Chapter 537 — Appropriation of Water Generally

2001 EDITION

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GENERAL PROVISIONS

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WATER USE REGISTRATION

(Registration of Water for Wetland, Stream or Riparian Restoration or Storm Water Management)

537.015 Findings. The Legislative Assembly finds that:

(1) It is desirable to encourage:

(a) Restoration or enhancement of wetlands;

(b) Construction of stream and riparian restoration or enhancement projects; and

(c) Storm water quality and quantity projects.

(2) Often the restoration or enhancement of wetlands, the construction of stream and riparian restoration projects and management of storm water quality and quantity involve a wide variety of uses of the waters of the state. [1993 c.654 §2]

537.017 Registration of water for wetland, stream or riparian restoration or storm water management. In accordance with ORS 537.020 to 537.030, any person may register a water use that would otherwise require a water right if the use is for wetland, stream or riparian restoration or storm water management, qualifies under ORS 537.022 and does not injure existing water rights. [1993 c.654 §3]

537.020 Application to register water use; fees; rules. (1) Except as provided in subsection (2) of this section, a person applying to register a water use shall:

(a) Submit a completed notice of registration in conjunction with the application for a permit under ORS 537.140. The notice of registration shall be on forms provided by the Water Resources Department and shall require the applicant to list the name and address of each adjacent property owner.

(b) Mail a copy of the completed notice of registration and application to each adjacent property owner.

(c) Pay fees equivalent to the fees under ORS 536.050 for an application for a permit to appropriate water to be deposited in the Water Resources Department Operating Account as described in ORS 536.050 (5).

(d) Provide a map indicating the location of the water use that complies with requirements established by rule by the Water Resources Commission. Except as provided in subsection (3) of this section, the map need not be prepared by a certified water right examiner under ORS 537.798.

(e) Provide any other information the commission may require by rule.

(2) Except as provided in subsection (3) of this section, up to 10 reservoirs may be included in an application under subsection (1) of this section if all the reservoirs are within the same ownership on contiguous property and within the same drainage basin as defined by the commission.

(3) A person may register a reservoir that stores 9.2 acre-feet or more of water or includes a dam 10 feet or higher for wetland, stream and riparian restoration or storm water management if the use qualifies under ORS 537.020 to 537.027. A person applying to register a reservoir that stores 9.2 acre-feet or more of water or includes a dam 10 feet or higher shall:

(a) Submit a separate, completed notice of registration and application for a permit under ORS 537.140 for each reservoir;

(b) Pay fees equivalent to the fees paid under ORS 536.050 for an application for a permit to appropriate water to be deposited in the Water Resources Department Operating Account as described in ORS 536.050 (5);

(c) Provide a map prepared by a certified water right examiner under ORS 537.798; and

(d) Provide any other information the commission may require by rule. [1993 c.654 §4; 1995 c.416 §43; 1999 c.664 §4]

537.022 Eligibility requirements for water use registration. (1) Wetlands restoration projects that may be considered for registration under ORS 537.020 to 537.027 include but are not limited to:

(a) Impounding surface water to create, restore or enhance a wetland environment;

(b) Appropriating surface water to create, restore or enhance a wetland environment; and

(c) Appropriating ground water to maintain an existing wetland environment.

(2) Stream or riparian restoration projects that may be considered for registration under ORS 537.020 to 537.027 include but are not limited to:

(a) The construction of off-channel reservoirs developed to provide water for livestock and wildlife use outside of riparian areas in order to protect or enhance a riparian area;

(b) Construction that diverts water into a new channel; and

(c) Diversion or spring development to provide water for livestock and wildlife outside of riparian areas in order to protect or enhance a riparian area.

(3) Storm water management projects that may be registered under ORS 537.020 to 537.027 include but are not limited to:

(a) Landscaping or channeling that directs runoff into small reservoirs, wetlands or treatment facilities; and

(b) On-channel storm water treatment facilities that impound or slow water.

(4) The Water Resources Commission, by rule, shall establish:

(a) The criteria for qualifying projects; and

(b) Standards for the expected results of a qualifying project. [1993 c.654 §5]

537.025 Determination of injury to existing rights or public interest; consultation with affected agencies; notice of registration application. (1) Upon receipt of an application for registration, the Water Resources Department shall determine whether the project may result in injury to existing water rights or the public interest.

(2) In consultation with the State Department of Fish and Wildlife, Department of Environmental Quality, State Department of Agriculture, Division of State Lands, Economic and Community Development Department and any other agency the department considers appropriate, the department shall determine whether the development proposed in an application for registration submitted under ORS 537.020 is reasonably expected to result in wetland, stream and riparian restoration or storm water management benefits.

(3) Notice of registration applications and a description of the proposed project shall be published in the department's public notice of water right applications. The public and state agencies shall have 30 days to submit written comments on the proposed project. [1993 c.654 §6]

537.027 Approval of registration; objections; denial of registration. (1)(a) The Water Resources Department shall issue the registration if:

(A) No written comments are received that warrant further review, in the determination of the Water Resources Director;

(B) The appropriate agencies under ORS 537.025 have been consulted; and

(C) The department determines that the development is reasonably expected to result in wetland, stream and riparian restoration or storm water management benefits.

(b) The registration shall serve as a preliminary permit and shall contain all conditions proposed to be included in the permit issued under ORS 537.211.

(c) The department shall send a copy of the registration to the applicant, any party requesting a copy and to each interested state agency. The department shall include notice of issuing the registration in the weekly notice published by the department.

(2) Any objection to a registration shall be submitted in writing to the department within 60 days after the date the department mails the registration. The department shall handle any objection received in the same manner as objections received on a water right application filed under ORS 537.140, in accordance with any applicable rules of the Water Resources Commission.

(3) If no objection is received, the department may presume that the registration is not opposed by any person or entity and the department may issue a permit.

(4) If written comments are received that the director determines warrant further review, the director shall rescind the registration and the permit application process shall continue as for a water right permit submitted under ORS 537.130.

(5) If the director denies registration, the construction of facilities or use of water is prohibited until the applicant successfully completes the permit application process and a permit is issued under ORS 537.211. [1993 c.654 §7]

537.030 Effect of registration; appurtenance to location identified in registration. (1) Except as provided in ORS 537.027, registration shall serve to authorize construction of facilities and use of water until a decision is made on the permit application and shall establish as the priority date for the registered use the date the registration, fee and map are first received by the Water Resources Department.

(2) A registration is appurtenant to the location identified in the registration. [1993 c.654 §8]

537.032 When registered project subject to regulation. A project registered under ORS 537.027 shall be subject to regulation by the Water Resources Commission if injury to a water right with an earlier priority date occurs as a result of the use registered under ORS 537.027. [1993 c.654 §9]

(Public Agency Water Use Registration)

537.040 Registration of water for road construction, maintenance or reconstruction; fee; annual renewal statement; limitations; rules. (1) In lieu of applying for a permit for a water right under ORS 537.130, a public agency having jurisdiction over roads or highways may register a water use for road and highway maintenance, construction and reconstruction purposes.

(2) A public agency applying to register a water use under subsection (1) of this section shall:

(a) Submit a completed application to register the water use;

(b) Pay a fee of $300 to be deposited in the Water Resources Department Operating Account in the manner described in ORS 536.050 (5);

(c) Provide a map indicating the general locations of points of diversion;

(d) Identify the sources of surface water or ground water to be used;

(e) Specify the maximum amount of water to be used during a calendar year and during any 24-hour period; and

(f) If the public agency is withdrawing water from a conveyance or storage facility that is a perfected or certificated water right:

(A) Identify the permit or certificate number of the conveyance or storage right; and

(B) Provide written authorization from the owner of the perfected or certificated water right that allows the public agency to use water from the conveyance or storage facility.

(3) A use of water registered under subsection (1) of this section shall continue until the public agency voluntarily withdraws the registration. However, the public agency shall submit an annual renewal statement accompanied by an annual fee of $50 to be deposited in the Water Resources Department Operating Account to be used in the manner described in ORS 536.050. The annual renewal statement shall specify any change in the map, the sources of water to be used or maximum amount of water to be used.

(4) The use of water registered under subsection (1) of this section:

(a) Shall not have priority over any water right exercised under a permit, water right certificate, certificate of registration, order of the Water Resources Commission or the Water Resources Director and related court decrees;

(b) Shall be subordinate to all other future permitted or certificated rights; and

(c) Shall not exceed 50,000 gallons from a single source during any 24-hour period.

(5) The commission may require a public agency to cease withdrawal or diversion of water at any time the director has reason to believe the registered use is causing a significant adverse impact upon:

(a) The affected watershed;

(b) Any other water user entitled to use water under a permit issued under ORS 537.211 or 537.625 or a certificate issued under ORS 537.250, 537.630 or 539.140; or

(c) An in-stream water right established under ORS 537.332 to 537.360.

(6) The commission may adopt rules to implement this section. The commission shall not require the map to be prepared by a water right examiner certified under ORS 537.798.

(7) As used in this section, “public agency” means the State of Oregon, any agency of the State of Oregon, a county, a special road district of a county, a city, town, incorporated municipality and any federal agency that has jurisdiction over a roadway in this state. [1993 c.705 §2; 1995 c.416 §44; 1999 c.664 §5]

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; LIMITED LICENSES

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 a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under the registration system set forth in ORS

537.020 or 537.132, 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 Department for a permit to make the appropriation.

(2) Except for a use exempted under ORS 537.040, 537.141, 537.142, 537.143 or 537.800 or under the registration system set forth in ORS 537.020 or 537.132, no person shall use, store or divert any waters until after the department issues a permit to appropriate the waters.

(3) The department 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. The department shall provide the notice even if the applicant has obtained written authorization or an easement from the owner.

(4) If more than 25 persons are identified in the application as required under subsection (3) of this section, the department may provide the notice required under subsection (3) of this section by publishing notice of the application in a newspaper having general circulation in the area in which the proposed ditch, canal or other work is located at least once each week for at least three successive weeks. The cost of the publication shall be paid by the applicant in advance to the department. [Amended by 1985 c.310 §3; 1985 c.673 §25; 1989 c.509 §3; 1991 c.370 §4; 1995 c.365 §1; 1995 c.416 §2a]

537.131 Reclaimed water. As used in ORS 537.132, 540.510 and 540.610, “reclaimed water” means water that has been used for municipal purposes and after such use has been treated in a treatment works as defined in ORS 454.010, and that, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur. [1991 c.370 §2; 1997 c.244 §1]

Note: 537.131 was added to and made a part of ORS chapter 537 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.132 Exemption from permit requirement for use of reclaimed water. (1) The provisions of ORS 537.130 requiring application for a permit to appropriate water shall not apply to the use of reclaimed water, if:

(a) The use of reclaimed water is authorized by the national pollutant discharge elimination system or water pollution control facilities permit issued pursuant to ORS 468B.050 or 468B.053;

(b) The Department of Environmental Quality, in reviewing an application for a permit pursuant to ORS 468B.050 or 468B.053, has consulted with the State Department of Fish and Wildlife on the impact to fish and wildlife to determine that the application of reclaimed water under ORS 537.130, 537.131, 537.132, 540.510 and 540.610 shall not have a significant negative impact on fish and wildlife; and

(c) The Department of Environmental Quality has determined the use of reclaimed water is intended to improve the water quality of the receiving stream.

(2) Any person using or intending to use reclaimed water shall file with the Water Resources Department a reclaimed water registration form setting forth the following:

(a) Name and mailing address of the registrant;

(b) The date the use of reclaimed water is initiated;

(c) Source of reclaimed water supply, including a description of the location of the reclaimed water treatment facility and the name and mailing address of the owner and operator of the facility;

(d) Nature of the use of the reclaimed water;

(e) Amount of reclaimed water used or proposed to be used;

(f) Location and description of the ditch, canal, pipeline or any other conduction facility used or to be used to transport the reclaimed water from the treatment facility to the place of use;

(g) A statement declaring the existence of a written contract or agreement to provide reclaimed water including the name and address of the reclaimed water provider and the date and terms of such contract or agreement;

(h) A description of the season of use and the place of use of the reclaimed water, and any restrictions applicable to the use of the reclaimed water; and

(i) If the reclaimed water is used in lieu of using water under an existing water right, the application, permit and certificate number of such right, or if the right is granted pursuant to a decree of circuit court, the volume and page number setting forth the right.

(3) If a municipality has discharged waste water into a natural watercourse for five or more years, and the

discharge represents more than 50 percent of the total average flow of the natural watercourse and if such discharge would cease as a result of the use of reclaimed water in accordance with the provisions of ORS 540.510 (3) and this section, the director of the department shall notify any persons who, according to the department records, have a water right that may be affected by the cessation of the discharge by the municipality.

(4) If a person holding an affected water right demonstrates to the department that the cessation of discharge by the municipality substantially impairs the ability to satisfy a water right, the person shall be entitled to a preference to the use of the reclaimed water. However, the delivery of the reclaimed water to the person claiming such preference shall be accomplished through a conveyance facility or channel other than a natural watercourse.

(5) If a municipality has a less expensive alternative for the disposal and distribution of the reclaimed water, the municipality shall not be obligated to incur expenses or cost beyond the expenses or costs of such alternative.

(6) The Water Resources Commission shall adopt rules to implement the notice and preference provisions and impairment evaluation standards of this section. [1991 c.370 §3; 1997 c.286 §8]

Note: 537.132 was added to and made a part of ORS chapter 537 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.133 Permittee's right to enter on forestland; notice. (1) A permittee may not enter upon forestland 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 forestlands shall include commercial forestland 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 Department 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 department 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 department shall determine, under ORS 537.170, whether the proposed ground water recharge project would impair or be detrimental to the public interest.

(5) The department 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. [1961 c.402 §1; 1985 c.673 §26; 1987 c.499 §1; 1995 c.416 §3]

537.139 Failure to obtain authorization for access to certain land. (1) The failure of an applicant to obtain written authorization, obtain an easement or acquire ownership of land if required as a condition to issuance of a

permit under ORS 537.211 (2) shall be a ground for refusal to issue a permit.

(2) If an applicant makes a statement under ORS 537.140 (1)(a)(E) that falsely states that the applicant owns all lands crossed by a proposed ditch, canal or other work or that the applicant has obtained written authorization or an easement permitting access across such lands, any permit issued in response to the application shall be subject to cancellation.

(3) Nothing in ORS 537.130, 537.133, 537.139, 537.140, 537.250, 772.305 and 772.310 requires the Water Resources Department 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; 1995 c.365 §2; 1995 c.416 §4]

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 be made to the Water Resources Department on a form prescribed by the department and shall set forth:

(A) The name and mailing address of the applicant;

(B) The 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) The nature and amount of the proposed use;

(D) The location and description of the proposed ditch, canal or other work, including the name and mailing address of the owner of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work even if the applicant has obtained written authorization or an easement from the owner;

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

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

(G) The time required for completion of the construction;

(H) The time for the complete application of the water to the proposed use; and

(I) Any other information required in the application form that is necessary to evaluate the application as established by statute and rule.

(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) Except as provided in subsection (2) of this section, 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) Any person who has applied to the Federal Energy Regulatory Commission for a preliminary permit or an exemption from licensing shall, at the same time, apply to the Water Resources Department for a permit to appropriate water for a hydroelectric project. An applicant for a permit to appropriate water for a new hydroelectric project shall submit to the department a complete copy of any application for the project filed with the Federal Energy Regulatory Commission or other federal agency. If the copy of the federal application is filed with the department at the same time it is filed with the federal agency, at the department's discretion such copy may fulfill the requirements for an application under subsection (1) of this section.

(3) 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.

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if

appropriate. In addition, the department shall accept locational coordinate information, including latitude and longitude as established by a global positioning system. If the application is for a water right for a municipal use, the map need not identify the proposed place of use by tax lot.

(5) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050 (1).

(6) If the proposed use of the water is for operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

(7) Notwithstanding any provision of ORS 183.310 to 183.550, an application for a permit to appropriate water shall be processed in the manner set forth in ORS 537.120 to 537.360. Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS 183.310 to 183.550 conflicts with a provision set forth in ORS 537.120 to 537.360, the provisions in ORS 537.120 to 537.360 shall control. [Amended by 1985 c.673 §27; 1987 c.542 §5; 1989 c.509 §4; 1991 c.735 §32; 1991 c.869 §6; 1993 c.557 §1; 1993 c.591 §2; 1995 c.365 §3; 1995 c.416 §5; 1997 c.446 §1; 1997 c.587 §4]

537.141 Uses of water not requiring water right application, permit or certificate. (1) The following water uses do not require an application under ORS 537.130 or 537.615, a water right permit under ORS 537.211 or a water right certificate under ORS 537.250:

(a) Emergency fire-fighting uses;

(b) Nonemergency fire-fighting training conducted by public fire departments and rural fire protection districts, provided:

(A) The source of the water is existing storage and the use occurs with permission of the owner of the stored water; or

(B) If the source of water is other than existing storage, the use occurs with the prior written approval of the watermaster in the district where the training will take place and subject to any conditions the watermaster determines are necessary to prevent injury to existing water rights and to protect in-stream resources;

(c) Water uses that divert water to water tanks or troughs from a reservoir for a use allowed under an existing water right permit or certificate for the reservoir;

(d) Fish screens, fishways and fish by-pass structures, as exempted by rule of the Water Resources Commission;

(e) Land management practices intended to save soil and improve water quality by temporarily impeding or changing the natural flow of diffuse surface water across agricultural lands when storage of public waters is not an intended purpose. Such practices include but are not limited to:

(A) Terraces;

(B) Dikes;

(C) Retention dams and other temporary impoundments; and

(D) Agronomic practices designed to improve water quality and control surface runoff to prevent erosion, such as ripping, pitting, rough tillage and cross slope farming;

(f) Livestock watering operations that comply with the requirements under subsections (2) and (3) of this section;

(g) Forest management activities that require the use of water in conjunction with mixing pesticides as defined in ORS 634.006, or in slash burning;

(h) The collection of precipitation water from an artificial impervious surface and the use of such water; and

(i) Land application of ground water so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

(2) The use of surface water for livestock watering may be exempted under subsection (1) of this section if:

(a) The water is diverted from a stream or other surface water source to a trough or tank through an enclosed water delivery system;

(b) The delivery system either is equipped with an automatic shutoff or flow control mechanism or includes a

means for returning water to the surface water source through an enclosed delivery system; and

(c) The operation is located on land from which the livestock would otherwise have legal access to both the use and source of the surface water source.

(3) If the diversion system described in subsection (2) of this section is located within or above a scenic waterway, the amount of water that may be used without a water right is limited to one-tenth of one cubic foot per second per 1,000 head of livestock. Nothing in this section shall prevent the Water Resources Commission from approving an application for a water right permit for a delivery system not qualifying under subsection (2) of this section.

(4) The Water Resources Department, in conjunction with local soil and water conservation districts, the Oregon State University Extension Service, the State Department of Agriculture and the State Department of Fish and Wildlife and any other organization interested in participating, shall develop and implement a voluntary educational program on livestock management techniques designed to keep livestock away from streams and riparian areas.

(5) To qualify for an exempt use under subsection (1)(g) of this section, the user shall:

(a) Submit notice of the proposed use, including the identification of the proposed water source, to the Water Resources Department and to the State Department of Fish and Wildlife at the time notice is provided to other affected agencies pursuant to ORS 527.670; and

(b) Comply with any restrictions imposed by the department pertaining to sources of water that may not be used in conjunction with the proposed activity.

(6) Except for the use of water under subsection (1)(i) of this section, the Water Resources Commission by rule may require any person or public agency diverting water as described in subsection (1) of this section to furnish information with regard to such water and the use thereof. For a use of water described in subsection (1)(i) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse. [1993 c.595 §3; 1995 c.184 §1; 1995 c.274 §9a; 1995 c.537 §2; 1995 c.752 §7; 1997 c.199 §1; 1997 c.244 §2; 1999 c.335 §1; 2001 c.248 §11]

Note: 537.141 was added to and made a part of ORS chapter 537 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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 or store surface or ground water or to use stored 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 or store ground water not otherwise exempt under ORS 537.545, to use or store surface water, to use stored water or to use stored water for purposes for which the stored water is authorized and in accordance with a contract with a local, state or federal government after the person complies with the notice provisions set forth in ORS 537.144. Uses eligible for a limited license shall be for a short-term or fixed duration and may include but are not limited to road construction and maintenance, general construction and forestland or rangeland

management. Except as provided in subsections (4) to (6) and (9) of this section, the use of water for a purpose specifically prohibited by a basin program or for irrigation is not eligible for a limited license.

(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 authorized uses that rely upon the same source. The Water Resources Department may revoke the right to use of water acquired under a limited license pursuant to subsection (1) of this section at any time if the use causes injury to:

(a) Any other water right; or

(b) A minimum perennial streamflow.

(3) Except as provided in subsections (4), (5) and (11) of this section, the licensee shall give notice to the Water Resources Department at least 15 days in advance of using the water under the limited license and shall maintain a record of use. The record shall include but need not be limited to an estimate of the amount of water used, the period of use and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be available for review by the department upon request.

(4) The Water Resources Director may issue a limited license in conjunction with an enforcement order to address an illegal water use, including irrigation use or a use specifically prohibited by a basin program. The director may issue a limited license for such a use upon a finding that:

(a) The person did not knowingly violate state laws regarding a water use permit;

(b) The immediate termination of the illegal use would cause serious and undue hardship to the water user that could be ameliorated by providing a period of time in which to achieve compliance with the law; and

(c) The continued use under a limited license outweighs the public benefits of termination, including deterrence of illegal uses and protection of the water source.

(5) An enforcement order issued under subsection (4) of this section shall specify an amount of time in which the person using water illegally shall bring such use into compliance. The duration of the limited license shall not exceed the duration of time allowed in the enforcement order to achieve compliance. A licensee using water under a limited license issued in conjunction with an enforcement order need not provide the department with advance notice of water use, but shall comply with the other requirements of this section.

(6) The director may issue a limited license for irrigation if the sole purpose of the use is:

(a) To provide water necessary to establish a crop for which no further irrigation will be required after the crop is established;

(b) To mitigate the impacts of drought when additional water is needed beyond a prescribed irrigation season in order to avoid irreparable damage to the user’s crop; or

(c) Under a limited license issued pursuant to subsection (9) of this section.

(7) 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 for which a limited license is obtained under this section.

(8) Except as provided in subsection (10) of this section, the department may not issue a limited license for the same use for more than five consecutive years.

(9) Notwithstanding any other provision of this section, if the use of water under the limited license is for the use of stored water consistent with the purposes for which the stored water is authorized and the use of water is authorized by a contract between the user and a local, state or federal government:

(a) The limited license may be issued for a period of up to one year; and

(b) The limited license shall be revoked if the contract between the user and the local, state or federal government is terminated for any reason.

(10) At the end of the one-year limited license period in subsection (9) of this section, the user may reapply for a limited license under ORS 537.144 provided that there is an authorized contract between the user and a local, state or federal government.

(11) The director may issue a limited license authorizing immediate use of water if the director finds that an emergency exists and the water is needed to protect the public health, safety and welfare. Notwithstanding subsection (8) of this section, the director may issue a limited license for such a use for a period of 60 days. [1989 c.933 §2; 1993 c.595 §1; 1995 c.274 §8; 1997 c.38 §1; 1997 c.366 §1]

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 Department on a form provided by the department.

(2) If the request submitted under subsection (1) of this section is to use stored water for purposes for which the

stored water is authorized and pursuant to a contract between the user and a local, state or federal government:

(a) The person also shall submit:

(A) A copy of the contract;

(B) A map indicating the point of diversion and the place of use; and

(C) Any other information required by the Water Resources Commission that is necessary to evaluate the request as established by statute and the rules of the commission.

(b) Upon the filing of the request under this subsection, the department shall determine whether the request contains the information listed under paragraph (a) of this subsection and is complete and not defective, including the payment of any fee required by the commission. If the department determines that the request is incomplete or defective or that all fees have not been paid, the department shall return all fees and the request. If the department determines that a request contains the information listed under paragraph (a) of this subsection and is complete and not defective, the department shall proceed with the review of the request and issuance of the limited license if the use complies with the requirements of ORS 537.143.

(3) The notification required under subsection (1) or (2) of this section shall be accompanied by the fee established by rule by the Water Resources Commission.

(4) The department shall notify the person whether the department grants the limited license.

(5) A request for the right to use stored water under a limited license as described in subsection (2) of this section may be made concurrently with an application for a permit to appropriate water under ORS 537.140. [1989 c.933 §3; 1995 c.274 §11; 1997 c.366 §2]

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 Department 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 department 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 department 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; 1995 c.416 §8]

537.150 Filing of application; determination of completeness; initial review; preliminary determination; notice; public comments; fees. (1) Within 15 days after receiving an application, the Water Resources Department shall determine whether the application contains the information listed under ORS 537.140 (1) and is complete and not defective, including the payment of all fees required under ORS 537.140 (5). If the department determines that the application is incomplete or defective or that all fees have not been paid, the department shall return all fees and the application.

(2) Upon determining that an application contains the information listed under ORS 537.140 (1) and is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application. All applications that comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

(3) If an application is complete and not defective, the department shall determine whether the proposed use is prohibited by ORS chapter 538. If the proposed use is prohibited by ORS chapter 538, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by ORS chapter 538, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (1) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all except $50 of all fees.

If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1). [Amended by 1985 c.673 §28; 1993 c.557 §2; 1995 c.416 §9]

537.153 Review of application; proposed final order; presumption that use will not impair or be detrimental to public interest; standing; protest; final order; contested case hearing. (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.150 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The department may request the applicant to provide additional information needed to complete the review. If the department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The department shall specify a date by which the information must be returned, which shall be not less than 10 days after the department mails the request to the applicant. If the department does not receive the information or a request for a time extension under ORS 537.175 by the date specified in the request, the department may reject the application and may refund fees in accordance with ORS 536.050 (3). The time period specified by the department in a request for additional information shall allow the department to comply with the 60-day time limit established by this subsection.

(2) In reviewing the application under subsection (1) of this section, the department shall presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest under subsection (6) of this section or in a finding of the department that shows:

(A) The specific public interest under ORS 537.170 (8) that would be impaired or detrimentally affected; and

(B) Specifically how the identified public interest would be impaired or detrimentally affected.

(3) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would impair or be detrimental to the public interest as provided in ORS 537.170;

(f) A draft permit, including any proposed conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption that the proposed use will not impair or be detrimental to the public interest has been established; and

(h) The date by which protests to the proposed final order must be received by the department.

(4) The department shall mail copies of the proposed final order to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also shall publish notice of the proposed final order by publication in the weekly notice published by the department.

(5) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

(6) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(7) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the department. Any person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and paid the required fee under ORS 537.150 (7), the person is a protestant and has paid the fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS 536.050 (1)(n).

(8) Within 60 days after the close of the period for receiving protests, the Water Resources Director shall:

(a) Issue a final order as provided under ORS 537.170 (6); or

(b) Schedule a contested case hearing if a protest has been submitted and if:

(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed use of water; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing. [1995 c.416 §11; 1997 c.446 §2; 1997 c.587 §5]

Note: 537.153, 537.173 and 537.175 were added to and made a part of 537.145 to 537.240 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.160 Approval for beneficial use; agreement authorizing use of ditch for waste or seepage water. (1) Subject to the provisions of subsections (2) and (3) of this section, and of ORS 537.170 and 537.190, the Water Resources Department 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 department 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 department 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 department shall reject every application for a permit to appropriate water to develop hydroelectric power if the department finds that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017. [Amended by 1985 c.569 §18; 1985 c.673 §197; 1995 c.416 §12]

537.170 Contested case hearing on application; final order; appeal. (1) Within 45 days after the Water Resources Director schedules a contested case hearing under ORS 537.153 (8), the Water Resources Department shall hold the contested case hearing. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.

(2) Notwithstanding the provisions of ORS 183.310 to 183.550 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this section shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under ORS 537.153 (5) and who requests to intervene in the contested case hearing prior to the start of the proceeding.

(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550 except:

(a) As provided in subsections (1) and (2) of this section; and

(b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

(4) 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.

(5) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Water Resources Department an opportunity to respond to the issue precludes judicial review based on that issue.

(6) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use does not comply with the standards set forth in ORS 543.017 or rules adopted by the Water Resources Commission under ORS 543.017 or would otherwise impair or be detrimental to the public interest, the director shall issue a final order rejecting the application or modifying the proposed final order to conform to the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use would not impair or be detrimental to the public interest, the director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order 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.

(7) If a contested case hearing is not held:

(a) Where the final order modifies the proposed final order, the applicant may request and the department shall schedule a contested case hearing as provided under subsection (3) of this section by submitting the information required for a protest under ORS 537.153 (6) within 14 days after the director issues the final order. However, the issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.

(b) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS 183.310 to 183.550 for appeal of order other than contested cases.

(8) If the presumption of public interest under ORS 537.153 (2) is overcome, then before issuing a final order, the director or the commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would impair or be detrimental to the public interest by considering:

(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 536.295 to 536.350 and 537.505 to 537.534.

(9) Upon issuing a final order, the director shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050 (1)(p). [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; 1995 c.416 §13; 1997 c.587 §6]

537.173 Exceptions to final order; modified order. (1) Within 20 days after the Water Resources Director issues a final order under ORS 537.170 after the conclusion of a contested case hearing, any party may file exceptions to the order with the Water Resources Commission.

(2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60 days after the close of the exception period under subsection (1) of this section. [1995 c.416 §14]

Note: See note under 537.153.

537.175 Time limit for issuing final order or scheduling contested case hearing; exception; applicant request for extension. (1) Except as provided in subsection (2) of this section, the Water Resources Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.140 or

537.400 within 180 days after the department proceeds with the application under ORS 537.150 (5).

(2) At the request of the applicant, the department may extend the 180-day period set forth in subsection (1) of this section for a reasonable period of time.

(3) If a contested case hearing is held, the department shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings.

(4) If the applicant does not request an extension under subsection (2) of this section and the department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the department proceeds with the application under ORS 537.150 (5), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the department to issue a final order or schedule a contested case hearing on an application for a water right. If the application is for an out-of-stream use, the writ of mandamus shall compel the department to issue a water right permit, unless the department shows by affidavit that to issue a permit may result in harm to an existing water right holder. [1995 c.416 §17]

Note: See note under 537.153.

537.180 [Amended by 1971 c.734 §78; 1985 c.673 §31; repealed by 1995 c.416 §50]

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 Department 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 department shall not approve an application for more water than can be applied to a beneficial use.

(2) The department 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 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; 1995 c.416 §15]

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; change in use allowed under permit. (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 Department. The permit shall specify the details of the authorized use and shall set forth any terms, limitations and conditions as the department 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 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) Except as provided in subsection (6) of this section, if an application under ORS 537.140 or 537.400 indicates that the applicant does not have written authorization or an easement permitting access to nonowned land crossed by

the proposed ditch, canal or other work, the department may issue a final order approving the application if the approval includes a condition requiring the applicant to obtain such written authorization, or easement or ownership of such land and to provide the department with a copy of the written authorization, easement or evidence of ownership.

(3) If an application referred to in ORS 537.140 or 537.400 is rejected, the department 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 department shall mail a copy of the order to the applicant.

(4) The holder of a water right permit may change the point of diversion, change the point of appropriation, change the point of diversion to allow the appropriation of ground water or use the water on land to which the right is not appurtenant if:

(a) The use of water on land to which the right is not appurtenant, the change of point of diversion or the change in point of appropriation does not result in injury to an existing water right;

(b) For a proposed change in the place of use of the water, the land on which the water is to be used is owned or controlled by the holder of the permit and is contiguous to the land to which the permit is appurtenant;

(c) All other terms of the permit remain the same, including but not limited to the beneficial use for which the water is used and the number of acres to which water is applied;

(d) Prior approval is obtained from the district if the water is transported or conveyed by an irrigation district organized under ORS chapter 545, a drainage district organized under ORS chapter 547, a water improvement district organized under ORS chapter 552, a water control district organized under ORS chapter 553 or a district improvement company or a corporation organized under ORS chapter 554;

(e) The holder of the permit provides written notice to the department at least 60 days before making any changes to the lands, point of diversion or point of appropriation described in the permit;

(f) The holder of the permit complies with the publication requirements of ORS 540.520 (5), if applicable;

(g) Diversion is provided with a proper fish screen, if requested by the State Department of Fish and Wildlife; and

(h) For a request to transfer the point of diversion to allow the appropriation of ground water, the proposed change meets the standards set forth in ORS 540.531 (2).

(5) Notwithstanding the requirements of subsection (4)(b) of this section, the holder of a water right permit may change the place of use of all or any portion of water under the permit to land that is not contiguous to the land to which the permit is appurtenant if:

(a) The change to noncontiguous land is in furtherance of mitigation or conservation efforts undertaken for the purposes of benefiting a species listed as sensitive, threatened or endangered under ORS 496.171 to 496.192 or the federal Endangered Species Act of 1973 (16 U.S.C. 1531 to 1544), as determined by the listing agency; and

(b) All other requirements of subsection (4) of this section are met.

(6) For an application made by or on behalf of a public corporation, the department may issue a permit approving the application without requiring the applicant to obtain prior written authorization or an easement permitting access to nonowned lands affected by the proposed project. However, nothing in this subsection shall be construed to allow any person to trespass on the lands of another person.

(7) When the department receives notice under subsection (4)(e) of this section, the department shall publish the notice in the department's weekly public notice of water right applications.

(8) If the use of water under the permit is for operation of a chemical process mine as defined in ORS 517.953:

(a) Review of the application and approval or denial of the application shall be coordinated with the consolidated application process under ORS 517.952 to 517.989. However, such review and approval or denial shall take into consideration all policy considerations for the appropriation of water as set forth in this chapter and ORS chapter 536.

(b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall be conditioned on the applicant's compliance with the consolidated application process.

(c) The permit shall include a condition that additional conditions may be added to the use of water when a water right certificate is issued, or when the use of water is changed pursuant to ORS 540.520 and 540.530 to use for a chemical process mine operation.

(9) As used in this section, "contiguous" includes land separated from the land to which a water right is appurtenant by roads, utility corridors, irrigation ditches or publicly owned rights of way. [1981 c.61 §2 (enacted in lieu of 537.210); 1985 c.392 §10; 1985 c.673 §33; 1991 c.735 §33; 1995 c.365 §4; 1995 c.368 §1; 1995 c.416 §16a; 1997 c.42 §1; 1997 c.446 §3; 1999 c.611 §1; 1999 c.664 §6]

537.220 Assignment of application, permit or license. (1) Any application, permit or license to appropriate water may be assigned, subject to the conditions of the application 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.

(2) An assignment of an application, permit or license to appropriate water filed for record with the Water Resources Department shall identify the current record owners of all property described in the application, permit or license. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [Amended by 1985 c.673 §34; 1995 c.367 §1]

537.230 Reasonable diligence required in construction of irrigation or other work; extension; survey; map; requirements for supplemental water right. (1) 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 Department, not to exceed five years from the date of approval.

(2) Except as provided in ORS 537.240 or 537.248, the department, 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 department shall give due weight to the considerations described under ORS 539.010 (5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

(3) Except as provided in subsection (4) of this section and ORS 537.409, 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 department under ORS 537.250. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

(4) The Water Resources Director may waive the requirement under subsection (3) of this section that a permittee hire a water right examiner certified under ORS 537.798 if:

(a) The permit is a supplemental water right that shares the same distribution system and same place of use as the primary water right; and

(b) The department determines that there is sufficient information in the records of the department to determine proof of beneficial use.

(5) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under ORS 537.250 for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions. [Amended by 1985 c.617 §1; 1985 c.673 §201; 1987 c.542 §4; 1995 c.367 §2; 1995 c.416 §35; 1995 c.473 §5; 1997 c.446 §4; 1997 c.502 §1; 1997 c.557 §1; 1999 c.453 §1; 1999 c.665 §2]

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 Department.

(2) Upon failure of the applicant to file with the department, 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 department shall, upon the filing in the Water Resources Department of satisfactory proof of such fact, revoke and cancel any permit issued by the department 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 department 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; 1995 c.416 §36]

537.248 Requirement to include in reservoir permit date for beginning and completing construction and for perfecting water right; extension. (1) When the Water Resources Department issues a reservoir permit for a new storage project to a county, municipality or district, the department shall include in the permit a date, not more than 10 years after the date the permit is issued, to begin and complete construction of diversion or storage works and to perfect the water right. An application for a reservoir permit under this section shall be subject to the provisions of ORS 537.140 to 537.211, except that the applicant need not submit engineering plans and specifications before the permit is issued. However, the applicant may not begin construction of the reservoir until the department approves the engineering plans and specifications.

(2) By order, the Water Resources Director may extend the date for beginning and completing construction and for completing perfection of the use if the applicant shows reasonable diligence and good cause. An extension allowed under this subsection shall not exceed 10 years, but the applicant may request additional extensions.

(3) As used in this section, “district” includes the entities set forth in ORS 198.010 and 198.180. [1995 c.473 §2; 1995 c.416 §35a]

Note: 537.248 and 537.249 were added to and made a part of 537.140 to 537.252 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

537.249 Election to have proposed reservation considered as application for permit or rulemaking proceeding. (1) In lieu of the procedure established pursuant to ORS 537.358, for any reservation pending on July 5, 1995, the state agency that requested the reservation may elect to have the proposed reservation considered:

(a) As an application for a permit under ORS 537.140 to 537.211 and 537.248; or

(b) As a rulemaking proceeding under the applicable provisions of ORS 183.310 to 183.550 in which case the provisions of ORS 537.358 requiring a public interest review under ORS 537.170 shall not be applicable.

(2) A state agency making any election under subsection (1) of this section shall submit a written request to the Water Resources Commission within 90 days after July 5, 1995. The commission shall proceed in accordance with the election made under subsection (1) of this section or, if an election is not submitted, according to the procedure established pursuant to ORS 537.358.

(3) A reservation established under the provisions of this section shall have as a priority date the date established in rules of the commission in effect on July 5, 1995.

(4) When issuing a reservoir permit for a multipurpose storage project using water reserved or proposed to be reserved under a request originally filed by the Water Resources Department before June 5, 1992, the department shall grant a preference for the project under ORS 537.352.

(5) Notwithstanding ORS 537.356, the Water Resources Commission may accept requests to reserve unappropriated water before July 1, 1997, but shall not begin to process such requests before July 1, 1997. Any request to reserve unappropriated water submitted by the State Department of Agriculture before July 1, 1997, also shall consider municipal needs. The priority date of a request received in proper form by the Water Resources Commission after July 5, 1995, shall be the date of receipt. [1995 c.473 §3; 1995 c.416 §35b]

Note: See note under 537.248.

537.250 Water right certificate; issuance; inclusion of land not described in permit; recordation; duration of rights. (1) After the Water Resources Department 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 department, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the department 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) When issuing a water right certificate under subsection (1) of this section in the name of a district as defined in

ORS 540.505, or in the name of a government agency for a district, the department may issue the water right certificate for land not described in the permit in accordance with ORS 537.252.

(3) 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; or

(b) As provided in ORS 537.297. [Amended by 1985 c.392 §11; 1985 c.673 §191; 1987 c.542 §6; 1989 c.509 §6; 1995 c.218 §3; 1995 c.365 §5; 1995 c.416 §21a]

537.252 Certificate issued for land not described in permit; notice. (1) When issuing a water right certificate under ORS 537.250 to a district, or to a government agency for a district, the Water Resources Department may issue the water right certificate for land not described in the permit if:

(a) Water furnished by the district under the permit has been applied beneficially to the land;

(b) The land not described in the permit that is proposed to be included in the certificate is included within the legally established boundaries of the district and is subject to the charges, assessments and liens of the district;

(c) The certificate does not authorize a greater rate, duty or acreage than is authorized by the terms of the permit, and all other conditions of the permit are satisfied;

(d) The inclusion of land not described in the permit will not result in injury to other existing water rights or in enlargement of the right authorized under the permit; and

(e) The impact to the water source of including land not described in the permit will not differ significantly from the impact expected at the time the permit was issued for the lands described in the permit.

(2) If a district proposes to use water after September 9, 1995, on lands not described in the permit, the Water Resources Department may issue a certificate that includes such additional lands if all of the conditions of subsection (1) of this section are satisfied and if, no later than 60 days before the district actually applies the water to the lands not described in the permit, the district provides written notice to the department. The notice shall include a copy of the original permit map modified to show the lands to be added and lands to be removed from the description of the place of use of the water. Upon receipt of the notice from the district, the department shall provide public notice of the proposed change by means of publication in the department's weekly notice and by publication once each week for three successive weeks in a newspaper having general circulation in the county or counties in which the affected lands are located. The cost of publication shall be paid by the district.

(3) Notwithstanding the provisions of ORS 545.051 (2), if a district has issued an order of inclusion or exclusion, the boundaries of the irrigation district shall be deemed to have been legally changed in the absence of approval of the Secretary of the Interior.

(4) As used in this section:

(a) "District" has the meaning given in ORS 540.505.

(b) "Legally established boundaries" means the boundaries of a district as established at the time of creation of the district and as the boundaries may have changed after creation of the district by an inclusion, exclusion or merger proceeding according to state law. [1995 c.218 §2; 1995 c.416 §21b]

Note: 545.051 (2) (formerly 545.582 (2)) was deleted by amendment by section 2, chapter 78, Oregon Laws 1995. The text of 537.252 was not amended by enactment of the Legislative Assembly to reflect the deletion. Editorial adjustment of 537.252 for the deletion of 545.051 (2) has not been made.

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 Department proof of completion of the appropriation as required by ORS 537.230 and 537.250, the department may, after 60 days' notice by registered mail or by certified mail with return receipt, 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 department 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 department 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 department, 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 department 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 department 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 authority formed under ORS chapter 450. [Amended by 1983 c.740 §211; 1985 c.673 §38; 1989 c.707 §2; 1991 c.249 §43; 1993 c.577 §35; 1995 c.416 §37]

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]

537.283 Procedure for applications to appropriate water for hydroelectric power; rules. (1) Notwithstanding any other provision of ORS 537.140 to 537.350, in accordance with the applicable provisions of ORS 183.310 to 183.550, the Water Resources Commission shall by rule establish a procedure for processing applications to appropriate water for hydroelectric power under ORS 537.140 to 537.320.

(2) Rules adopted under subsection (1) of this section:

(a) To the extent possible, shall be consistent with the process established for other applications to appropriate water for other beneficial uses under ORS 537.140 to 537.252.

(b) Shall not supersede any provision pertaining to hydroelectric power established under this chapter or ORS chapter 543, to the extent such provisions are applicable to applications to appropriate water for hydroelectric power purposes.

(c) Need not comply with the mandatory time limits or notice provisions established under ORS 537.140 to 537.350 if such provisions are incompatible with the substantive requirements applicable to applications to appropriate water for hydroelectric power purposes. [1995 c.416 §32a]

Note: 537.283 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.

537.285 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 Department 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 department 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 department to determine whether the permittee remains qualified as a municipal applicant.

(2) If the department determines that a permittee no longer qualifies as a municipal applicant, the department 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; 1995 c.416 §33]

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 537.252. 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; exception; delivery of available permit, order or certificate; effect of failure to comply. (1) In any transaction for the conveyance of real estate that includes a water right, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

(2) Upon closing and delivery of the instrument of conveyance in a real estate transaction involving the transfer of

a water right, the seller shall also deliver to the purchaser evidence of any permit, transfer approval order or certificate of water rights if the permit, transfer approval order or certificate is available. In addition, the seller shall notify the Water Resources Department on a form prescribed by the department of:

(a) The real estate transaction; and

(b) The water right involved in the transaction.

(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 water right when the permit, transfer approval order or certificate evidencing the water right 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:

(a) “Certificate” means a certificate or registration issued under ORS 537.250 (1), 537.585, 539.140 or 539.240.

(b) “Permit” means a permit issued under ORS 537.211, 537.240 or 537.625.

(c) “Transfer approval order” means an order of the Water Resources Commission issued under ORS 540.530. [1979 c.535 §4; 1981 c.448 §1; 1991 c.411 §1; 1995 c.274 §12]

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 flow” means the minimum quantity of water necessary to support the public use requested by an agency.

(3) “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.

(4) “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.

(5) “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; 1995 c.416 §32]

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; agreement required when supply is stored water. (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 468B.048. 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.

(4) Any request for an in-stream water right to be supplied from stored water 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 sufficient interest in the reservoir to impound enough water for the purposes set forth in the request. [1987 c.859 §4; 1989 c.904 §68; 1995 c.673 §1]

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. A certificate for an in-stream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336. [1987 c.859 §6; 1995 c.673 §2]

537.343 Proposed final order; conditions. (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final 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.

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

(3) After the director issues a final order approving an in-stream water right, the Water Resources Department shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7; 1995 c.416 §20]

537.345 [Formerly 537.300; renumbered 537.400 in 1987]

537.346 Conversion of minimum perennial streamflows to in-stream water rights; special provisions for Willamette Basin. (1) All minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and the Water Resources Department 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.

(2) The priority date for that portion of an in-stream water right that uses the stored water component of a minimum perennial streamflow in the Willamette Basin shall be the date the commission or its predecessor adopted the minimum perennial streamflow containing the stored water component.

(3) Notwithstanding the priority date established under subsection (2) of this section, until the state enters into a contract that meets the criteria set forth in subsection (4) of this section with the owner of the storage facility to release the stored water for the purpose of satisfying the in-stream water right, for that portion of an in-stream water right in the Willamette Basin converted from the stored water component of a minimum perennial streamflow, the department:

(a) May not require the release of the stored water; and

(b) Shall not regulate the use of water to provide water for the portion of the in-stream water right using stored water.

(4) A contract for the release of stored water to satisfy an in-stream water right shall:

(a) Include as parties to the contract the State of Oregon and the owner of the storage facility;

(b) Specifically allow the state to obtain the release of stored water to satisfy an in-stream water right; and

(c) Identify a method to determine the specific quantity of water released from storage to satisfy the stored water component of the in-stream water right.

(5) If the federal government does not release water to satisfy a stored water component of an in-stream water right pursuant to a contract that satisfies the criteria set forth in subsection (4) of this section, the department may not regulate the use of water by other water right holders to satisfy the stored water component of an in-stream water right or take any other action that impairs the rights of any person under a valid contract for the use of the stored water. [1987 c.859 §8; 1995 c.72 §1; 1997 c.212 §3; 1999 c.59 §170; 2001 c.104 §227]

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 all or a portion of an existing water right or accept a gift of all or a portion of an existing water right 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 540.505 to 540.580.

(2) Any person who has an existing water right may lease all or a portion of the existing water right 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.

(3) A lease of all or a portion of an existing water right for use as an in-stream water right under subsection (2) of this section may allow the split use of the water between the existing water right and the in-stream right during the same water or calendar year provided:

(a) The uses are not concurrent; and

(b) The holders of the water rights measure and report to the Water Resources Department the use of the existing water right and the in-stream water right. [1987 c.859 §9; 2001 c.205 §1]

Note: The amendments to 537.348 by section 2, chapter 205, Oregon Laws 2001, become operative January 2, 2008. See section 3, chapter 205, Oregon Laws 2001. The text that is operative on and after January 2, 2008, is set forth for the user's convenience.

537.348. (1) Any person may purchase or lease all or a portion of an existing water right or accept a gift of all or a portion of an existing water right 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 540.505 to 540.580.

(2) Any person who has an existing water right may lease all or a portion of the existing water right 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.

537.349 Processing request for in-stream water right. Except as provided in ORS 537.343, the Water Resources Department shall process a request received under ORS 537.336 for a certificate for an in-stream water right in accordance with the provisions for obtaining a permit to appropriate water under ORS 537.140 to 537.252. [1995 c.416 §19]

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 Water Resources Department 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; 1995 c.416 §42]

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; priority date of reservation. (1) Any local government, local watershed council or state agency or any other individual cooperating jointly with a local government, local watershed council or state agency may request the Water Resources Commission to reserve unappropriated water for multipurpose storage for future economic development.

(2) A request under subsection (1) of this section shall be in writing on a form provided by the Water Resources Department. Before deciding whether to approve the request and initiate a rulemaking process, the commission shall request comments from any local government or watershed council within the geographic area or basin affected by the request. The comment period shall be closed not later than 120 days after the request is submitted.

(3) The priority date for any reservation established under this section shall be the date on which the commission takes action to initiate the rulemaking process. [1987 c.859 §13; 1997 c.445 §1]

537.358 Rules for reservation for future economic development; application for use of reserved water. (1) In adopting a rule under ORS 537.356 to reserve unappropriated water for multipurpose storage for future economic development, the Water Resources Commission shall include a public interest review that takes into consideration the factors described under ORS 537.170.

(2) A person requesting use of the reserved water for new storage shall submit a water right application and comply with the procedure set forth in ORS 537.140 to 537.252, except that the priority date for a storage right approved for use of reserved water shall be the date of the reservation. The commission by rule may describe a process for ensuring that the proposed use is consistent with the requirements of the rule establishing the reservation. [1987 c.859 §14; 1997 c.445 §2]

537.360 Relationship between application for in-stream water right and application for certain hydroelectric permits. If an application is pending under this chapter for a water right permit to use water for hydroelectric purposes or under ORS 543.010 to 543.610 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

537.385 Extension of irrigation season; limitations. (1) Notwithstanding any condition or limitation of a water right permit issued under ORS 537.211 or 537.625 or a water right certificate issued under ORS 537.250, 537.630 or 539.140, upon receipt of a request by the State Department of Agriculture, the Water Resources Commission may, by order, extend the irrigation season of a subbasin beyond the period established by adjudication, administrative rule or by condition imposed on a permit or certificate, if the commission finds:

(a) Water is available during the period of the extended irrigation season;

(b) Water use during the extended season would not impair in-stream flows that are necessary to protect aquatic resources; and

(c) Water diversion and use during the period of the extended season would not impair the achievement or maintenance of water quality standards as established for the water source by the Department of Environmental Quality.

(2) If the source of water identified in the request is stored water and water is available from the storage source during the period of the extended irrigation season, the commission may extend the irrigation season as requested

without making the findings required by subsection (1) of this section. However, use of water during the extended period shall be limited to the stored water.

(3) In order to ensure that use of water during an extended irrigation season does not injure existing and future water rights, use of water during the extended period of the irrigation season shall be subordinated to all existing and future water rights.

(4) Use of water during the extended irrigation season shall comply with all conditions and limitations of the permit or certificate, including the rate, duty and place of use of the right.

(5) Use of water shall be regulated among irrigators for whom the season has been extended during the extended irrigation season according to the priority date of the permit or certificate. [1995 c.356 §1]

Note: 537.385 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.

537.390 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]

PONDS AND RESERVOIRS

537.400 Reservoir permits. (1) All applications for reservoir permits shall be subject 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 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 Department 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.

(3) An application submitted to construct a reservoir storing less than 9.2 acre-feet of water or with a dam less than 10 feet in height need not be accompanied by a map prepared by a water right examiner certified under ORS 537.798 as required by ORS 537.140 (4). The map submitted with the application shall comply with standards established by the Water Resources Commission. The survey required under ORS 537.230 shall be prepared by a water right examiner certified under ORS 537.798 and shall be submitted to the department before the department issues the water right certificate.

(4) If a dam safety review is required under ORS 540.350, the department may issue a final order approving an application on the basis of preliminary plans, specifications and supporting information if the approval includes a condition requiring the commission's approval of final plans, specifications and supporting information under ORS 540.350 before the permit is issued.

(5) Notwithstanding the provisions of ORS 537.211 (2), the department may approve an application for a reservoir permit for which a dam safety review is required under ORS 540.350 and issue a permit, subject to the condition that before the reservoir may be filled, the permittee shall submit to the department evidence that the permittee owns, or has written authorization or an easement permitting access to, all lands to be inundated by the reservoir. [Formerly 537.300; and then 537.345; 1993 c.557 §3; 1993 c.595 §9; 1995 c.365 §6]

537.405 Exempt reservoirs; written notification to department; injury to other users. (1) Reservoirs in existence on or before January 1, 1995, that store less than 9.2 acre-feet of water or with a dam or impoundment structure less than 10 feet in height, are found to be a beneficial use of the water resources of this state. Except as provided in subsection (4) of this section, such reservoirs are exempt from regulation by the Water Resources Commission and the Water Resources Department and are not required to obtain a permit or certificate under ORS 537.140 to 537.252.

(2)(a) On or before January 31, 1997, an owner of a reservoir constructed before January 1, 1995, shall provide written notification to the department of the existence of the exempt reservoir. The written notification shall include the quantity of water stored by the reservoir, the source of the water used to fill the reservoir and a map or drawing of sufficient quality and scale to establish the general location of the reservoir by tax lot, township, range and section and to the nearest quarter-quarter section.

(b) Any person who submitted a notice of exemption for a reservoir under ORS 537.141 and qualified for the exemption shall be allowed an exemption.

(3) Within 90 days after receiving written notification under subsection (2) of this section, the department shall provide notice of the exemption in the manner the department determines to be the most appropriate.

(4) Detailed, legally obtained information demonstrating that a specific reservoir exempt under subsection (1) of this section should not be exempt shall be submitted in writing to the department on or before August 1, 1997:

(a) By the State Department of Fish and Wildlife if the reservoir should not be exempt because the existing reservoir, including any impoundment structure, poses a significant detrimental impact to existing fishery resources; or

(b) By any person if the existing reservoir should not be exempt because the existing reservoir, including the storage or use of the water, results in injury to an existing water right.

(5) Within 180 days after the department receives information under subsection (4) of this section, the Water Resources Director shall determine whether the reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources. The determination of injury to an existing water right or impact to existing fishery resources shall be based on verifiable evidence.

(6) If the director determines that an existing reservoir does not injure an existing water right or pose a significant detrimental impact to existing fishery resources, the reservoir shall be exempt under subsection (1) of this section.

(7) If the director determines that an existing reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources, the director shall require the owner of the reservoir to take

appropriate action to mitigate injury to existing water rights or impact to the existing fishery resources.

(8) If the director fails to act under subsection (6) or (7) of this section within 180 days after receiving the information under subsection (4) of this section, the reservoir shall be considered exempt.

(9) Nothing in this section shall be construed to allow any owner of a reservoir exempt under this section to increase the quantity of water stored in or diverted from such reservoir on or before January 1, 1995. [1995 c.752 §2]

537.407 Water right certificate for reservoirs existing before January 1, 1993; injury to other users; conversion of prior application to notice of exemption. (1) The Water Resources Department shall issue a water right certificate to any person who submitted an application for a reservoir under section 4, chapter 595, Oregon Laws 1993.

(2) Within 90 days after issuing a certificate under subsection (1) of this section, the department shall provide notice of the certificate in the manner the department determines to be the most appropriate.

(3) Detailed, legally obtained information demonstrating that a specific reservoir granted a certificate under subsection (1) of this section should not be certificated shall be submitted in writing to the department on or before August 1, 1997:

(a) By the State Department of Fish and Wildlife if the reservoir should not be exempt because the existing reservoir, including any impoundment structure, poses a significant detrimental impact to existing fishery resources; or

(b) By any person if the existing reservoir should not be exempt because the existing reservoir, including the storage or use of the water, results in injury to an existing water right.

(4) Within 180 days after the department receives information under subsection (3) of this section, the Water Resources Director shall determine whether the reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources. The determination of injury to an existing water right or impact to existing fishery resources shall be based on verifiable evidence.

(5) If the director determines that an existing reservoir does not injure an existing water right or pose a significant detrimental impact to existing fishery resources, the certificate for the reservoir shall continue with the same terms and conditions included with the certificate under subsection (1) of this section.

(6) If the director determines that an existing reservoir results in injury to an existing water right or poses a significant detrimental impact to existing fishery resources, the director shall require the owner of the reservoir to take appropriate action to mitigate injury to existing water rights or impact to the existing fishery resources.

(7) If the director fails to act under subsection (5) or (6) of this section within 180 days after receiving the information under subsection (3) of this section, the certificate shall continue with the same terms and conditions included with the certificate.

(8) Nothing in this section shall be construed to allow any owner of a reservoir certificated under this section to increase the quantity of water stored in or diverted from such reservoir on or before January 1, 1995.

(9) Any person who submitted an application for a reservoir under section 4, chapter 595, Oregon Laws 1993, may submit a written request to the department to convert the application to a notice of exemption under ORS 537.405. Upon receipt of a request under this subsection, the department shall refund all fees and convert the application to a notice of exemption. [1995 c.752 §3]

537.409 Alternate permit application process for qualifying reservoirs; injury to existing users or fishery resources; public interest review. (1) In lieu of the process set forth in ORS 537.140 to 537.211 for applying for a water right permit, an owner of a reservoir may submit an application to the Water Resources Department to issue a water right permit under ORS 537.211 or a certificate under ORS 537.250 according to the process set forth in this section if the reservoir:

(a) Has a storage capacity of less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height;

(b) Does not injure any existing water right;

(c) Does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and

(d) Is not prohibited under ORS 390.835.

(2) An application for a water right permit for a reservoir under subsection (1) of this section shall provide sufficient information to demonstrate compliance with the criteria set forth in subsection (1) of this section. The application shall:

(a) Include the quantity of water to be stored by the reservoir, a map indicating the location of the reservoir and the source of the water used to fill the reservoir; and

(b) Be accompanied by the fee established in ORS 536.050 (1)(q).

(3) The map required under subsection (2) of this section need not be prepared by a water right examiner certified under ORS 537.798. The map submitted with the application shall comply with standards established by the Water Resources Commission.

(4) Within 60 days after receiving an application under subsection (1) of this section, the Water Resources Department shall provide public notice of the application in the manner the department determines to be the most appropriate.

(5) Within 60 days after the department provides public notice under subsection (4) of this section, any person may submit detailed, legally obtained information in writing, requesting the department to deny the application for a permit on the basis that the reservoir:

(a) Would result in injury to an existing water right; or

(b) Would pose a significant detrimental impact to existing fishery resources.

(6) In accordance with rules established by the Water Resources Commission for an expedited public interest review process for applications submitted under this section or in response to a request under subsection (5) of this section, the department shall conduct a public interest review of the reservoir application. The review shall be limited to issues pertaining to:

(a) Water availability;

(b) Potential detrimental impact to existing fishery resources; and

(c) Potential injury to existing water rights.

(7) Within 180 days after the department receives an application for a permit under subsection (1) of this section, the department shall issue a final order granting or denying the permit or granting the permit with conditions.

(8) If the department issues an order under subsection (7) of this section denying the permit, the applicant may request a contested case hearing, which shall be conducted in accordance with applicable provisions of ORS 183.310 to 183.550.

(9) If the department does not find injury or impact under subsection (6) of this section and the department issues a final order under subsection (7) of this section allowing the issuance of a permit, the order shall be subject to judicial review of orders in other than contested cases as provided in ORS 183.310 to 183.550.

(10) Notwithstanding the requirement for a survey under ORS 537.230 (3), a survey of the appropriation is not required for a reservoir that has a storage capacity of less than 9.2 acre-feet of water. For a reservoir qualifying under this subsection, a permittee shall submit to the department a claim of beneficial use within one year after the date of completion of construction. A claim of beneficial use for a reservoir qualifying under this subsection shall require only a written affidavit signed by the permittee that includes the following:

(a) The dimensions of the reservoir.

(b) The maximum capacity of the reservoir in acre-feet.

(c) A map identifying the location of the reservoir. The map shall comply with standards established by the Water Resources Commission. The map required under this subsection need not be prepared by a water right examiner certified under ORS 537.798.

(11) Any person applying for a secondary permit for the use of stored water from a reservoir qualifying under subsection (10) of this section shall submit a survey prepared by a water right examiner certified under ORS 537.798. The survey required under this subsection shall apply to the storage reservoir and to the secondary use of the water in the reservoir. [1995 c.752 §4; 1997 c.446 §5; 1997 c.502 §2; 1997 c.587 §7]

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, municipalities and public utilities 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, to municipal corporations for municipal uses or purposes or to public utilities complying with subsection (3) of this section for an energy facility granted a site certificate by the Energy Facility Siting Council, are not subject to cancellation under the provisions of ORS 537.410 to 537.450.

(3) For a public utility to qualify under subsection (2) of this section:

(a) The energy facility of the public utility must not be a facility required to be licensed under ORS chapter 543; and

(b) The public utility must supply information every two years that demonstrates to the satisfaction of the commission that the conditions in the site certificate issued by the Energy Facility Siting Council contemplate the future use of the remaining portion of the water applied for in the original permit application. [Amended by 1985 c.673 §41; 1995 c.372 §1]

537.420 Notice of hearing. Whenever a permit holder fails to comply with the laws of the state and the requirements of the permit as to the commencement of work with due diligence, completion of the work of construction or the application of the water for a beneficial use, and the permit is subject to cancellation as provided in ORS 537.410 to 537.450, the Water Resources Commission shall, not less than 30 nor more than 60 days prior to the hearing provided for in ORS 537.445, notify each person who, according to Water Resources Department records, is the holder of a water right permit or certificate whose right may be injured by the proposed cancellation. The notice shall require the holder of the permit to appear before the commission at the time and place designated in the notice, and show cause why the permit described in the notice should not be canceled for the reasons therein specified. The notice shall contain a brief statement of the grounds for cancellation and shall be served in accordance with ORS 183.415. [Amended by 1983 c.740 §212; 1985 c.673 §42; 1991 c.103 §1]

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 diverted to satisfy 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 that results from conservation measures, measured as the

difference between:

(a) The smaller of the amount stated on the water right or the maximum amount of water that can be diverted using the existing facilities; and

(b) The amount of water needed after implementation of conservation measures to meet the beneficial use under the water right certificate. [1987 c.264 §1; 1993 c.641 §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;

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

(c) Encourage local cooperation and coordination in development of conservation proposals to provide incentives for increased efficiency and to improve streamflows.

(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; 1993 c.641 §2]

Note: See note under 537.455.

537.463 Applicability of ORS 537.455 to 537.500. The provisions of ORS 537.455 to 537.500 establish a voluntary program and apply only to those persons who choose to submit a conservation proposal under ORS 537.465. [1993 c.641 §11]

Note: See note under 537.455.

Note: Until July 1, 2003, 537.463, 537.465, 537.470 and 537.485 are not applicable. Sections 1, 2, 3 and 4, chapter 726, Oregon Laws 1997, apply in lieu thereof and are repealed December 31, 2003. See section 5, chapter 726, Oregon Laws 1997, as amended by section 1, chapter 394, Oregon Laws 1999, and section 6, chapter 726, Oregon Laws 1997, as amended by section 2, chapter 394, Oregon Laws 1999. The temporary text that is applicable until July 1, 2003, is set forth for the user’s convenience. Sections 1 to 7, chapter 726, Oregon Laws 1997, provide:

Sec. 1. The provisions of ORS 537.455 to 537.500 establish a voluntary program and apply only to those persons who choose to submit a conservation proposal or a request for allocation of conserved water under section 2 of this Act. [1997 c.726 §1]

Sec. 2. (1) Any person or group of persons holding one or more water right certificates issued under ORS 537.250, 537.630 or 539.140 or decrees may submit to the Water Resources Commission a conservation proposal for approval of a proposed conservation measure or a request for allocation of conserved water for a measure that was implemented by the person or group of persons within not more than five years prior to submitting the request.

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

(a) A description of the proposed measures;

(b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities;

(c) The amount of water that will be needed to supply the existing rights after implementation of the conservation measures;

(d) The amount of conserved water expected from implementation of the conservation measures;

(e) The proposed allocation and use of the conserved water if different from the allocation specified in section 3 of this Act;

(f) The intended use of any water allocated to the applicant; and

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

(3) A request for allocation of conserved water for conservation measures that already have been implemented, as submitted under subsection (1) of this section, shall include:

(a) A description of the measure as implemented and the date on which the measure was implemented;

(b) A description of the diversion facilities before the conservation measure was implemented and the amount of water that was diverted at the facilities before the conservation measure was implemented;

(c) The amount of water needed to supply existing rights after implementation of the conservation measure;

(d) The amount of water conserved by implementing the conservation measure;

(e) The proposed allocation and use of the conserved water if different from the allocation specified in section 3 of this Act;

(f) The intended use of any water allocated to the applicant;

(g) Evidence that the measure was implemented not more than five years prior to the date of filing the request for allocation of conserved water;

(h) A statement that the conserved water has not been used by the holder of the water right since implementation of the conservation measure; and

(i) Any other information the commission considers necessary to evaluate the request.

(4) 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. [1997 c.726 §2]

Sec. 3. (1) Upon receipt of a conservation proposal or a request for allocation of conserved water for conservation measures already implemented, as submitted under section 2, chapter 726, Oregon Laws 1997, the Water Resources Commission shall give notice of receipt of the proposal or request in accordance with ORS 540.520 (5).

(2) The commission shall allocate conserved water as provided in subsection (3) of this section and approve modifications of water rights as provided in subsection (6) of this section. The commission shall not allocate conserved water pursuant to a request under section 2 (3), chapter 726, Oregon Laws 1997, if:

(a) The request is filed more than five years after the conservation measure was implemented; or

(b) The conserved water was used by the holder of the water right since implementation of the conservation measure.

(3) After determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public for appropriation by the next user in priority. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

(4) The commission shall notify the applicant and any other person requesting notice of the action the commission intends to take under subsection (3) of this section. Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the commission.

(5) The modification of water rights under a conservation proposal shall not require a separate request for transfer under ORS 540.520.

(6) After the commission completes the allocation of conserved water under subsection (3) of this section, the commission shall issue orders for proposed new certificates covering the changes in the original water rights. Once the conservation project is completed, separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates indicating the priority of rights as set forth in section 4, chapter 726, Oregon Laws 1997, shall be issued to cover the right to the use of the allocated water. [1997 c.726 §3; 1999 c.664 §8]

Sec. 4. (1) 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, including an in-stream water right, under a proposal or request submitted and approved by the Water Resources Commission under sections 2 and 3 of this Act shall be either the

same as or one minute after the priority of the water right held by the person implementing the conservation measures.

(2) A person who implements a conservation measure may choose the priority date for the conserved water in accordance with subsection (1) of this section. However, all rights to conserved water that are established under a conservation proposal or a request for allocation of conserved water shall have the same priority date. [1997 c.726 §4]

Sec. 5. Notwithstanding ORS 537.463, 537.465, 537.470 or 537.485, for the period beginning on October 4, 1997, and ending July 1, 2003, sections 1, 2, 3 and 4, chapter 726, Oregon Laws 1997, shall apply in lieu of ORS 537.463, 537.465, 537.470 and 537.485, respectively. [1997 c.726 §5; 1999 c.394 §1]

Sec. 6. Sections 1 to 5, chapter 726, Oregon Laws 1997, are repealed December 31, 2003. [1997 c.726 §6; 1999 c.394 §2]

Sec. 7. The repeal of sections 1 to 5, chapter 726, Oregon Laws 1997, by section 6, chapter 726, Oregon Laws 1997, shall not affect the processing of any request for allocation of conserved water received before July 1, 2003. After December 31, 2003, the Water Resources Department may complete processing of any allocation of conserved water under sections 1 to 5, chapter 726, Oregon Laws 1997, provided that the request for allocation was received before July 1, 2003. [1997 c.726 §7; 1999 c.394 §3]

537.465 Conservation proposal; submission; contents. (1) Any person or group of persons holding one or more water right certificates issued under ORS 537.250, 537.630 or 539.140 or decrees 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 proposed measures;

(b) A description of the existing diversion facilities and an estimate of the amount of water that can be diverted at the facilities;

(c) The amount of water which will be needed to supply the existing rights after implementation of the conservation measures;

(d) The amount of conserved water expected from implementation of the conservation measures;

(e) The proposed allocation and use of the conserved water if different from the allocation specified in ORS 537.470;

(f) The intended use of any water allocated to the applicant; and

(g) 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; 1993 c.641 §3; 1995 c.274 §10]

Note: Until July 1, 2003, 537.465 is not applicable. Section 2, chapter 726, Oregon Laws 1997, applies in lieu thereof and is repealed December 31, 2003. See second note under 537.463.

Note: See note under 537.455.

537.470 Allocation of conserved water by commission; criteria; percentage to state; certificates showing change in original water right. (1) Upon receipt of a conservation proposal under ORS 537.465, the Water Resources Commission shall give notice of receipt of the proposal in accordance with ORS 540.520 (5).

(2) The commission shall allocate conserved water as provided in subsection (3) of this section and approve modifications of water rights as provided in subsection (6) of this section.

(3) After determining the quantity of conserved water, if any, required to mitigate the effects on other water rights, the commission shall allocate 25 percent of the remaining conserved water to the state and 75 percent to the applicant, unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources. If more than 25 percent of the funds used to finance the conservation measures comes from federal or state public sources and is not subject to repayment, the commission shall allocate to the state a percentage equal to the percentage of public funds used to finance the conservation measures and allocate to the applicant a percentage equal to the percentage of other funds used to finance the conservation measures. If the commission determines that the water allocated to the state is necessary to support in-stream flow purposes in accordance with ORS 537.332 to 537.360, the water shall be converted to an in-stream water right. If the water allocated to the state is not necessary to support in-stream flow purposes, it shall revert to the public

for appropriation by the next user in priority. In no event, however, shall the applicant receive less than 25 percent of the remaining conserved water unless the applicant proposes a higher allocation to the state.

(4) The commission shall notify the applicant and any other person requesting notice, of the action the commission intends to take under subsection (3) of this section. Any person objecting to the proposed allocation may file a protest requesting a contested case hearing before the commission.

(5) The modification of water rights under a conservation proposal shall not require a separate request for transfer under ORS 540.520.

(6) After the commission completes the allocation of conserved water under subsection (3) of this section, the commission shall issue orders for proposed new certificates covering the changes in the original water rights. Once the conservation project is completed, separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates indicating the priority of rights as set forth in ORS 537.485 shall be issued to cover the right to the use of the allocated water. [1987 c.264 §4; 1989 c.62 §1; 1993 c.641 §4; 1995 c.274 §13; 1999 c.664 §7]

Note: Until July 1, 2003, 537.470 is not applicable. Section 3, chapter 726, Oregon Laws 1997, as amended by section 8, chapter 664, Oregon Laws 1999, applies in lieu thereof and is repealed December 31, 2003. See second note under 537.463.

Note: See note under 537.455.

537.475 [1987 c.264 §5; repealed by 1993 c.641 §13]

537.480 Rules; criteria for evaluating allocation and determining mitigation required. The Water Resources Commission shall adopt rules and standards necessary to carry out the provisions of ORS 537.455 to 537.500. The rules may include formulas or other criteria for evaluating the effects of allocation of water on existing rights and for determining whether, and to what extent, mitigation shall be required. [1987 c.264 §6; 1993 c.641 §5]

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, including an in-stream water right, 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; 1993 c.641 §6]

Note: Until July 1, 2003, 537.485 is not applicable. Section 4, chapter 726, Oregon Laws 1997, applies in lieu thereof and is repealed December 31, 2003. See second note under 537.463.

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 537.470 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 537.470 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 540.505 to 540.580 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; 1993 c.641 §7]

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 water in a manner that results in the conserved water remaining in the stream. [1987 c.264 §9; 1993 c.641 §8]

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

Note: See note under 537.455.

GROUND WATER

(Generally)

537.505 Short title. ORS 537.505 to 537.795 and 537.992 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 and 537.992. As used in ORS 537.505 to 537.795 and 537.992, 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) “Converting” a well means changing the use of an existing well or hole not previously used to withdraw water such that the well or hole can be used to seek or withdraw water.

(4) “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.

(5) “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.

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

(7) “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.

(8) “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.

(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 temporary hole drilled for the purpose of gathering geotechnical ground water quality or ground water level information, a natural spring or a hole 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;

(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; 1991 c.200 §1; 1995 c.79 §302; 1999 c.293 §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 468B.155. [1955 c.708 §2; 1985 c.673 §46; 1989 c.201 §2; 1989 c.833 §56]

537.530 [Repealed by 1955 c.708 §38]

(Aquifer Storage and Recovery)

537.531 Legislative findings. The Legislative Assembly declares that aquifer storage and recovery is a beneficial use inherent in all water rights for other beneficial uses. Aquifer storage and recovery is the storage of water from a separate source that meets drinking water standards in a suitable aquifer for later recovery and not having as one of its primary purposes the restoration of an aquifer. [1995 c.487 §2]

537.532 Injection of ground water into aquifers; standards. (1) Notwithstanding any other provision of law, the injection into aquifers of water that complies with drinking water standards established by the Department of Human

Services under ORS 448.273 under an aquifer storage and recovery limited license or permit:

(a) Shall not be considered a waste, contaminant or pollutant;

(b) Shall be exempt from the requirement to obtain a discharge permit under ORS 468B.050 or 468B.053 or a concentration limit variance from the Department of Environmental Quality;

(c) Shall comply with all other applicable local, state or federal laws; and

(d) May be located within or outside an urban growth boundary in conformance with land use laws.

(2) In order to continue to protect the high quality of Oregon's aquifers for present and future uses, the Legislative Assembly recognizes the need to minimize concentrations of constituents in the injection source water that are not naturally present in the aquifer. Each aquifer storage and recovery limited license or permit shall include conditions to minimize, to the extent technically feasible, practical and cost-effective, the concentration of constituents in the injection source water that are not naturally present in the aquifer. In no case may an aquifer storage and recovery limited license or permit establish concentration limits for water to be injected in excess of the standards established by the Department of Human Services under ORS 448.273 or the maximum measurable levels established by the Environmental Quality Commission under ORS 468B.165, whichever are more stringent.

(3) Except as otherwise provided, if the injection source water contains constituents regulated under ORS 448.273 or 468B.165 that are detected at greater than 50 percent of the established levels, the aquifer storage and recovery limited license or permit may require the permittee to employ, or continue the employment of, technically feasible, practical and cost-effective methods to minimize concentrations of such constituents in the injection source water. Constituents that have a secondary maximum contaminant level or constituents that are associated with disinfection of the water may be injected into the aquifer up to the standards established under ORS 448.273.

(4) The Water Resources Department may, based upon valid scientific data, further limit certain constituents in the injection source water if the department finds the constituents will interfere with or pose a threat to the maintenance of the water resources of the state for present or future beneficial uses. [1995 c.487 §3; 1997 c.286 §9]

537.534 Rules for permitting and administering aquifer storage and recovery projects; limited license for test program; fees. (1) In accordance with this section, the Water Resources Commission shall establish rules for the permitting and administration of aquifer storage and recovery projects. The rules shall establish the Water Resources Department as the sole permitting agency for the projects, but the Department of Environmental Quality and the Department of Human Services may comment on permits for a project and recommend conditions to be included on the permit. When necessary, the applicant also shall obtain land use and development approval from a local government.

(2) Notwithstanding the provisions of ORS 537.130, the Water Resources Commission shall establish by rule a procedure to allow a person to obtain a limited license to store and use water injected into an underground aquifer for aquifer storage and recovery testing purposes for a short term or fixed duration after the person complies with the notice provision set forth in ORS 537.144. The rules shall provide a 30-day public comment period before issuance of a limited license. The department may attach conditions to the limited license regarding monitoring, sampling and rates of recovery up to 100 percent of the injection quantity. Aquifer storage and recovery under a limited license may be conditioned by the department to protect existing ground water rights that rely upon the receiving aquifer and the injection source water. The department may revoke or modify the limited license to use the stored water acquired under a limited license if that use causes injury to any other water right or to a minimum perennial streamflow. The Water Resources Director may issue a limited license for aquifer storage and recovery purposes for a term of not more than five years. The license may be renewed if the applicant demonstrates further testing is necessary.

(3) To obtain a limited license for aquifer storage and recovery, the applicant shall provide to the department:

(a) Well construction information;

(b) Test results of the quality of the injection source water;

(c) Test results of the quality of the receiving aquifer water;

(d) The proposed injected water storage time, recovery rates and recovery schedule;

(e) Preliminary hydrogeologic information including a description of the aquifer, estimated flow direction and rate of movement, allocation of surface water, springs or wells within the area affected by aquifer storage and recovery wells;

(f) The fee established by rule by the commission pursuant to ORS 536.050 (1)(L); and

(g) Any other information required by rule of the commission.

(4) Only after completion of a test program under a limited license issued under subsection (3) of this section may the applicant apply for a permanent aquifer storage and recovery permit. Each application for an aquifer storage and

recovery permit shall be accompanied by the fee set forth in ORS 536.050 (1)(b)(A). The Water Resources Department shall be the sole permitting agency for the project and may place conditions on the permit consistent with rules adopted by the commission, but the Department of Environmental Quality and the Department of Human Services may review, comment on and recommend conditions to be included on the permit. When necessary, the applicant shall obtain land use and development approval from a local government. Where existing water rights for the injection source water have been issued, the Water Resources Department shall receive comments from interested parties or agencies, but the public interest review standards shall apply only to the matters raised by the aquifer storage and recovery permit application in the same manner as any new water right application, not to the underlying water rights. If new water rights for injection source water and aquifer storage and recovery are necessary, then the public interest review standards shall apply to the new permit application in the same manner as any new water right application. The Water Resources Director may refer policy matters to the commission for decision.

(5) The commission shall adopt rules consistent with this section to implement an aquifer storage and recovery program. The rules shall include:

(a) Requirements for reporting and monitoring the aquifer storage and recovery project aquifer impacts and for constituents reasonably expected to be found in the injection source water.

(b) Provisions that allow any person operating an aquifer storage and recovery project under a permit, upon approval by the department, to recover up to 100 percent of the water stored in the aquifer storage facility if valid scientific data gathered during operations under the limited license or permit demonstrate that the injected source water is not lost through migration or other means and that ground water otherwise present in the aquifer has not been irretrievably lost as a result of aquifer storage or retrieval. The department may place such other conditions on withdrawal of stored water necessary to protect the public health and environment, including conditions allowing reconsideration of the permit to comply with ORS 537.532.

(c) The procedure for allowing the Department of Environmental Quality and the Department of Human Services to comment on and recommend permit conditions.

(6) The use of water under a permit as injection source water for an aquifer storage and recovery project up to the limits allowed in subsection (5)(b) of this section shall not affect the priority date of the water right permit or otherwise affect the right evidenced by the permit.

(7) The holder of a permit for aquifer storage and recovery shall apply for a transfer or change of use if the use of recovered water is different from that which is allowed in the source water permit or certificate. [1995 c.487 §4; 1997 c.587 §2; 1999 c.665 §3]

(Appropriation of Ground Water)

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 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992.

(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 and 537.992 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;

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

(g) Land application, so long as the ground water:

(A) Has first been appropriated and used under a permit or certificate issued under ORS 537.625 or 537.630 for a water right issued for industrial purposes or a water right authorizing use of water for confined animal feeding purposes;

(B) Is reused for irrigation purposes and the period of irrigation is a period during which the reused water has never been discharged to the waters of the state; and

(C) Is applied pursuant to a permit issued by the Department of Environmental Quality or the State Department of Agriculture under either ORS 468B.050 to construct and operate a disposal system or ORS 468B.215 to operate a confined animal feeding operation.

(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. Except for the use of water under subsection (1)(g) of this section, the Water Resources Commission by rule 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. For a use of water described in subsection (1)(g) of this section, the Department of Environmental Quality or the State Department of Agriculture shall provide to the Water Resources Department a copy of the permit issued under ORS 468B.050 or 468B.215 authorizing the land application of ground water for reuse. The permit shall provide the information regarding the place of use of such water and the nature of the beneficial reuse.

(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 and 537.992 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; 1997 c.244 §3; 2001 c.248 §12]

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, 537.620, 537.621, 537.622 and 537.625. [1955 c.708 §6 (1); 1999 c.59 §171]

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 [1989 c.939 §4; repealed by 1991 c.200 §3]

537.599 [1989 c.939 §5; repealed by 1991 c.200 §3]

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 existing right to appropriate ground water; fee. (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 Department 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 department 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 Water Resources 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 department considers necessary to evaluate the application.

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

(4) The map or drawing required to accompany the application shall be of sufficient quality and scale to establish the location of the proposed point of diversion and the proposed place of use identified by tax lot, township, range, section and nearest quarter-quarter section along with a notation of the acreage of the proposed place of use, if appropriate. In addition, the department shall accept locational coordinate information, including latitude and longitude as established by a global positioning system. If the application is for a water right for a municipal use, the map need not identify the proposed place of use by tax lot.

(5) Each application for a permit to appropriate water shall be accompanied by the examination fee set forth in ORS 536.050 (1).

(6) If the proposed use of the water is for the operation of a chemical process mine as defined in ORS 517.953, the applicant shall provide the information required under this section as part of the consolidated application under ORS 517.952 to 517.989.

(7) Notwithstanding any provision of ORS 183.310 to 183.550, an application for a permit to appropriate ground water shall be processed in the manner set forth in ORS 537.505 to 537.795. Nothing in ORS 183.310 to 183.550 shall be construed to allow additional persons to participate in the process. To the extent that any provision in ORS 183.310 to 183.550 conflicts with a provision set forth in ORS 537.505 to 537.795, the provisions in ORS 537.505 to 537.795 shall control. [1955 c.708 §9; 1959 c.437 §3; 1985 c.673 §54; 1987 c.542 §7; 1991 c.735 §34; 1993 c.557 §4; 1995 c.416 §22; 1997 c.446 §6; 1997 c.587 §8]

537.620 Determination of completeness of application; initial review; preliminary determination; notice; comments. (1) The Water Resources Department shall accept all applications for permits submitted under ORS 537.615 in proper form.

(2) Within 15 days after receiving the application, the department shall determine whether the application contains the information listed under ORS 537.615 (2) and is complete and not defective, including the payment of all fees required under ORS 537.615 (5). If the department determines that the application is incomplete or defective or that all fees have not been paid, the department shall return all fees and the application to the applicant to remedy the defect. If an application is complete and not defective, the department shall indorse on the application the date upon which the application was received at the department, which shall be the priority date for any water right issued in response to the application.

(3) Upon determining that an application is complete and not defective, the department shall determine whether the proposed use is prohibited by statute. If the proposed use is prohibited by statute, the department shall reject the application and return all fees to the applicant with an explanation of the statutory prohibition.

(4) If the proposed use is not prohibited by statute, the department shall undertake an initial review of the application and make a preliminary determination of:

(a) Whether the proposed use is restricted or limited by statute or rule or because the proposed use is located within a designated critical ground water area;

(b) The extent to which water is available from the proposed source during the times and in the amounts requested; and

(c) Any other issue the department identifies as a result of the initial review that may preclude approval of or restrict the proposed use.

(5) Upon completion of the initial review and no later than 30 days after determining an application to be complete and not defective as described in subsection (2) of this section, the department shall notify the applicant of its preliminary determinations and allow the applicant 14 days from the date of mailing within which to notify the department to stop processing the application or to proceed with the application. If the applicant notifies the department to stop processing the application, the department shall return the application and all except $50 of all fees. If the department receives no timely response from the applicant, the department shall proceed with the application.

(6) Within seven days after proceeding with the application under subsection (5) of this section, the department shall give public notice of the application in the weekly notice published by the department. The notice shall include a request for comments on the application and information pertaining to how an interested person may obtain future notices about the application and a copy of the proposed final order.

(7) Within 30 days after the public notice under subsection (6) of this section, any person interested in the application shall submit written comments to the department. Any person who asks to receive a copy of the department's proposed final order shall submit to the department the fee required under ORS 536.050 (1)(p). [1955 c.708 §10; 1981 c.589 §4; 1985 c.673 §55; 1989 c.201 §3; 1991 c.102 §2; 1991 c.400 §3; 1991 c.735 §35; 1993 c.557 §5; 1995 c.416 §23; 1997 c.587 §9]

537.621 Review of application; proposed final order; presumption that use will ensure preservation of public welfare, safety and health; flow rate and duty; standing; protest; final order; contested case hearing. (1) Within 60 days after the Water Resources Department proceeds with the application under ORS 537.620 (5), the department shall complete application review and issue a proposed final order approving or denying the application or approving the application with modifications or conditions. The department may request the applicant to provide additional

information needed to complete the review. If the department requests additional information, the request shall be specific and shall be sent to the applicant by registered mail. The department shall specify a date by which the information must be returned, which shall be not less than 10 days after the department mails the request to the applicant. If the department does not receive the information or a request for a time extension under ORS 537.627 by the date specified in the request, the department may reject the application and may refund fees in accordance with ORS 536.050 (3). The time period specified by the department in a request for additional information shall allow the department to comply with the 60-day time limit established by this subsection.

(2) In reviewing the application under subsection (1) of this section, the department shall determine whether the proposed use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525. The department shall presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310 (12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest under subsection (7) of this section or in a finding of the department that shows:

(A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

(3) The proposed final order shall cite findings of fact and conclusions of law and shall include but need not be limited to:

(a) Confirmation or modification of the preliminary determinations made in the initial review;

(b) A brief statement that explains the criteria considered relevant to the decision, including the applicable basin program and the compatibility of the proposed use with applicable land use plans;

(c) An assessment of water availability and the amount of water necessary for the proposed use;

(d) An assessment of whether the proposed use would result in injury to existing water rights;

(e) An assessment of whether the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525;

(f) A draft permit, including any proposed conditions, or a recommendation to deny the application;

(g) Whether the rebuttable presumption under subsection (2) of this section has been established;

(h) The date by which protests to the proposed final order must be received by the department; and

(i) The flow rate and duty of water allowed.

(4) In establishing the flow rate and duty of water allowed, the department may consider a general basin-wide standard, but first shall evaluate information submitted by the applicant to demonstrate the need for a flow rate and duty higher than the general standard. If the applicant provides such information, the department shall authorize the requested rate and duty except upon specific findings related to the application to support a determination that a lesser amount is needed. If the applicant does not provide information to demonstrate the need for a flow rate and duty higher than the general basin-wide standard, the department may apply the general standards without specific findings related to the application.

(5) The department shall mail copies of the proposed final order to the applicant and to persons who have requested copies and paid the fee required under ORS 536.050 (1)(p). The department also shall publish notice of the proposed final order by publication in the weekly notice published by the department.

(6) Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing and shall be accompanied by the fee established under ORS 536.050 (1)(n).

(7) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant’s interest in the proposed final order, and if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant’s interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged

error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(8) Requests for standing and protests on the proposed final order shall be submitted within 45 days after publication of the notice of the proposed final order in the weekly notice published by the department. Any person who asks to receive a copy of the department's final order shall submit to the department the fee required under ORS 536.050 (1)(p), unless the person has previously requested copies and paid the required fee under ORS 537.620 (7), the person is a protestant and has paid the fee required under ORS 536.050 (1)(j) or the person has standing and has paid the fee under ORS 536.050 (1)(n).

(9) Within 60 days after the close of the period for receiving protests, the Water Resources Director shall:

(a) Issue a final order as provided under ORS 537.625 (1); or

(b) Schedule a contested case hearing if a protest has been submitted and if:

(A) Upon review of the issues, the director finds that there are significant disputes related to the proposed use of water; or

(B) Within 30 days after the close of the period for submitting protests, the applicant requests a contested case hearing. [1995 c.416 §25; 1995 c.549 §1a; 1997 c.446 §7; 1997 c.587 §10]

537.622 Contested case hearing; parties; issues. (1) Within 45 days after the Water Resources Director schedules a contested case hearing under ORS 537.621 (9), the Water Resources Department shall hold the contested case hearing. The issues to be considered in the contested case hearing shall be limited to issues identified by the hearings officer.

(2) Notwithstanding the provisions of ORS 183.310 to 183.550 pertaining to contested case proceedings, the parties to any contested case hearing initiated under this section shall be limited to:

(a) The applicant;

(b) Any person who timely filed a protest; and

(c) Any person who timely filed a request for standing under ORS 537.621 (6) and who requests to intervene in the contested case hearing prior to the start of the proceeding.

(3) The contested case proceeding shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550 except:

(a) As provided in subsections (1) and (2) of this section; and

(b) An interlocutory appeal under ORS 183.480 (3) shall not be allowed.

(4) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably ascertainable issue in a protest or in a hearing or failure to provide sufficient specificity to afford the Water Resources Department an opportunity to respond to the issue precludes judicial review based on that issue. [1957 c.341 §2; 1983 c.740 §213; 1985 c.673 §56; 1995 c.416 §27]

537.625 Final order; appeal; contents of permit. (1) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Water Resources Director determines that the proposed use does not ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the director shall issue a final order rejecting the application or modifying the proposed final order as necessary to ensure the preservation of the public welfare, safety and health as described in ORS 537.525. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the director determines that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525, the director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order 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.

(2) If a contested case hearing is not held:

(a) Where the final order modifies the proposed final order, the applicant may request and the Water Resources Department shall schedule a contested case hearing as provided under ORS 537.622 (3) by submitting the information required for a protest under ORS 537.621 (7) within 14 days after the director issues the final order. However, the issues on which a contested case hearing may be requested and conducted under this paragraph shall be limited to issues based on the modifications to the proposed final order.

(b) Only the applicant or a protestant may appeal the provisions of the final order in the manner established in ORS

183.310 to 183.550 for appeal of order other than contested cases.

(3) If the presumption of public welfare, safety and health under ORS 537.621 (2) is overcome, then before issuing a final order, the director or the Water Resources Commission, if applicable, shall make the final determination of whether the proposed use or the proposed use as modified in the proposed final order would preserve the public welfare, safety and health as described in ORS 537.525 by considering:

(a) The conservation of 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.

(4) Upon issuing a final order, the Water Resources Department shall notify the applicant and each person who submitted written comments or protests or otherwise requested notice of the final order and send a copy of the final order to any person who requested a copy and paid the fee required under ORS 536.050 (1)(p).

(5) A right to appropriate ground water under a permit has a priority from the date when the application was filed with the department.

(6) If the use of water under the permit is for operation of a chemical process mine as defined in ORS 517.952:

(a) Review of the application and approval or denial of the application shall be coordinated with the consolidated application process under ORS 517.952 to 517.989. However, such review and approval or denial shall take into consideration all policy considerations for the appropriation of water as set forth in this chapter and ORS chapter 536.

(b) The permit may be issued for exploration under ORS 517.702 to 517.740, but the permit shall be conditioned on the applicant's compliance with the consolidated application process.

(c) The permit shall include a condition that additional conditions may be added to the use of water when a water right certificate is issued, or when the use of water is changed pursuant to ORS 540.520 and 540.530 to use for a chemical process mine operation. [1955 c.708 §11; 1959 c.437 §4; 1981 c.61 §3; 1985 c.673 §57; 1995 c.416 §28; 1997 c.587 §11]

537.626 Exceptions to final order; modified order. (1) Within 20 days after the Water Resources Director issues a final order under ORS 537.625 after the conclusion of a contested case hearing, any party may file with the Water Resources Commission exceptions to the order.

(2) The commission shall issue a modified order, if allowed, or deny the exceptions within 60 days after close of the exception period under subsection (1) of this section. [1995 c.416 §29]

537.627 Time limit for issuing final order or scheduling contested case hearing; extension; writ of mandamus. (1) Except as provided in subsection (2) of this section, the Water Resources Department shall issue a final order or schedule a contested case hearing on an application for a water right referred to in ORS 537.615 within 180 days after the department proceeds with the application under ORS 537.620 (5).

(2) At the request of the applicant, the department may extend the 180-day period set forth in subsection (1) of this section for a reasonable period of time.

(3) If the applicant does not request an extension under subsection (2) of this section and the department fails to issue a proposed final order or schedule a contested case hearing on an application for a water right within 180 days after the department proceeds with the application under ORS 537.620 (5), the applicant may apply in the Circuit Court for Marion County for a writ of mandamus to compel the department to issue a final order or schedule a contested case hearing on an application for a water right. The writ of mandamus shall compel the department to issue a water right permit, unless the department shows by affidavit that to issue a permit may result in harm to an existing water right holder. [1995 c.416 §31]

537.628 Terms; conditions; time limit for issuing final order after contested case hearing. (1) The Water

Resources Department 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 department 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.

(2) If a contested case hearing is held, the department shall issue a final order:

(a) Within 270 days after scheduling the hearing for a contested case proceeding that involves three or more parties not including the department; and

(b) Within 180 days after scheduling the hearing for all other contested case proceedings. [1995 c.416 §30]

537.629 Conditions or limitations to prevent interference with other users. (1) 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 Water Resources Department may impose conditions or limitations in the permit to prevent the same or reject the same after hearing, or, in the department's discretion, request the Water Resources Commission to initiate a rulemaking proceeding to declare the affected area a critical ground water area under ORS 537.730 to 537.740.

(2)(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 department may:

(A) Approve the permit;

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

(C) After a hearing under ORS 537.622, reject the application; or

(D) Request the commission to initiate a rulemaking proceeding to declare the affected area 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 department shall consider any orders or permits applicable to the ground water reservoir issued by the State Geologist or the governing board of the State Department of Geology and Mineral Industries under ORS chapter 522. [1995 c.416 §26]

537.630 Construction work under permit; certificate of completion; survey; ground water right certificate; requirements for obtaining supplemental water right. (1) The construction of a well or other means of developing and securing the ground water under a permit issued pursuant to ORS 537.625 shall be prosecuted with reasonable diligence and be completed within a reasonable time fixed in the permit by the Water Resources Department, not to exceed five years after the date of approval of the application. The department, 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 department, 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;

(d) The identity of the record owner of any property that was described in the application for a permit under ORS 537.625 but is not included in the certificate of completion; and

(e) Any other information the department 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 department along with the certificate of completion required under subsection (2) of this section. If any property described in the permit is not included in the request for a water right certificate, the permittee shall state the identity of the record owner of that property.

(4) After the department 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 department, that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795 and 537.992, the department 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.

(6) Notwithstanding ORS 537.410, for purposes of obtaining a water right certificate under subsection (4) of this section for a supplemental water right, the permittee shall have a facility capable of handling the full rate and duty of water requested from the supplemental source and be otherwise ready, willing and able to use the amount of water requested, up to the amount of water approved in the water right permit. To obtain a certificate for a supplemental water right, the permittee is not required to have actually used water from the supplemental source if:

(a) Water was available from the source of the primary water right and the primary water right was used pursuant to the terms of the primary water right; or

(b) The nonuse of water from the supplemental source occurred during a period of time within which the exercise of the supplemental water right permit was not necessary due to climatic conditions. [1955 c.708 §12; 1959 c.437 §5; 1985 c.617 §2; 1985 c.673 §202; 1987 c.542 §8; 1995 c.367 §3; 1995 c.416 §34; 1997 c.446 §8; 1999 c.453 §2]

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

537.635 Assignment of application, certificate of registration or permit. (1) 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.

(2) An assignment of an application filed under ORS 537.615 or a permit issued under ORS 537.625 and filed for record with the Water Resources Department shall identify the current record owners of all property described in the application or permit. The assignor shall furnish proof acceptable to the department that notice of the assignment has been given or attempted for each identified property owner not a party to the assignment. [1955 c.708 §13; 1985 c.673 §59; 1995 c.367 §4]

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 468B.185 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 Water Resources 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 468B.167. [1955 c.708 §14; 1985 c.673 §60; 1989 c.833 §58]

537.670 Determination of rights to appropriate ground water of 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 appropriate 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 Water Resources Department 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 enclose 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; 1991 c.102 §3]

537.675 Determination of rights in several reservoirs or of 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 Water Resources Department 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; 1991 c.102 §4]

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 and 537.992 is willfully violating any provision of the permit or certificate of registration or any provision of ORS 537.505 to 537.795 and 537.992, 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 Designation of critical ground water area; notice. (1) The Water Resources Commission by rule may designate an area of the state a critical ground water area if:

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

(b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;

(c) The department finds a pattern of interference or potential interference between wells of ground water claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;

(d) The department finds a pattern of substantial interference between wells within the area in question and:

(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 proceeding to designate a critical ground water area shall be conducted according to the provisions under ORS 183.310 to 183.550 applicable to the adoption of rules by an agency, except that a hearing on a critical ground water declaration shall occur at least 60 days after notice has been given.

(3) In addition to the notice requirements under ORS 183.335, the department shall give notice by regular mail to:

(a) The owners of record of all ground water registrations, permits and certificates for water use within the affected area; and

(b) Each water well constructor licensed under ORS 537.747.

(4) If the department satisfies the notice requirements under ORS 183.335 and subsection (3) of this section, a person shall not contest a critical ground water area designation on grounds of failure to receive notice by regular mail. [1955 c.708 §26; 1957 c.341 §8; 1981 c.589 §5; 1985 c.673 §62; 1987 c.442 §1; 1989 c.201 §4; 1991 c.400 §4]

537.735 Rules designating critical ground water area. (1) A rule adopted by the Water Resources Commission under ORS 537.730 shall:

(a) Define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located either in whole or in part 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.

(b) Contain a provision requiring a periodic review of conditions in the critical ground water area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground water area designation and shall occur no less frequently than once every 10 years.

(2) In adopting the rule, 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.

(3) A rule by the commission under subsection (1) of this section 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.

(c) The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process.

(d) 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 and 537.992.

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

(f) 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 Water Resources 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. [1955 c.708 §27; 1981 c.589 §6; 1981 c.919 §1; 1985 c.673 §63; 1989 c.201 §5; 1991 c.400 §5]

537.740 Filing rules designating critical ground water area. In addition to any applicable requirements under ORS 183.310 to 183.550, the Water Resources Commission shall file a copy of any rules designating a critical ground water area under ORS 537.730 to 537.740 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 designation in the deed records of the county. [1955 c.708 §28; 1985 c.673 §64; 1991 c.400 §6]

537.742 Contested case proceeding to limit use of ground water in critical ground water area. (1) Any time

after the Water Resources Commission adopts a rule under ORS 537.730 designating a critical ground water area, the commission may initiate a contested case proceeding to limit the use of ground water in the area if the commission has reason to believe that any of the qualifying criteria of ORS 537.730 (1) exists.

(2) Upon the conclusion of a contested case proceeding initiated under subsection (1) of this section and upon finding that the problems that resulted in the designation of a critical ground water area under ORS 537.730 can be resolved by implementing one or more of the corrective control provisions of this section, the commission shall issue a final order establishing any one or more of the following corrective control provisions:

(a) A provision apportioning the permissible total withdrawal as established by rule under ORS 537.730, among the appropriators holding valid rights to ground water in the critical area in accordance with the relative dates of priority of such rights.

(b) 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.

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

(d) 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.

(e) A provision requiring the abatement, in whole or 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.

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

(3) The commission shall conduct the proceeding under this section according to the provisions of ORS 183.310 to 183.550 applicable to contested case proceedings. [1991 c.400 §2]

537.745 Voluntary agreements among ground water users from same reservoir. (1) In the administration of ORS 537.505 to 537.795 and 537.992, 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 537.992, 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 and 537.992. 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 and 537.992.

(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]

537.746 Mitigation credits for projects in Deschutes River Basin; relationship to water made available; rules; annual report. (1) The Water Resources Commission may by rule establish a system of credits that may be used to offset the potential interference with hydraulically connected surface waters caused by ground water withdrawals within the Deschutes River Basin to account for projects performed in the basin that make water available for mitigation.

(2) A person proposing a project that makes water available for mitigation may apply to the Water Resources Department for approval of the project and a preliminary finding as to the amount of mitigation credits available, based on the amount of water made available by the project. Projects approved by the department shall comply with all other applicable provisions of law, including relevant portions of ORS 390.835, and may not result in injury to existing water rights.

(3)(a) The amount of mitigation credits awarded for a completed project, or any completed phase of the project, shall be equal to the amount of water made available by the project as determined and approved by the department.

(b) A final award of mitigation credits by the department shall be made upon completion of the approved project by the applicant and verification by the department that the project is complete. The department may provide for a partial award of mitigation credits to correspond with completion of approved phases of project implementation.

(c) Mitigation credits shall remain valid until exercised by the holder.

(4) The commission may by rule provide for the recognition or establishment of mitigation banks to facilitate transactions among the holders of mitigation credits and persons who desire to acquire mitigation credits. The mitigation credits may be assigned by the person creating the project to another person or a mitigation bank.

(5) The Water Resources Department shall prepare an annual report on the implementation and management of the system of mitigation credits established by subsections (1) to (4) of this section. [2001 c.659 §§2,3]

(Water Well Constructors)

537.747 Water well constructor's license; fees. (1) No person shall advertise services to construct, alter, abandon or convert wells, offer to enter or enter into a contract with another person or public agency to construct, alter, abandon or convert a well for such other person, cause any well construction, alteration, abandonment or conversion 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. The department shall adopt a single water well constructor's license that may specify the type of well, type of well alteration or construction or type of well drilling machine operation for which the water well constructor is qualified.

(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 two years.

(5) A water well constructor's license shall expire on June 30. A person may renew a license by submitting an application and the appropriate fees any time before the license expires but not later than one year after the license expires. At the time of application, the person shall provide the department with evidence of compliance with the continuing education requirements established pursuant to section 4, chapter 496, Oregon Laws 2001. A person who renews a license within the 12 months after the license expires may either pay a penalty fee set forth under subsection (6)(d) 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 $150.

(c) A renewal fee of $150.

(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 $250 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 and 537.992 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 willfully or negligently violates any provision of ORS 537.505 to 537.795 and 537.992, 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; 1999 c.293 §2; 2001 c.496 §5]

Note: The amendments to 537.747 by section 8, chapter 496, Oregon Laws 2001, become operative January 2, 2008. See section 9, chapter 496, Oregon Laws 2001. The text that is operative on and after January 2, 2008, is set forth for the user's convenience.

537.747. (1) No person shall advertise services to construct, alter, abandon or convert wells, offer to enter or enter into a contract with another person or public agency to construct, alter, abandon or convert a well for such other person, cause any well construction, alteration, abandonment or conversion 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 person may renew a license 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 subsection (6)(d) 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 and 537.992 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 willfully or negligently violates any provision of ORS 537.505 to 537.795 and 537.992, 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.

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 or letter of credit; landowner's permit and bond. (1) Any person who contracts or offers services to contract to construct, alter, abandon or convert wells shall have in effect a surety bond or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, running to the State of Oregon in the sum of $4,000. The bond or letter of credit shall be filed with the Water Resources Commission in accordance with the following conditions: In the construction, alteration, abandonment or conversion of wells, the principal shall comply with all the provisions of ORS 537.505 to 537.795 and 537.992 that are applicable to such construction, alteration, abandonment or conversion and to the rules and standards of well construction, alteration, abandonment and conversion 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 or letter of credit has a right of action on the bond or letter of credit in the name of the injured person. However, the aggregate liability of the surety or letter of credit issuer to all such persons shall in no event exceed the sum of the bond or letter of credit.

(3) In no event shall a proceeding against the bond or letter of credit 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, altered, abandoned or converted 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 work. 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 or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 running to the State of Oregon in the sum of $2,000, ensuring that in the construction, alteration, abandonment or conversion of the well the landowner shall comply with all the provisions of ORS 537.505 to 537.795 and 537.992 that are applicable to the construction, alteration, abandonment or conversion of wells and to the rules and standards of well construction, alteration, abandonment and conversion that have been prescribed by the commission. Before the person who constructs, alters, abandons or converts a well referred to in this subsection seals the well, the person must give 10 days' written notice of the construction, alteration, abandonment or conversion 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 §198; 1991 c.331 §78; 1997 c.631 §485; 1999 c.293 §3]

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 beginning work on well; 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 beginning work on 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 Water Resources 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. [Formerly 537.632; 1981 c.416 §5; 1985 c.615 §7; 1985 c.673 §69; 1987 c.109 §2; 1989 c.129 §1; 1999 c.293 §4]

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 constructing, altering, abandoning or converting well; furnishing samples to Water Resources Commission. (1) The business or activity of constructing new wells or altering, abandoning or converting 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, or any person or public agency constructing, altering, abandoning or converting a well, shall keep a log of each well constructed, altered, abandoned or converted and shall furnish a certified copy of the log to the Water Resources Commission within 30 days after the completion of the construction, alteration, abandonment or conversion.

(2) The commission shall provide acknowledgment to the constructor of receipt of a well log submitted under subsection (1) of this section within 120 days of receipt.

(3) 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, altering, abandoning or converting the well.

(b) The location of the well by county tax lot number, township, range and section, and to the nearest quarter-quarter section or latitude and longitude as established by a global positioning system, 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, altering, abandoning or converting 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.

(4) 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; 1993 c.774 §5; 1995 c.77 §1; 1999 c.293 §5]

Note: Sections 2 to 4, 6, 7 and 10, chapter 496, Oregon Laws 2001, provide:

Sec. 2. (1) There is established a Well Constructors Continuing Education Committee consisting of four members appointed by the Water Resources Director as follows:

(a) Three persons from the well drilling industry licensed pursuant to ORS 537.747; and

(b) One person from the regulatory community.

(2) The term of office of each member is three years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become effective immediately for the unexpired term.

(3) A member of the committee is entitled to travel expenses as provided in ORS 292.495.

(4) Members of the committee must be residents of this state who are knowledgeable about the principles of well construction.

(5) The committee shall select one of its members as chairperson and another as vice chairperson, for such terms and with the duties and powers necessary for the performance of the functions of such offices as the committee determines.

(6) Three members of the committee constitute a quorum for the transaction of business. At least three members of the committee must approve all official actions or decisions of the committee. [2001 c.496 §2]

Sec. 3. Notwithstanding the term of office specified by section 2 of this 2001 Act, of the members first appointed to the Well Constructors Continuing Education Committee:

(1) One shall serve for a term ending June 30, 2002.

(2) One shall serve for a term ending June 30, 2003.

(3) Two shall serve for terms ending June 30, 2004. [2001 c.496 §3]

Sec. 4. (1) The Well Constructors Continuing Education Committee shall recommend to the Water Resources Commission a process for reviewing and approving continuing education requirements for licensed water well constructors established by rule pursuant to subsection (2) of this section.

(2) The commission shall adopt rules necessary for the administration of a continuing education program for licensed water well constructors consistent with the recommendations of the committee.

(3) The rules adopted by the commission under this section for the continuing education program shall:

(a) Authorize the committee to review and approve continuing education courses and to assign continuing education credits.

(b) At a minimum require, for renewal of a license issued under ORS 537.747, that an applicant:

(A) Through clinics, schools, professional organizations or seminars, lectures or other courses of study that relate to the practice of well construction and that are approved by the committee, obtain continuing education credits during each licensing period in an amount designated by the commission, but not to exceed 14 credits; and

(B) Furnish proof on a form approved by the committee that the applicant has complied with the continuing education requirements during the preceding licensing period unless the applicant is exempt under subsection (4) of this section.

(4) The commission may waive the continuing education requirements established by rule pursuant to subsection (2) of this section for a licensed water well constructor if the constructor submits satisfactory evidence of inability to attend continuing education courses because of health, military duty or other circumstances beyond the control of the constructor. [2001 c.496 §4]

Sec. 6. The Water Resources Department shall adopt the license specified in the amendments to ORS 537.747 (1) by section 5 of this 2001 Act no later than July 1, 2006. [2001 c.496 §6]

Sec. 7. Sections 2 to 4 of this 2001 Act are repealed January 2, 2008. [2001 c.496 §7]

Sec. 10. The continuing education requirements for renewal of a water well constructor's license established pursuant to section 4 of this 2001 Act apply to the renewal of all licenses that expire on or after June 30, 2005. [2001 c.496 §10]

(Local Regulation)

537.769 Local regulation of wells and water well constructors. The Legislative Assembly finds that ground water protection is a matter of statewide 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 and 537.992. [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; permanent abandonment of old well. (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 and 537.992, 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.

(3) A landowner who replaces an old well by drilling a new well shall permanently abandon the old well if the old well is within a setback as defined in well construction rules adopted by the commission. Permanent abandonment of a well located within a setback shall occur within one year after the function of the well is replaced or within one year after the water right, if applicable, is transferred to the new well, whichever is later. [1955 c.708 §25; 1981 c.919 §2;

1985 c.673 §71; 1987 c.442 §2; 1989 c.201 §6; 1989 c.833 §59; 1993 c.774 §12]

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 537.992 and any applicable order or rule of the commission under ORS 537.505 to 537.795 and 537.992; 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; rules; limitations on authority. (1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may:

(a) 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.

(b) Enforce:

(A) General standards for the construction and maintenance of wells and their casings, fittings, valves, pumps and back-siphoning prevention devices; and

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

(c)(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.

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

(e) 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 back-siphoning prevention devices.

(f) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795 and 537.992, 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.

(g) 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.

(h) Adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795 and 537.992 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.

(i) 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.

(2) Notwithstanding any provision of subsection (1) of this section, in administering the provisions of ORS 537.505 to 537.795 and 537.992, the commission may not:

(a) Adopt any rule restricting ground water use in an area unless the rule is based on substantial evidence in the record of the Water Resources Department to justify the imposition of restrictions.

(b) Make any determination that a ground water use will impair, substantially interfere or unduly interfere with a surface water source unless the determination is based on substantial evidence. Such evidence may include reports or studies prepared with relation to the specific use or may be based on the application of generally accepted hydrogeological principles to the specific use.

(3) At least once every three years, the commission shall review any rule adopted under subsection (2) of this section that restricts ground water use in an area. The review process shall include public notice and an opportunity to comment on the rule. [1955 c.708 §32; 1981 c.416 §7; 1985 c.673 §73; 1989 c.833 §60; 1995 c.549 §2]

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 and 537.992.

(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 468B.050 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 and 537.992, 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 and 537.992, 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, abandonment or conversion 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 537.992, 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; 1999 c.293 §6]

537.788 Recording well information in deed records. (1) A person who owns property upon which a well is drilled shall, within 60 days of the drilling of the well, record the following information in the deed records of the property upon which the well was drilled:

(a) The identification number of the well provided by the Water Resources Department upon satisfaction of the reporting requirement of ORS 537.762; and

(b) The standard form of notice adopted by the Water Resources Commission under section 6, chapter 774, Oregon Laws 1993, if this form of notice is not already in the deed records.

(2) An owner of a property shall record the following information in the property deed records when transferring property if a known well is located on the property and the following information is not already recorded in the property deed records:

(a) The identification number of the well obtained from the Water Resources Department under ORS 537.791.

(b) The standard form of notice adopted by the Water Resources Commission under section 6, chapter 774, Oregon Laws 1993. [1993 c.774 §8]

537.789 Well identification number. (1) The well identification number provided by the Water Resources Department when the reporting requirement of ORS 537.762 is satisfied shall be recorded on the well by a person licensed under ORS 537.747 within 30 days after the associated well work is completed.

(2) If a well does not have an identification number recorded on it at the time the property upon which the well is located is transferred, the owner of the property shall record on the well the identification number obtained from the Water Resources Department under ORS 537.791 within 30 days.

(3) The identification number on the well shall be clearly visible to a person looking for the number and shall meet minimum standards as recommended by the ground water advisory committee appointed under ORS 536.090 and adopted by the Water Resources Commission. [1993 c.774 §9]

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

537.791 Request for well identification number. (1) A landowner may apply to the Water Resources Department for a number to identify a well on the landowner's property.

(2) The Water Resources Department shall issue a number to identify a well that has not received a number through the reporting process required for wells under ORS 537.762 within 10 days after receipt of the application. [1993 c.774 §10]

537.792 [1985 c.615 §6; 1985 c.673 §200; 1991 c.734 §52; renumbered 537.992 in 1993]

537.793 Effect of failure to comply with ORS 537.788, 537.789 or 537.791. Failure of a seller to comply with the provisions of ORS 537.788, 537.789 or 537.791 does not invalidate an instrument of conveyance of real estate. [1993 c.774 §11]

537.795 ORS 537.505 to 537.795 supplementary. ORS 537.505 to 537.795 and 537.992 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, ENGINEERS AND GEOLOGISTS

537.797 Rules for certification of surveyors, engineers and geologists. The Water Resources Commission by rule shall establish criteria for the certification of registered, professional surveyors and engineers and geologists practicing as defined in ORS 672.005 and 672.505, respectively, 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; 1995 c.7 §1]

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

(a) Conduct examinations for certification of registered, professional surveyors, engineers and geologists 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, engineer or geologist 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 Examiners for Engineering and Land Surveying may revoke, suspend or modify certificates issued under subsection (1) of this section.

(3) The State Board of Examiners for Engineering and Land Surveying 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 Examiners for Engineering and Land Surveying. 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; 1995 c.7 §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. However, the person upon whose lands the seepage or spring waters first arise shall have the right to the use of such waters.

(2) As used in this section, “spring” means a point where water emerges naturally from the earth as a result of gravity flow or artesian pressure. [Formerly 537.710; 1989 c.939 §2; 1991 c.200 §2; 1995 c.79 §303]

DIVERSION OF WATERS FROM BASIN OF ORIGIN

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 [1989 c.939 §6; repealed by 1991 c.200 §3]

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]

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 Criminal 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 willfully 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 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]

537.992 Civil penalties; schedule of penalties. (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 and 537.992, or any rule promulgated pursuant thereto. A civil penalty 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 and 537.992, causes the person to comply with the provisions of ORS 537.747 to 537.795 and 537.992 or rules adopted thereunder.

(2) The commission shall adopt by rule a schedule of penalties for violation of ORS 537.747 to 537.795 and 537.992, 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) Civil penalties under this section shall be imposed as provided in ORS 183.090.

(4) All amounts recovered under this section shall be deposited in the General Fund. [Formerly 537.792]