

Chapter 541

1989 EDITION

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

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**WATER COMPANIES ORGANIZED
UNDER 1891 ACT**

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

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

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

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

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

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

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

541.055 District liability for seepage and leakage from water or flood control works; limitation on commencement of action. (1) Any person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 that owns, operates or maintains any irrigation, drainage, water supply, water control or flood control works shall be liable for damage caused by seepage and leakage from such works only to the extent that such damage is directly and proximately caused by the negligence of the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 and not otherwise. Damage resulting from extraordinary and unforeseen action of the elements, or attributable in whole or in part to the wrongful interference of another person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 with the irrigation, drainage, water supply, water control or flood control works, which may not be known to the person or irrigation, drainage, water improvement or water control district organized

pursuant to ORS chapter 545, 547, 552, 553 or 554 for such length of time as would enable the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554 by the exercise of reasonable efforts to remedy the same, shall not be recovered against the person or irrigation, drainage, water improvement or water control district organized pursuant to ORS chapter 545, 547, 552, 553 or 554.

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

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

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

541.080 Suits involving water rights; parties; decree as to priorities. In any suit commenced for the protection of rights to water acquired under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to the suit, and the court may in one decree determine the relative priorities and rights of all parties to the suit. Any person claiming a right on the stream or source, not made a party to the suit, may become such on application to the court, when it is made to appear that the person is interested in the result, and may have the right of the person determined. The

court may at any stage, on its own motion, require any persons having or claiming rights to water on the stream or source, to be brought in and made parties, when it appears that a complete determination of the issue involved cannot be made without their presence.

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

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

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

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

APPROPRIATION OF WATER BY THE UNITED STATES

541.210 [Repealed by 1953 c 328 §2]

541.220 Survey of stream system; delivery of data to Attorney General; suits for determination of water rights. In any stream system where construction is contemplated by the United States under the Act of Congress approved June 17, 1902, 32 Stat. 388 to 390, and known as the Reclamation Act, the Water Resources Commission shall make a hydrographic survey of the stream system, and shall deliver an abstract thereof together with an abstract of all data necessary for the determination of all rights for the use of the waters of such system, to the Attorney General. The Attorney General, together with the district attorneys of the districts affected by the stream system shall, at the request of the Secretary of the Interior, enter suit on behalf of the State of Oregon, in the name of the state, for the determination of all rights for the use of the water, and shall diligently prosecute the same to a final adjudication. [Amended by 1985 c.673 §101]

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

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

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

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

541.310 Suits for determination of rights; parties; survey of stream; disbursements. In any suit wherein the state is a party, for determination of a right to the use of the waters of any stream system, all who claim the right to use the waters shall be made parties. When any such suit has been filed the court shall call upon the Water Resources Commission to make or furnish a complete hydrographic survey of the stream system as provided in ORS 541.220, in order to obtain all data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in the suit shall be taxed by the court as in other equity suits. [Amended by 1985 c 673 §102]

541.320 Decrees adjudicating rights; filing; statement as to matters adjudicated. Upon the adjudication of the rights to the use of the water of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the Water Resources Department. The decree shall declare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority. [Amended by 1985 c.673 §103]

DISTRICT WATER RIGHTS MAPPING

541.325 Definitions for ORS 541.327 to 541.333. As used in ORS 541.327 to 541.333:

(1) "District" means any district or corporation organized under ORS chapter 545, 552, 553 or 554 or any corporation, cooperative, company or other association formed before 1917 for the purpose of distributing water for irrigation purposes.

(2) "Owned" or "controlled" means ownership in fee, purchase on a land sale contract, option to purchase or lease.

(3) "User" means an owner of land with an appurtenant water right that is subject to assessment by a district and that would be altered by the petition and map filed under ORS 541.329. [1989 c.1000 §1]

Note: 541.325 was enacted into law by the Legislative Assembly but was not added to or made a part of

ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

541.327 Failure or refusal of district to act; joint applications. (1) If a district fails or refuses to act under ORS 541.329 and 541.331, the owner of land with an appurtenant water right within a district and subject to assessment by the district may transfer the use or place of use of the water right on or before July 1, 1992, pursuant to ORS 541.333. An owner transferring the use or place of use under this subsection shall comply with ORS 536.050.

(2) If the owners of land within a quarter quarter of a section in a district agree as to the use and place of use of all water rights in the quarter quarter of the section subject to assessment by the district, the owners may jointly submit an application, without the fees required under ORS 536.050, to the Water Resources Commission to conform the department's records to the present usage within the quarter quarter of a section. The application must be filed in accordance with ORS 541.333 on or before July 1, 1992. [1989 c.1000 §2]

Note: See note under 541.325.

541.329 Petition for approval of district map; contents; notice to users. (1) Pursuant to the requirements of subsection (2) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the location and use of the water rights within the district or any part thereof. The map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. In no event shall the petition and map expand a water right of the district or its users beyond the total right of record of the district. If the district has met the requirements of ORS 541.325 to 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct the director to issue a new certificate to the district listing the requested locations and uses and retaining the original priority date. If the commission denies the petition, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be under the provisions of ORS 183.310 to 183.550 pertaining to contested cases. The hearing shall be conducted in the area where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(2) The petition required under subsection (1) of this section shall be filed on or before July 1, 1992, and shall include:

(a) The name of the district and the certificate number of each water right contained in the petition.

(b) The names of all users within the district whose lands are included in the petition.

(c) A general description of the district boundaries.

(d) A general description of the users' land and the water right per each parcel affected by the petition and the map. If the water right is on a tract of land of five acres or less, a notation of the acres of water right on the assessor's tax map shall be sufficient for identification of the place of use and the extent of use.

(e) A description of the use which is proposed to be made of the water on each parcel.

(f) An affirmation by the petitioner that the map and petition are accurate to the best of the petitioner's knowledge.

(3) Before filing a petition under subsection (1) of this section, the district shall send a notice to the user of every parcel whose right of record is to be altered, as evidenced by the district's records. This notice shall be sent to the last-known address for the user with a return receipt requested. The notice shall include the number of acre-feet of water or its equivalent, for which the user is being assessed, a general description or tax lot of the land to which the water is assigned, a description of the use and a request for confirmation that the information in the notice is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as described in subsections (1) and (2) of this section. Payment for water by the user or the user's predecessor for a period of five years before the petition shall create a rebuttable presumption that the number of acres billed and paid by the user or the user's predecessor is equal to the user's water right.

(4) After the petition is filed, the district shall send notice to the users of the district whose right of record is to be altered by the petition. This notice shall be sent to the last-known address of the user with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the user is being assessed, a general description or tax lot number of the land to which the water is assigned and a description of the use. In addition, the district shall publish notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive;

(b) That the proposed map and petition are available for inspection at the office of the district during normal business hours for a period of 60 days from the date of first publication;

(c) That 60 days after the date of first publication, the petition and map shall be accepted by the commission unless a protest is filed or the petition does not meet the requirements of subsections (1) and (2) of this section; and

(d) That the user has the right to protest the petition and map as described in ORS 541.331. [1989 c.1000 §3]

Note: See note under 541.325.

541.331 Protest against approval of petition; hearing; issuance of water right certificate. (1) Any user may file with the Water Resources Commission, within 60 days after the date of first publication, under ORS 541.329, a protest against approval of the petition. Whenever a timely protest is filed or in the opinion of the commission a hearing is necessary to determine whether the district has met the requirements of ORS 541.325 to 541.333 or the proposed changes described in the petition would result in injury to existing water rights, the commission shall hold a hearing on the matter. The hearing shall be conducted according to the provisions of ORS 183.310 to 183.550 applicable to contested cases. The hearing shall be held in the area where the rights are located unless the parties and the persons who filed the protest under this section stipulate otherwise.

(2) If after examination or hearing, the commission finds that the petition and map have met the requirements of ORS 541.325 to 541.331 and that the proposed changes described in the petition would not result in injury to existing water rights, the commission shall issue an order approving the petition and map. If a water right certificate for the water right has been issued previously, the commission shall cancel the previous certificate and issue a new certificate that conforms to the petition and map and retains the original priority date.

(3) A certificate issued under this section shall have the evidentiary effect provided for in ORS 537.270 except when the right to appropriate water described in the certificate is abandoned after the certificate is issued. [1989 c.1000 §4]

Note: See note under 541.325.

541.333 Application for change of use; contents; form of map. (1) Whenever the owner of a water right for irrigation, domes-

tic use, stock water storage or other use, for any reason desires to change the place of use, the point of diversion or the use made of the water under ORS 541.327, an application shall be filed with the Water Resources Commission.

(2) The application required under subsection (1) of this section shall include:

(a) The name of the owner;

(b) The previous use of the water;

(c) A description of the premises upon which the water is used;

(d) A description of the premises upon which it is proposed to use the water;

(e) The use which is proposed to be made of the water;

(f) The reasons for making the proposed change;

(g) If the application is made under ORS 541.327 (1), evidence that the water has been used within the past five years upon lands owned or controlled by the owner of the water right;

(h) In the event the application is made pursuant to ORS 541.327 (2), evidence that the water has been used within the past five years in the quarter quarter of a section; and

(i) The approval of the district in which the water right is located.

(3) The description of the premises or mapping required under ORS 541.329 (2) shall not require a map prepared by a certified water right examiner, but shall be in a form satisfactory to the commission. If the water right is on a tract of land of five acres or less, the assessor's tax map with a notation of the acres of water right shall be sufficient for identification of the tract and place of use.

(4) A certificate issued under this section has the evidentiary effect provided for in ORS 537.270 except when the right to appropriate water described in the certificate is abandoned after the certificate is issued. [1989 c.1000 §5]

Note: See note under 541.325.

WATERSHED ENHANCEMENT

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

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

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

(3) "Division" means the Natural Resources Division created under ORS 561.400.

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

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

541.355 Policy. (1) The Legislative Assembly finds that:

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

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

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

(2) Therefore, the Legislative Assembly declares that:

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

(A) Enhance Oregon's waters through the management of riparian and associated upland areas of watersheds in order to improve water quality and quantity for all beneficial purposes as set forth in ORS 536.310.

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

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

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

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

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

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

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

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

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

(A) The Environmental Quality Commission;

(B) The State Fish and Wildlife Commission;

(C) The State Board of Forestry;

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

(E) The Water Resources Commission.

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

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

(B) The Director of Agriculture, or designee.

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

(A) A representative of the United States Forest Service.

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

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

(3) The board shall use state agency employees with relevant expertise to provide

staff support necessary for the board to carry out its duties and responsibilities under ORS 541.350 to 541.395. [1987 c.734 §3]

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

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

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

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

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

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

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

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

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

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

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

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

(2) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers

necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee. [1987 c.734 §6]

541.375 Watershed enhancement projects; application for funds or assistance; criteria for approval. (1) Any person, state agency, federal agency or political subdivision of this state may submit a request for funding for or for advice and assistance in developing a watershed enhancement project under the program established by the Governor's Watershed Enhancement Board under ORS 541.365.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the board. The requester may submit the request to the board or to a local soil and water conservation district organized under ORS 568.210 to 568.805.

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

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

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

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

(5) A watershed enhancement project proposal submitted to a district under this section shall not be subject to review and approval by the Natural Resources Division under ORS 561.400.

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

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

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

(c) Meet the criteria established by the board under ORS 541.380.

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

project that consists solely of construction of a storage structure for out-of-stream use.

(8) If the Governor's Watershed Enhancement Board approves a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license. [1987 c.734 §7; 1989 c.171 §71]

541.380 Rules. (1) In accordance with the applicable provisions of ORS 183.310 to 183.550, the Governor's Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

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

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

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

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

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

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

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

(c) The amount of funding that a local soil and water conservation district organized under ORS 568.210 to 568.805 can provide directly for a watershed enhancement project without prior approval of the board. [1987 c.734 §8]

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

541.390 Duties of Natural Resources Division. In addition to the duties conferred on the Natural Resources Division under ORS 561.400 and 568.210 to 568.805, the division shall:

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

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

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

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

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

541.395 State agency reports to be provided to board. In order to assist the Governor's Watershed Enhancement Board in developing and maintaining a centralized repository under ORS 541.370, the following agencies shall provide the board with a copy of any report produced by the agency that is related to enhancement or restoration of riparian areas or associated uplands:

(1) The Department of Environmental Quality.

(2) The State Department of Fish and Wildlife.

(3) The Water Resources Department.

(4) The State Forestry Department.

(5) The State Department of Agriculture.

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

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

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

SPLASH DAMS

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

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

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

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

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

RELEASE OF WATER FROM IMPOUNDMENT OR DIVERSION STRUCTURE

541.510 Authority of Water Resources Commission to require signs warning public of stream level fluctuation. (1) Whenever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination or upon evidence submitted by any person that the release of water from an impoundment or diversion structure constructed before or after May 26, 1959, endangers or may endanger the public safety, the commission shall send a written notice to the owner or operator of the structure.

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

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

(b) That the owner or operator of the structure shall within a time to be set by the commission post notices downstream from the structure at places of public access to the stream to be designated by the commission warning the public that the stream level below the structure is subject to fluctuation. [1959 c.624 §1, 1961 c.379 §9a; 1985 c.673 §104]

541.515 Notice by commission when hazard created by release of stored water. (1) Whenever it appears to the satisfaction of the Water Resources Commission, upon the commission's own determination or upon evidence submitted by any person that the present or proposed release of stored water from an impoundment or diversion structure, including any water power project, constructed before or after May 1, 1961, results in rapid increase in the stream level below the structure which creates or will create a hazard to human life or property, the commission shall cause written notice of such determination to be mailed to the owner or operator of the structure.

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

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

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

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

(d) That the owner or operator of the impoundment or diversion structure, within 15 days after the mailing of the notice, may request in writing that the commission hold a hearing on such unreasonable hazard or action required to minimize such unreasonable hazard, and that upon failure to request a hearing the commission shall make an order stating the terms, limitations and conditions of the action required to minimize such unreasonable hazard. [1961 c.379 §1; 1985 c.673 §105]

541.520 Procedure when owner or operator of structure fails to request hearing; order regulating release of water. If, within 15 days after the mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure fails to request in writing that the Water Resources Commission hold a hearing, the commission shall make and file in the Water Resources Department an order stating the terms, limitations and conditions relating to the release of water from the

structure necessary to minimize unreasonable hazard to human life or property as set forth in the notice. The order shall become effective upon filing a copy in the Water Resources Department. The commission shall cause a copy of the order to be mailed to the owner or operator of the structure. The order is not subject to appeal. [1961 c.379 §2; 1985 c.673 §106]

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

(2) At least 10 days prior to the hearing the commission, in addition to the notice requirements of ORS 183.310 to 183.550, shall cause a copy of the notice to be published in a newspaper of general circulation in each county in which the structure is located and in which unreasonable hazard to human life or property is or may be created. [1961 c.379 §3; 1971 c.734 §83; 1985 c.673 §107]

541.530 Order of commission regulating release of water. After the hearing provided for in ORS 541.525, if the Water Resources Commission determines that the release of stored water from the impoundment or diversion structure results or will result in rapid increase in the stream level below the structure and the increase creates or will create an unreasonable hazard to human life or property, the commission shall make and file in the offices of the Water Resources Department an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize the unreasonable hazard. In determining what constitutes unreasonable hazard and what terms, limitations and conditions are necessary to minimize it, the commission shall consider the likelihood of harm to the public, recreation benefits, power benefits, agriculture benefits, purpose of the structure, water flows, extent, nature and time of use by the public and all other material factors. [1961 c.379 §4; 1971 c.734 §84; 1985 c.673 §108]

541.535 Installation of automatic stream level recording devices. An order of the Water Resources Commission under

ORS 541.520 or 541.530 may require the owner or operator of an impoundment or diversion structure to install one or more automatic stream level recording devices satisfactory to the commission at one or more locations satisfactory to the commission. The cost of each such device and the installation and maintenance thereof shall be paid by the owner or operator of the structure. [1961 c.379 §5; 1985 c.673 §109]

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

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

(2) The owner, operator or person in immediate charge of the structure shall immediately notify the commission or the Water Resources Department of the situation.

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

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

(2) The commission may enforce any order made as provided in ORS 541.520 or 541.530, and may prosecute proceedings to enjoin violations of subsection (1) of this section. [1961 c.379 §§7, 8, 1985 c.673 §111]

541.550 [1987 c.855 §3; 1989 c.904 §69; renumbered 196.600 in 1989]

541.555 [1987 c.855 §2, renumbered 196.605 in 1989]

541.557 [1987 c.855 §7; renumbered 196.610 in 1989]

541.560 [1987 c.855 §8; renumbered 196.615 in 1989]

541.565 [1987 c.855 §9; renumbered 196.620 in 1989]

541.567 [1987 c.855 §10; renumbered 196.625 in 1989]

541.570 [1987 c.855 §12; renumbered 196.630 in 1989]

541.575 [1987 c.855 §13; renumbered 196.635 in 1989]

541.577 [1987 c.855 §4; 1989 c.966 §60, renumbered 196.640 in 1989]

541.580 [1987 c.855 §6; renumbered 196.645 in 1989]

541.585 [1987 c.855 §5; renumbered 196.650 in 1989]

541.587 [1987 c.855 §11; renumbered 196.655 in 1989]

541.590 [1987 c.855 §19; renumbered 196.660 in 1989]

541.595 [1987 c.855 §1a; renumbered 196.665 in 1989]

541.605 [1967 c.567 §2; 1971 c.509 §4; 1971 c.754 §1; 1973 c.330 §1; 1973 c.674 §1; 1977 c.417 §2; 1977 c.418 §1; 1979 c.564 §1; 1989 c.837 §4, renumbered 196.670 in 1989]

541.610 [1967 c.567 §1; 1971 c.754 §2; 1973 c.330 §2; 1973 c.674 §2; 1977 c.418 §2; 1979 c.564 §2; renumbered 196.675 in 1989]

541.615 [1967 c.567 §3; 1971 c.754 §3; 1989 c.837 §15; renumbered 196.680 in 1989]

541.620 [1967 c.567 §4; 1969 c.338 §4; 1971 c.754 §4; 1973 c.674 §3; 1977 c.418 §3; 1977 c.564 §6; 1989 c.1039 §1; renumbered 196.685 in 1989]

541.622 [1977 c.120 §2; 1987 c.160 §1; renumbered 196.690 in 1989]

541.625 [1967 c.567 §5; 1969 c.593 §49; 1971 c.754 §5; 1973 c.330 §3; 1973 c.674 §6; 1977 c.417 §1; 1979 c.200 §1; 1979 c.564 §3a; 1981 c.796 §1; 1987 c.70 §1; 1989 c.837 §16; 1989 c.904 §70, renumbered 196.695 in 1989]

541.626 [1979 c.564 §5; 1981 c.796 §2; 1983 c.827 §56; 1989 c.837 §5, renumbered 196.700 in 1989]

541.627 [1973 c.674 §5; 1979 c.564 §6, renumbered 196.705 in 1989]

541.630 [1967 c.567 §6; 1971 c.754 §6; 1973 c.330 §4; 1973 c.674 §7; 1981 c.796 §3, renumbered 196.710 in 1989]

541.635 [1967 c.567 §7; 1971 c.754 §7; renumbered 196.715 in 1989]

541.640 [1967 c.567 §8; 1971 c.754 §8; 1973 c.330 §5; 1973 c.674 §8; 1981 c.796 §4, repealed by 1989 c.837 §8 (196.718 enacted in lieu of 541.640)]

541.645 [1967 c.567 §9; 1971 c.754 §9; 1989 c.837 §17; renumbered 196.720 in 1989]

541.650 [1967 c.567 §10; 1971 c.754 §10; 1973 c.330 §6; 1973 c.674 §9; 1985 c.414 §1; 1989 c.837 §18; renumbered 196.725 in 1989]

541.655 [1967 c.567 §11; 1971 c.754 §11; 1973 c.330 §7; 1973 c.674 §10; 1985 c.414 §2, renumbered 196.730 in 1989]

541.660 [1967 c.567 §12; 1973 c.330 §8; 1973 c.674 §11; 1979 c.284 §166; 1985 c.414 §3; renumbered 196.735 in 1989]

541.662 [Enacted by 1973 c.330 §10 and 1973 c.674 §13; 1985 c.545 §7; renumbered 196.740 in 1989]

541.665 [1971 c.754 §14; renumbered 196.745 in 1989]

541.670 [1985 c.545 §6; 1987 c.855 §16; 1989 c.837 §22; renumbered 196.750 in 1989]

541.675 [1985 c.545 §3, renumbered 196.755 in 1989]

541.680 [1985 c.545 §4; renumbered 196.760 in 1989]

541.685 [1985 c.545 §5; renumbered 196.765 in 1989]

541.695 [1971 c.754 §12; 1977 c.417 §3; 1989 c.837 §19; renumbered 196.770 in 1989]

WATER DEVELOPMENT PROJECTS

(Definitions)

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

(1) "Commission" means the Water Resources Commission appointed under ORS 536.022.

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

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

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

(5)(a) "Secondary use" means:

(A) Any water-related recreational use.

(B) Any wildlife or natural resource conservation use.

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

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

(E) Any flood control use.

(F) Any power generation use.

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

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

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

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

(6) "Water development project" means:

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

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

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

(d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways and all other structures and facilities necessary or convenient for providing fish protection.

(e) An undertaking, in whole or in part, in this state for the purpose of watershed enhancement including methods and materials to restore, maintain and enhance the biological, chemical and physical integrity of the riparian zones and associated uplands of the state's rivers, lakes and estuaries systems and recommended by the Governor's Watershed Enhancement Board established under ORS 541.360.

(f) Secondary uses in conjunction with projects described in paragraphs (a) to (e) of this subsection.

(7) "Water developer" means:

(a) Any individual resident of this state;

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

(c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal income is from farming in Oregon;

(d) Any nonprofit corporation subject to the provisions of ORS chapter 61, whose principal income is from farming in Oregon;

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

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

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

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

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

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

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

(L) Any port district organized under ORS 777.005 to 777.725, 777.850 to 777.910, 777.915 to 777.953 and 777.990;

(m) Any city or county;

(n) Any organization formed for the purpose of distributing water for community water supply; or

(o) Any local soil and water conservation district organized under ORS 568.210 to 568.805. [1977 c.246 §1; 1981 c.166 §1; 1981 c.592 §1; 1985 c.673 §184; 1985 c.677 §65; 1987 c.94 §103; 1987 c.636 §§1, 5, 1989 c.1010 §177]

(Loan Applications)

541.703 Project applications; preference for approval. Of the applications filed under ORS 541.705 for assistance in constructing a water development project for municipal use, the commission shall give preference for approval to those projects required to be undertaken as a result of a proceeding under ORS 222.840 to 222.915 or 431.705 to 431.760 to alleviate conditions constituting a danger to public health. [1983 c.407 §13, 1985 c.673 §112]

541.705 Project applications; contents.

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

(2) In addition to other requirements prescribed by the commission, an application filed under subsection (1) of this section shall:

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

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

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

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

(e) Show that the applicant holds or can acquire all lands, other than public lands,

and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project. [1977 c.246 §2; 1981 c.592 §2; 1985 c.673 §113, 1987 c.636 §2]

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

- (a) Reject the application;
- (b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or
- (c) Make such revisions of the feasibility study as the commission considers necessary to make the plan satisfactory.

(2) Except as provided in subsection (3) of this section, the commission shall charge and collect from the applicant at the time the application is filed, a fee of \$100. In addition, the commission shall charge the applicant the amount required to reimburse the commission for costs that exceed the application fee incurred in connection with the application. Moneys referred to in this subsection shall be paid into the Water Development Administration and Bond Sinking Fund.

(3) The commission may establish by rule an application fee of less than \$100 for a water development project that is for fish protection or for watershed enhancement. [1977 c.246 §3; 1985 c.673 §114, 1987 c.636 §3]

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

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

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

(2) The plan for the construction, operation and maintenance of the proposed water development project is satisfactory and, if the primary purposes of the project include irrigation or drainage, the agricultural potential is confirmed;

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

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

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

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

(7) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project. [1977 c.246 §5; 1981 c.166 §2; 1981 c.592 §3; 1985 c.673 §115]

(Loan Contracts)

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

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

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

(a) Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon

not later than two years after the date of the loan contract or at such other time as the commission may provide;

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

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

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

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

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

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

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

(7) That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission. The commission may approve a loan assignment or transfer only if the commission finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700 (7) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state. [1977 c.246 §6; 1981 c.166 §3; 1985 c.673 §116]

541.735 Payment of funds by State Treasurer pursuant to loan contract. If the commission approves a loan for a water

development project or federal water development project, the State Treasurer shall pay moneys for such project from the Water Development Fund in accordance with the terms of the loan contract, as prescribed by the commission. [1977 c.246 §7; 1985 c.673 §117]

541.740 Liens and other loan security; foreclosure. (1)(a) When a loan is made to a water developer other than a water developer described in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property of the water developer or to the user charges, including interest, owed to or received by the water developer. At the discretion of the commission, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project.

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

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

(2) When a loan is made under ORS 541.700 to 541.855 to a water developer described in ORS 541.700 (7)(a), (b), (c) or (d), the loan shall be secured by a mortgage or security agreement in the full amount of the loan which mortgage or security agreement shall be a first lien upon such real property of the water developer as the commission shall require for adequate security.

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

(4) When a loan is made to a water developer under ORS 541.700 to 541.855, the commission shall file notice of the loan with

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

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

(6) The commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses incurred in foreclosing, into the Water Development Administration and Bond Sinking Fund. In a foreclosure proceeding, the commission may bid on property offered for sale in the proceeding and may acquire title to the property on behalf of the state.

(7) The commission may take any action, make any disbursement, hold any funds or institute any action or proceeding necessary to protect the state's interest.

(8) Notwithstanding ORS 293.240, the commission may compromise, release, discharge, waive, cancel or settle a claim against a water developer if such action:

(a) Is consistent with the purposes of ORS 541.700 to 541.855;

(b) Does not impair the ability to pay the administrative expenses of the commission or the obligations of any bonds outstanding; and

(c) Is, under the circumstances, the means most likely to preserve the claim or to recover the greatest part of the amount claimed.

(9) The commission, by rule, may set out procedures to be used when a water developer is unable to make required loan payments because of illness, injury, death, involuntary job loss or economic stress due to factors beyond individual control. The rules shall be effective to the extent permitted by the terms of the contracts associated with affected loans. The rules:

(a) May provide for a temporary reduction of loan payment;

(b) May provide for any other solution jointly agreed to by the water developer and the commission;

(c) Shall provide for repayment of the amount of any loan payments reduced under the rules in accordance with terms and conditions agreed upon by the borrower and the commission; and

(d) Shall require the commission to consider the effect of any payment reduction or delay on the solvency of the program as a whole, on estimates of the most probable financial position of the program in the future and on other borrowers in the program.

(10)(a) Upon application by a water developer, the commission may grant a partial release of security when the commission determines that granting the requested release will not jeopardize the water development loan program's security position.

(b) The remaining property must qualify as security for the loan balance under the applicable law.

(c) Notwithstanding compliance with paragraph (b) of this subsection, the commission may require that the loan balance be reduced as consideration for granting the requested release. [1977 c.246 §8; 1981 c.166 §4; 1985 c.673 §118; 1987 c.636 §4; 1989 c.950 §3]

541.741 Recovery of certain interest amounts. The Water Resources Commission shall not attempt to recover interest amounts credited or paid before January 1, 1986, to any water developer who borrowed moneys under ORS 541.700 to 541.855 and shall adjust the borrower's account balance as necessary to reflect those credits as lawful payments on the borrower's contractual obligations to the state. [1989 c.950 §2]

Note: 541.741 was added to and made a part of ORS 541.700 to 541.855 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

Note: Sections 7 and 8, chapter 950, Oregon Laws 1989, provide:

Sec. 7. (1) The Water Resources Department shall review and identify the amount in the loan account of each borrower with respect to.

(a) Reserve accounts;

(b) Borrowed unspent loan proceeds; and

(c) The amount, rounded off, to equal the nearest bond increment.

(2) Upon completion of the review and identification process described in subsection (1) of this section, the Water Resources Department shall make an estimate of the fiscal impact if all or part of such funds were credited to the borrowers account and submit a report of the review to the Legislative Fiscal Office on or before October 1, 1990. [1989 c.950 §7]

Sec. 8. Section 7 of this Act is repealed on January 1, 1991. [1989 c.950 §8]

541.745 Remedies of commission when water developer fails to comply with contract. If a water developer fails to comply with a contract entered into with the commission for construction and repayment as provided in ORS 541.730, the commission,

in addition to remedies provided in ORS 541.740, may seek other appropriate legal remedies to secure the loan and may contract with any other water developer as provided in ORS 541.730 for continuance of construction and for repayment of moneys from the Water Development Fund used to continue construction and interest on the moneys. [1977 c.246 §8, 1981 c.166 §4; 1985 c.673 §119]

541.750 Repayment of moneys to Water Development Administration and Bond Sinking Fund. Any water developer that enters into a contract with the commission for construction and repayment as provided in ORS 541.730 or 541.745 may obtain moneys for repayment to the Water Development Administration and Bond Sinking Fund under the contract in the same manner as other moneys are obtained for other authorized purposes. The commission may also provide by contract or otherwise, for the construction, operation and maintenance of a water development project until the project is assumed by such new water developer. Moneys in the Water Development Fund may be used for such construction, operation and maintenance, and if so used, shall be repaid to the Water Development Administration and Bond Sinking Fund by the contracting water developer. [1977 c.246 §10; 1985 c.673 §120]

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

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

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

541.760 Reduction of loan amount when secondary use funding available. If a water development project has any secondary use, and if the water developer receives from any source other than the Water Development Fund any funds to assist in the construction, operation or maintenance of such secondary use, the amount of the loan to the water developer from the Water Development Fund shall be limited to that amount necessary for the construction of

those portions of the project not funded by other sources. [1977 c.246 §15]

541.765 Loans for certain federal projects authorized; use of funds; amount limitation. In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855, the commission may authorize loans of such moneys to those persons to whom approval has been granted by the Congress of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission considers appropriate. Money so loaned shall be used only for the acquisition of easements and rights of way for federal water development projects, and shall be limited in amount to the market value of the interests to be acquired, as determined by such appraisers as the commission may appoint. The total amount of moneys loaned for federal water development project purposes shall not exceed \$5 million. [1977 c.246 §16; 1985 c.673 §121]

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

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

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

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

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

(5) That the commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in foreclosing, into the Water Development Administration and Bond Sinking Fund. [1977 c.246 §17; 1981 c.166 §5; 1985 c.673 §122]

(Bonds)

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

541.785 Disposition and use of bond proceeds. Except for the proceeds of refunding bonds, all moneys obtained from the sale of bonds under ORS 541.780 to 541.815 shall be credited by the State Treasurer to the Water Development Fund. Such moneys shall be used only for the purposes stated in Article XI-I (1), Oregon Constitution, and ORS 541.700, 541.705 to 541.770 and 541.835. If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments set forth in ORS 541.830, moneys in the Water Development Fund may be transferred to the Water Development Administration and Bond Sinking Fund. Pending the use of moneys in the Water Development Fund for the proper purposes, such moneys may be invested in the manner provided by law. [1977 c.246 §20, 1981 c.660 §46; 1989 c.950 §4]

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

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

541.800 Payment of bond principal and interest from Water Development Administration and Bond Sinking Fund. (1) The State Treasurer shall make payment of the principal of and the interest on any bond issued under ORS 541.780 to 541.815 from the Water Development Administration and Bond Sinking Fund.

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

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

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

541.815 Limitation on bond issuance amount. No bonds shall be issued or sold under ORS 541.780 to 541.815 nor indebtedness incurred thereunder, which, singly or in the aggregate with previous debts or liabilities incurred for the construction, operation and maintenance of water development projects and for the acquisition of easements and rights of way for federal water development projects shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds.

If the maximum aggregate principal sum of bonds authorized to be issued under ORS 541.780 to 541.815, exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 541.780 to 541.815, in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1977 c.246 §27]

(Administration)

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

(a) Administrative expenses of the commission and the Water Resources Department in processing applications, investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding loans made under ORS 541.700 to 541.855, if the expense is not paid directly by the applicant, including principle and interest due on bonds outstanding.

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

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

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

(a) Application fees required by ORS 541.710.

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

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

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

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

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

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

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

(i) Moneys transferred from the Water Development Fund.

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

(4) The commission, with the approval of the Governor, may identify those projects financed under the provisions of ORS 541.700 to 541.855 which offer significant public benefit, and recommend to the Legislative Assembly funding of those projects in proportion to the public benefits offered.

(5) The commission, with the approval of the State Treasurer, may transfer moneys from the fund created under subsection (1) of this section to the Water Development Fund if:

(a) A cash flow projection shows that the transfer will not have any negative impact on the commission's ability to pay bond principal, interest and administration costs;

(b) The transfer will not create the need for issuance of any bonds; and

(c) The transfer, together with loans outstanding from prior transfers and not refinanced by funds derived directly from a bond sale, shall not exceed \$1.

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board. [1977 c 247 §28; 1981 c 172 §1; 1985 c 673 §123; 1989 c 587 §3; 1989 c.950 §5]

541.835 Water Development Fund; use.

All moneys in the Water Development Fund created by Article XI-I (1), Oregon Constitution, hereby are appropriated continuously to the commission and shall be used for the purposes provided in ORS 541.700 to 541.855. Moneys expended from the fund may include those expended or to be expended for engineering, legal fees and acquisition of water rights and property required for rights of way or facility locations. Interest earned by the fund shall be credited to the fund. [1977 c 246 §18, 1985 c.673 §124; 1989 c.966 §61]

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

(2) When the commission determines that moneys in sufficient amount are available in the Water Development Administration and Bond Sinking Fund, the commission shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1977 c.246 §30, 1985 c 673 §125]

541.845 Rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Water Resources Commission may adopt rules necessary to carry out ORS 541.700 to 541.855. [1977 c.246 §13; 1985 c.673 §126]

541.850 Commission authorized to accept gifts or grants. The commission may accept gifts of money or other property from any source, given for the purposes of ORS 541.700 and 541.705 to 541.770. Money so received shall be paid into the Water Development Fund. Money or other property so received shall be used for the purposes for which received. [1977 c.246 §12; 1985 c.673 §127]

541.855 Commission to make biennial report to Legislative Assembly and Governor. The commission shall make available to the Legislative Assembly and the Governor a biennial report of the transactions of the Water Development Fund and the Water Development Administration and Bond Sinking Fund in such detail as will accurately indicate the transactions and the condition of the funds. [1977 c 246 §29, 1985 c.673 §128]

NORTH UMPQUA RIVER DAMS

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

(2) Nothing in this section applies to the repair, maintenance or improvement required by a state agency of any dam constructed on the North Umpqua River prior to November 1, 1981. No hydroelectric facility may be constructed, repaired or reconstructed on an existing dam on that portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua

River and South Umpqua River except in conformance with this section.

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

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

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

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

PENALTIES

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

(2) Violation of ORS 541.510 is a misdemeanor.

(3) Violation of ORS 541.545 (1) is a misdemeanor. [1957 c.163 §4; subsection (2) enacted as 1959 c.624 §2, subsection (3) enacted as 1961 c.379 §9, subsection (4) enacted as 1967 c.567 §13; subsection (4) renumbered 196.990 in 1989]

WATER LAWS
