 or 537.765 exceed $250.

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

(4) All amounts recovered under this section shall be deposited in the General Fund. [1985 c.615 §6; 1985 c.673 §200]

537.795 ORS 537.505 to 537.795 supplementary. ORS 537.505 to 537.795 are intended to be supplementary and in addition to and are not intended to repeal any law relating to the surface waters of this state. [1955 c.708 §35]

537.796 Rules regarding low temperature geothermal appropriations. The Water Resources Commission shall adopt by rule an initial temperature below which low temperature geothermal appropriations shall not be protected from thermal interference caused by ground water appropriations for other purposes. [1989 c.201 §§7, 8]

Note: 537.796 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

SURVEYORS AND ENGINEERS

537.797 Rules for certification of surveyors and engineers. The Water Resources Commission by rule shall establish criteria for the certification of registered, professional surveyors and engineers to conduct surveys to determine whether a permittee has completed all work necessary to perfect an appropriation of water under ORS 537.230, 537.630 and 540.530. [1987 c.542 §1; 1989 c.171 §70]

Note: 537.797, 537.798 and 537.799 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

537.798 Examination for certification of surveyors and engineers; fees; revocation. (1) In accordance with criteria established by the Water Resources Commission, the State Board of Engineering Examiners shall:

(a) Conduct examinations for certification of registered, professional surveyors and engineers to conduct surveys to determine whether or not a permittee has completed all work necessary to perfect an appropriation of water under ORS 537.230, 537.630 and 540.530.

(b) Issue certificates to any land surveyor or engineer qualifying for certification under paragraph (a) of this subsection.

(c) Collect fees for the examination and certification of water right examiners under this subsection.

(2) In accordance with the provisions of ORS 183.310 to 183.550 relating to contested cases, the State Board of Engineering Examiners may revoke, suspend or modify certificates issued under subsection (1) of this section.

(3) The State Board of Engineering Examiners shall establish fees for the examination, certification and renewal of certification of water right examiners. The fees shall be based upon the expenses of the board in conducting a program to certify

water right examiners and the expenses of the Water Resources Department in providing for examination of water right appropriations by water right examiners.

(4) The board shall pay into the State Treasury all moneys received as fees under subsection (1) of this section. The State Treasurer shall credit such money to the State Board of Engineering Examiners. The moneys are continuously appropriated to the board to be used by the board in conjunction with the Water Resources Department for any expenses incurred by the board and, if approved by the Governor, any expenses incurred by the Water Resources Department in the certification, examination and review of activities of water right examiners. [1987 c 542 §2]

Note: See note under 537.797.

537.799 Survey for issuance of water right certificate. Any person who has applied for or received a permit or a transfer to appropriate water under ORS 537.211, 537.625 or 540.530 on or before July 9, 1987, shall notify the Water Resources Department that the work has been completed and either:

(1) Hire a water right examiner certified under ORS 537.798 to conduct a survey, the original to be submitted as required by the Water Resources Department, for issuance of a water right certificate; or

(2) Continue to appropriate water under the water right permit or transfer issued under ORS 537.211, 537.625 or 540.530 until the Water Resources Department conducts a survey and the commission issues a water right certificate under ORS 537.250 or 537.625. [1987 c 542 §3]

Note: See note under 537 797.

WASTE, SPRING AND SEEPAGE WATERS

537.800 Waste, spring and seepage waters; laws governing. (1) All ditches now or hereafter constructed, for the purpose of utilizing waste, spring, or seepage waters, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the waters of running streams.

(2) A person upon whose lands the seepage or spring waters first arise who put those waters to beneficial use prior to January 1, 1991, shall have the right to the use of such waters and may apply for a certificate of registration evidencing that right in accordance with ORS 537.597.

(3) After January 1, 1991, any person who initiates use of seepage or spring waters that stay on the person's property or constructs or attempts to construct any means of developing and securing such seepage or spring waters may apply for a permit issued under ORS 537.625, whether or not the use would otherwise be exempt under ORS 537.545. Any person applying for a permit for the use of seepage or spring waters shall pay a permit fee required under ORS 536.050. [Formerly 537.710; 1989 c.939 §2]

537.801 Definitions; findings. (1) As used in ORS chapters 537 and 540:

(a) "Basin" means one of the river basins within this state, as defined by Water Resources Department Map No. 0.2, dated 1987, and entitled "Oregon Drainage Basins," unless the context requires otherwise.

(b) "Basin of origin" means the basin in which surface or ground water that is the subject of an application under ORS 537.211, 537.400, 537.620, 540.520, 543.210 or 543.290 is located.

(2) The Legislative Assembly finds that the transport of significant quantities of water outside the boundaries of the basin of origin may have a significant impact on the water and other resources of the basin of origin.

(3) Therefore, the Legislative Assembly declares that the waters of the state may not be appropriated, stored or diverted for use outside the basin of origin except in compliance with the provisions of ORS 537.801 to 537.860, including, if applicable, the prior approval of the Legislative Assembly under ORS 537.810. [1989 c.936 §§2, 3]

537.803 Application proposing use of water outside of basin of origin; contents. (1) When an application for appropriation of water submitted under ORS 537.211, 537.400, 537.620, 543.210, 543.290 or for a change in the place of use of an existing water right submitted under ORS 540.520 proposes use of water outside the basin of origin, the application shall include, in addition to any other information required, an analysis of the following:

(a) The amount of water in the basin of origin available for future appropriation.

(b) Projected future needs for water in the basin of origin.

(c) Benefits presently and prospectively derived from the return flow of water used within the basin of origin that will be eliminated by the proposed out-of-basin use.

(d) The correlation between surface water and ground water in the basin of origin, and whether the proposed use will be harmful to the supply of either.

(e) Injury to existing water rights of other appropriators or interference with planned uses or developments within the basin of origin for which a permit has been issued or for which an application is pending.

(f) Whether the proposed use will adversely affect the quantity or quality of water available for domestic or municipal use within the basin of origin.

(g) Whether the proposed use will adversely affect public uses, as defined in ORS 537.332, in the basin of origin.

(h) Alternative sources of water for the proposed use that would not rely on transfer of water out of its basin of origin.

(2) This section shall apply only to an application filed on and after October 3, 1989.

(3) This section shall not apply to an application for exchange of water under ORS 540.533 to 540.543.

(4) This section shall not apply to an application for the transfer of less than 0.5 cubic feet per second of water.

(5) Subsection (1) of this section shall not apply to an appropriation or diversion by a city to facilitate regional municipal water service if the city has historically transported water between the basin of origin and proposed receiving basins identified in the application. [1989 c.936 §4]

537.805 Processing of application; hearing; action on application. Notwithstanding any other provision of ORS 537.801 to 537.809, an application governed by ORS 537.803 shall be processed as follows:

(1) Upon determination that the application is acceptable, the Water Resources Commission shall conduct a comprehensive review of the application, at the applicant's expense.

(2) When the comprehensive review is complete, the commission shall issue a preliminary analysis of the application that addresses the factors under ORS 537.803 and any other information the commission considers relevant. The preliminary analysis, or a reasonable summary, shall be published at the applicant's expense for three consecutive weeks in a newspaper of general circulation in the basin of origin of the proposed appropriation, diversion or impoundment.

(3) Following publication, the commission shall conduct a public hearing at the applicant's expense, in the basin of origin. The hearing shall be for comment on the factors analyzed under ORS 537.803 and standards that otherwise apply to the proposed appropriation or transfer.

(4) After considering the application, the information generated during the comprehensive review of the application, all comments received at the hearing and written comments received within 20 days after the date of the public hearing, the commission shall:

(a) If the application requires legislative approval under ORS 537.810, submit a report to the Legislative Assembly that addresses all factors analyzed under ORS 537.803 and recommends whether to approve or deny the application for use of water outside the basin of origin; or

(b) If the application does not require legislative approval under ORS 537.810, approve or deny the application in accordance with the procedures and standards that otherwise govern the application, giving due consideration to factors set forth in ORS 537.803. [1989 c.936 §5]

537.807 Private matters between water user and property owner. Nothing in ORS 537.515, 537.597, 537.599, 537.800 and this section shall authorize construction, operation or maintenance activities on property not owned by the permittee. Any easement, right of access or right of way necessary to the intended use of water is a private matter between the water user and the property owner involved. [1989 c.939 §6]

Note: 537 807 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation. [1989 c 939 §6]

537.809 Reservation of water in basin of origin. Before approving or recommending approval of an application subject to ORS 537.803, the Water Resources Commission shall reserve an amount of water adequate for future needs in the basin of origin, including an amount sufficient to protect public uses, and subordinate the out-of-basin use to that reservation. [1989 c.936 §6]

DIVERSION OF WATERS FROM BASIN OF ORIGIN

537.810 Diversion or appropriation of waters from basin of origin without legislative consent prohibited; terms of consent; exceptions. (1) No waters located or arising within a basin shall be diverted, impounded or in any manner appropriated for diversion or use beyond the boundaries of that basin except upon the express consent of the Legislative Assembly. In the event the Legislative Assembly shall give its consent to any such request it may attach thereto such terms, conditions, exceptions, reservations, restrictions and provisions as it may care to make in the protection of the natural resources of the basin and the health and welfare of the present and future inhabitants of the basin within which the water arises or is located.

(2) Subsection (1) of this section shall not apply to appropriations or diversions of less than 50 cubic feet per second out of the basin of origin.

(3) Subsection (1) of this section shall not apply to appropriations or diversions within the Klamath River Basin as defined in ORS 542.620 or within the Goose Lake Basin as defined in ORS 542.520, so long as those statutes remain in effect.

(4) This section shall not apply to an appropriation or diversion by a city to facilitate regional municipal water service if the city has historically transported water between the basin of origin and proposed receiving basins identified in the application. [Amended by 1989 c.936 §7]

537.820 Application of provisions to waters forming common boundary between states. ORS 537.801 to 537.860 shall also apply to the waters located within the boundaries of this state of any river, stream, lake or other body of water serving as part of the common boundary of this state and any other state and over which this state has concurrent jurisdiction, except that said sections shall not apply to the diversion, impoundment or appropriation of waters for the development of hydroelectric energy, flood control, irrigation or other uses in waters forming a boundary of the state in cases where such waters are not to be diverted from the drainage basin wherein such waters are located.

537.830 Filing upon or condemnation of waters without legislative permission prohibited. No person, or agency of any state or of the United States, shall attempt to condemn any waters within the boundaries of this state for use outside the basin of origin without first complying with the requirements of ORS 537.801 to 537.810 and this section. [Amended by 1989 c.936 §8]

537.835 City of Walla Walla, Washington, may appropriate, impound and divert certain waters from Mill Creek. (1) Pursuant to the provisions of ORS 537.810, consent is hereby given to the City of Walla Walla, a municipal corporation of the State of Washington, to appropriate, impound and divert certain waters from Mill Creek, a tributary of the Walla Walla River, located in Township 6 North, Range 38, E.W.M., Umatilla County, Oregon, for the beneficial use of both the State of Oregon and within the City of Walla Walla, State of Washington, subject to the following terms and conditions:

(a) The City of Walla Walla shall pay the entire cost of constructing and maintaining this project; and

(b) The City of Walla Walla shall employ only residents and inhabitants of the State of Oregon in the construction and maintenance of the project.

(2) The Water Resources Commission may from time to time direct that a designated portion of the impounded waters shall be held in the State of Oregon for fire protection, for use by Oregon residents, for wildlife habitat needs, and to maintain proper stream flow during the summer months.

(3) Prior to commencing construction, the City of Walla Walla shall make application for such appropriation, impoundment and diversion to the Water Resources Commission and such appropriation, impoundment and diversion shall be allowed upon such additional terms, conditions, reservations, restrictions and provisions, including minimum stream flow, as the Water Resources Commission shall impose for the protection and benefit of the State of Oregon. [1975 c.732 §2; 1985 c.673 §76]

537.840 Legislative consent; filing of certified copy; appropriation rights and procedure. Upon receiving legislative permission to appropriate waters under ORS 537.801 to 537.860, the permittee, upon filing in the Water Resources Department a certified copy of the Act, certified to by the Secretary of State, may proceed to obtain an appropriation of waters in the manner provided by the laws of this state for the appropriation of waters for beneficial use, subject to all existing rights and valid prior appropriations and subject to the terms, conditions, exceptions, reservations, restrictions and provisions of such legislative consent. [Amended by 1985 c.673 §77]

537.850 Suits to protect state interests; right of redress to private persons. In the event of any violation or attempt to violate any of the provisions of ORS 537.801 to 537.860, the Governor shall cause to be instituted such suits and actions as may be necessary to protect and defend the sovereign rights and interests of the state in the premises. Persons are given right of redress against such violator at private suit or action under any appropriate remedy at law or in equity.

537.855 Domestic water supply district permitted to divert water out of state; conditions. (1) Pursuant to the provisions of ORS 537.810, consent is hereby given to any domestic water supply district formed under ORS chapter 264 to permit the diversion of water for use on property a portion of which is within a state adjoining Oregon, subject to the following conditions:

(a) The majority of the property is within Oregon.

(b) The property is developed with economic benefit to Oregon as well as to the

adjoining state, in the judgment of the domestic water supply district.

(c) The costs of the diversion are borne by the developer or owner of the property.

(d) The developer employs only residents of Oregon in the construction necessary for the diversion of water.

(2) The diversion of water under this section shall be subject to additional terms, conditions, reservations, restrictions and provisions as the Water Resources Commission shall impose for the protection and benefit of the State of Oregon. [1985 c.572 §2; 1987 c.158 §115]

537.860 Vested rights protected. ORS 537.810 to 537.850 shall not affect any valid prior appropriation or water right existing on May 12, 1951.

537.870 Out-of-state municipalities; acquisition of land and water rights in Oregon. Subject to the limitations imposed by ORS 537.801 to 537.860, any municipal corporation of any state adjoining Oregon may acquire title to any land or water right within Oregon, by purchase or condemnation, which lies within any watershed from which the municipal corporation obtains or desires to obtain its water supply.

PENALTIES

537.990 Penalties. (1) Violation of ORS 537.130 (2) is punishable, upon conviction, by a fine of not less than $10 nor more than $250, or by imprisonment in the county jail for not more than six months, or both.

(2) Any person who wilfully diverts or uses water to the detriment of others without compliance with law shall be punished as provided in subsection (1) of this section. The possession or use of water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it.

(3) Violation of ORS 537.535 (1) is punishable, upon conviction, by a fine of not less than $10 nor more than $250, or by imprisonment in the county jail for not more than six months, or both. Violation of ORS 537.747 is a Class B misdemeanor.

(4) Justice courts and district courts shall have concurrent jurisdiction with the circuit courts in the trial of all violations under this section. [Subsection (3) enacted as 1955 c.708 §36; 1963 c.293 §3; 1981 c.416 §8]