TITLE 45

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Chapter 536

2003 EDITION

Water Resources Administration

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GENERAL PROVISIONS

536.007 Definitions. As used in ORS 196.600 to 196.905, 541.010 to 541.320 and 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543:

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

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

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

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

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

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

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

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

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

(10) "State water resources policy" means the water resources policy provided for in ORS 536.295 to 536.350 and 537.505 to 537.534.

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

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

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

(a) Potential reservoir sites.

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

536.008 [1975 c.581 §14; 1985 c.421 §4; repealed by 1985 c.673 §185]

536.009 Water Resources Department Water Right Operating Fund; uses; sources. (1) There is established in the State Treasury the Water Resources Department Water Right Operating Fund, separate and distinct from the General Fund, to provide for the payment of the program and administrative expenses of the Water Resources Commission and the Water Resources Department in carrying out the provisions of ORS chapters 536, 537, 540 and 541. Interest earned by the fund shall be credited to the fund.

(2) The fund shall consist of:

(a) All moneys received under ORS 536.050 and 537.747.

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

(3) All moneys in the fund are continuously appropriated to the Water Resources Department for payment of expenses as described in this section. [1989 c.758 §3; 1993 c.765 §106; 1999 c.1026 §19; 2003 c.594 §5]

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

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

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

536.015 Water Resources Department Hydroelectric Fund; uses; sources. (1) The Water Resources Department Hydroelectric Fund is established separate and distinct from the General Fund of the State Treasury. Except as provided in subsections (4) to (6) of this section, of the moneys in the Water Resources Department Hydroelectric Fund:

(a) A portion equal to 67 percent of the total moneys received each year shall be transferred to the fund created under ORS 496.835;

(b) A portion equal to 10.3 percent of the total moneys received each year shall be transferred to an account of the Department of Environmental Quality to be used to review applications for certification of hydroelectric projects under ORS 468B.040 and 468B.045; and

(c) All of the remaining moneys received each year are continuously appropriated to the Water Resources Commission and the Water Resources Department to provide for the payment of the administrative expenses

of the commission and the department in carrying out their responsibilities related to the issuance of permits, licenses or water right certificates for hydroelectric projects.

(2) The following shall be deposited into the State Treasury and credited to the Water Resources Department Hydroelectric Fund:

(a) Fees received by the Water Resources Department for hydroelectric projects under ORS 536.050, 543.078 to 543.092, 543.210, 543.280, 543.300, 543.710, 543A.405 and 543A.415; and

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

(3) All interest, if any, from moneys credited to the Water Resources Department Hydroelectric Fund shall be credited to the fund and shall inure to the benefit of the Water Resources Department Hydroelectric Fund.

(4) Application fees received under ORS 543A.405 shall be disbursed to the various agencies in the amounts specified in the cost reimbursement agreement executed with each reauthorization applicant.

(5) Four cents of each 28 cents paid as a reauthorization fee under ORS 543A.415 shall be paid to the Department of Environmental Quality.

(6) Annual fees paid under ORS 543.078 shall be disbursed to state agencies pursuant to a memorandum of agreement developed by the Department of Environmental Quality, the State Department of Fish and Wildlife and the Water Resources Department. [1991 c.869 §2; 1997 c.449 §36; 1999 c.873 §13]

536.017 Records of expenditures from Water Resources Department Hydroelectric Fund. The Water Resources Commission and the State Department of Fish and Wildlife shall maintain records of expenditures from the Water Resources Department Hydroelectric Fund established under ORS 536.015. The records shall account for costs imposed against specific operating hydroelectric projects and against projects in the process of obtaining a state or federal hydroelectric permit, certificate or license. [1991 c.869 §13]

Note: 536.017 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

536.020 [Repealed by 1955 c.707 §75]

536.021 Water Measurement Cost Share Program Revolving Fund; uses; sources; prioritization. (1) The Water Measurement Cost Share Program Revolving Fund is established separate and distinct from the General Fund. All moneys in the Water Measurement Cost Share Program Revolving Fund are continuously appropriated to the Water Resources Department for the purposes described in this section.

(2) The fund established in this section consists of moneys appropriated by the Legislative Assembly and moneys gifted, bequested, donated or granted from any person for the purpose of installing, substantially repairing or replacing stream flow gauges, measuring devices or headgates with measuring devices.

(3) The department may use the moneys in the fund to contribute up to 75 percent of the moneys needed to install, substantially repair or replace a stream flow gauge, measuring device or headgate with a measuring device on authorized diversions on the waters of this state where the gauge, measuring device or headgate will be used to protect in-stream flow or to monitor water rights and stream flow.

(4) The department may receive funds from, and may enter into agreements or contracts with, any person for the purpose of implementing the Water Measurement Cost Share Program Revolving Fund.

(5) The department shall prioritize the expenditure of moneys from the fund for stream flow gauges, measuring devices and headgates with measuring devices in the following descending order:

(a) Installation.

(b) Replacement.

(c) Substantial repair. [2001 c.808 §2]

WATER RESOURCES COMMISSION

536.022 Water Resources Commission; members; terms; confirmation; compensation and expenses. (1) There is created a Water Resources Commission consisting of seven members, appointed by the Governor, one of whom the Governor shall designate as chairperson. The members appointed to the commission shall be subject to confirmation by the Senate as provided in ORS 171.562 and 171.565. One member of the commission shall be appointed from each of the five regional river basin management areas set forth in subsection (3) of this section, one member shall be appointed from east of the summit of the Cascade Mountains, as defined in ORS 477.001, and one member shall be appointed from west of that summit.

(2) The term of office of a member shall be four years. Before the expiration of the term of a member, the Governor shall appoint a successor to assume the retiring member's duties on July 1 next following. A member shall be eligible for reappointment,

but no member shall serve more than two consecutive terms. In case of a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. The members of the commission shall serve at the pleasure of the Governor.

(3) For purposes of appointing members under subsection (1) of this section, the drainage basins of the state shall be divided into the following regional river basin management areas:

(a) Upper Northwest Region, consisting of the Lower and Middle Willamette, North Coast and Sandy drainage basins and that portion of the Columbia River drainage basin below Bonneville Dam.

(b) Southwest Region, consisting of the Rogue, Klamath, Goose and Summer Lakes drainage basins and that portion of the South Coast drainage basins south of the mouth of the Rogue River.

(c) West Central Region, consisting of the Umpqua, Mid Coast, Upper Willamette and that portion of the South Coast drainage basins north of the mouth of the Rogue River.

(d) North Central Region, consisting of the Umatilla, John Day, Hood and Deschutes drainage basins and that portion of the Columbia River drainage basin above Bonneville Dam.

(e) Eastern Region, consisting of the Owyhee, Malheur, Grande Ronde, Malheur Lake, Middle Snake and Powder drainage basins.

(4) A member of the commission is entitled to compensation and expenses as provided in ORS 292.495. [1985 c.673 §3; 1995 c.548 §1]

536.025 Duty of commission; delegation to Water Resources Director; exception. (1) It is the function of the Water Resources Commission to establish the policies for the operation of the Water Resources Department in a manner consistent with the policies and purposes of ORS 196.600 to 196.905, 537.525, 541.010 to 541.320, 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543. In addition, the commission shall perform any other duty vested in it by law.

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

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

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

(a) Conduct public hearings.

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

(c) Administer oaths.

(d) Take or cause to be taken depositions and receive such pertinent and relevant proof as may be considered necessary or proper to carry out duties of the commission and Water Resources Department under ORS 196.600 to 196.905, 541.010 to 541.320, 541.430 to 541.545, 541.700 to 541.990 and ORS chapters 536 to 540, 542 and 543.

(2) Subpoenas authorized by this section may be served by any person authorized by the person issuing the subpoena. Witnesses who are subpoenaed shall receive the fees and mileage provided in ORS 44.415 (2). [Formerly 536.029]

536.027 Rules and standards. (1) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission shall adopt rules and standards to perform the functions vested by law in the commission.

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

536.028 Rules pertaining to human or livestock consumption uses within or above scenic waterway. In accordance with applicable provisions of ORS chapter 183, the Water Resources Commission may adopt rules necessary to administer the provisions of ORS 390.835 pertaining to the issuance of a water right within or above a scenic waterway. [1993 c.99 §3; 1995 c.719 §2]

536.029 [1985 c.673 §11; 1989 c.980 §14c; renumbered 536.026 in 1999]

536.030 [Repealed by 1975 c.581 §29]

536.031 Applicability of rules to completed application for permit. (1) Except as provided in subsection (2) of this section,

the Water Resources Department may apply only those rules of the department that are in effect as of the date that a completed application is made for a permit in deciding whether to approve, deny or impose conditions on the permit.

(2) This section does not affect the application of any rule of the department that:

(a) Is required by federal law;

(b) Is required by any agreement between the state and a federal agency;

(c) The applicant voluntarily agrees to make applicable to the application; or

(d) Is necessary to protect public health and safety. [1999 c.301 §2]

WATER RESOURCES DIRECTOR

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

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

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

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

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

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

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

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

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

(2) In addition to duties otherwise required by law, the director shall prescribe internal policies and procedures for the government of the department, the conduct of its employees, the assignment and performance of its business and the custody, use and preservation of its records, papers and property in a manner consistent with applicable law.

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

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

536.040 Public records; copies as evidence. (1) The records of the Water Resources Department are public records and shall remain on file in the department and be open to the inspection of the public at all times during business hours. The records shall show in full all maps, profiles, and engineering data relating to the use of water, and certified copies thereof shall be admissible as evidence in all cases where the original would be admissible as evidence.

(2) Whenever a record is required to be filed or maintained in the Water Resources Department, the record may be handwritten, typewritten, printed or a photostated or photographic copy and any means of recording the information is acceptable, including but not limited to papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums or other preservation of the document or the information contained in the document.

(3) Notwithstanding any provision of subsection (2) of this section, the Water Resources Department shall maintain a paper copy of each final water use permit, certificate, order of the Water Resources Commission or Water Resources Director, decree or certificate of registration. The copies shall be retained in a secure location in the department. [Amended by 1975 c.581 §20; 1991 c.102 §1]

536.050 Fees; rules; refunds; waiver of certain fees. (1) The Water Resources Department may collect the following fees in advance:

(a) For examining an application for a permit:

(A) To appropriate water, except as provided under ORS 543.280 for an application for a hydroelectric project:

(i) A base fee of $300;

(ii) $200 for the first second-foot or fraction thereof;

(iii) $100 for each additional second-foot or fraction thereof; and

(iv) If appropriating stored water, $20 for the first acre-foot or fraction thereof up to 10 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

(B) To store water under ORS 537.400 or 537.534 (4):

(i) A base fee of $300; and

(ii) $20 for the first acre-foot or fraction thereof up to 10 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

(C) To exclusively appropriate stored water:

(i) A base fee of $150; and

(ii) $15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

(b) For recording a permit to appropriate or store water, $250.

(c) For filing or recording any other water right instrument, $25 for the first page and $5 for each additional page.

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

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

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

(g) For a computer-generated map, the actual cost of the work.

(h) For examining an application for approval of a change to an existing water right or permit:

(A) A base fee of $350;

(B) $350 for each additional type of change requested; and

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, $175 for each second-foot or fraction thereof requested beyond the first second-foot.

(i) For examining an application for a temporary change in place of use under ORS 540.523, for a temporary transfer under ORS 540.585 or for a temporary change in place of use, a change in the point of diversion to allow for the appropriation of ground water or a change of a primary right to a supplemental right under ORS 540.570, a base fee of $175 and:

(A) For nonirrigation uses, $75 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, $1 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 25 cents per acre of land irrigated.

(j) For submitting a protest to the department, $250.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, $250.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, $250 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, $50.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, $200.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300, $10.

(q) For examining an application to store water under ORS 537.409:

(A) A base fee of $40; and

(B) $10 for each acre-foot or fraction thereof, not to exceed a total of $250.

(r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established by the Water Resources Director under ORS 543A.410.

(s) For examining an application for a substitution made under ORS 540.524, $250.

(t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500, $700.

(u) For submitting a water management and conservation plan pursuant to rules of the Water Resources Commission:

(A) $250, if the plan is submitted by an agricultural water supplier;

(B) $500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) $1,000, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

(v) For examining a new application for an in-stream water right lease under ORS 537.348:

(A) $200 for an application for a lease with four or more landowners or four or more water rights; or

(B) $100 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, $50.

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

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

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area, as that term is defined in ORS 541.351.

(3) The Water Resources Director may refund all or part of a fee paid to the department under this section if the director determines that a refund of the fee is appropriate in the interests of fairness to the public or necessary to correct an error of the department.

(4) The director may waive all or part of a fee for a change to a water right permit under ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

(a) Made pursuant to ORS 537.348;

(b) Necessary to complete a project funded under ORS 541.375; or

(c) Approved by the State Department of Fish and Wildlife as a change or allocation of conserved water that will result in a net benefit to fish and wildlife habitat.

(5) All moneys received under this section, less any amounts refunded under subsection (3) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

(6) Notwithstanding subsection (5) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015. [Amended by 1961 c.187 §3; 1967 c.36 §1; 1973 c.163 §4; 1975 c.581 §21; 1981 c.627 §1; 1983 c.256 §1; 1985 c.673 §12; 1987 c.815 §8; 1989 c.587 §1; 1989 c.758 §1; 1989 c.933 §4; 1989 c.1000 §6; 1991 c.734 §49a; 1991 c.869 §4; 1995 c.416 §1; 1995 c.752 §6; 1997 c.449 §35; 1997 c.587 §1; 1999 c.555 §3; 1999 c.664 §1; 1999 c.665 §1; 1999 c.873 §19; 2003 c.594 §1; 2003 c.691 §4; 2003 c.705 §7]

Note: The amendments to 536.050 by section 7, chapter 705, Oregon Laws 2003, apply to applications submitted on or after April 1, 2004. See section 13, chapter 705, Oregon Laws 2003. The text that is applicable to applications submitted before April 1, 2004, including amendments by section 1, chapter 594, Oregon Laws 2003, and section 4, chapter 691, Oregon Laws 2003, is set forth for the user's convenience.

536.050. (1) The Water Resources Department may collect the following fees in advance:

(a) For examining an application for a permit:

(A) To appropriate water, except as provided under ORS 543.280 for an application for a hydroelectric project:

(i) A base fee of $300;

(ii) $200 for the first second-foot or fraction thereof;

(iii) $100 for each additional second-foot or fraction thereof; and

(iv) If appropriating stored water, $20 for the first acre-foot or fraction thereof up to 10 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

(B) To store water under ORS 537.400 or 537.534 (4):

(i) A base fee of $300; and

(ii) $20 for the first acre-foot or fraction thereof up to 10 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

(C) To exclusively appropriate stored water:

(i) A base fee of $150; and

(ii) $15 for the first acre-foot or fraction thereof up to 10 acre-feet, plus $1 for each additional acre-foot or fraction thereof.

(b) For recording a permit to appropriate or store water, $250.

(c) For filing or recording any other water right instrument, $25 for the first page and $5 for each additional page.

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

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

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

(g) For a computer-generated map, the actual cost of the work.

(h) For examining an application for approval of a change to an existing water right or permit:

(A) A base fee of $350;

(B) $350 for each additional type of change requested; and

(C) For a request for a change in place of use or type of use or for a water exchange under ORS 540.533, $175 for each second-foot or fraction thereof requested beyond the first second-foot.

(i) For examining an application for a temporary change in place of use under ORS 540.523 or 540.570, a base fee of $175 and:

(A) For nonirrigation uses, $75 for each second-foot or fraction thereof requested beyond the first second-foot; or

(B) For irrigation uses, $1 per acre of land irrigated or, if the application and required map are submitted to the department in a department-approved digital format, 25 cents per acre of land irrigated.

(j) For submitting a protest to the department, $250.

(k) For filing an application for extension of time within which irrigation or other works shall be completed or a water right perfected, $250.

(L) For a limited license under ORS 537.143 or 537.534 (2), the fee established by rule by the Water Resources Commission.

(m) For filing, examining and certifying a petition under ORS 541.329, $250 plus 10 cents per acre of water involved in the application. For purposes of computing this fee, when any acreage within a quarter quarter of a section is involved, the 10 cents per acre shall apply to all acres in that quarter quarter of a section. Notwithstanding the fee amount established in this paragraph, a district notifying the department under ORS 541.327 (4) shall pay the actual cost of filing, examining and certifying the petition.

(n) For requesting standing under ORS 537.153, 537.621 or 543A.120, $50.

(o) For participating in a contested case proceeding under ORS 537.170, 537.622 or 543A.130, $200.

(p) Except for an applicant, for obtaining a copy of both a proposed final order and a final order for a water right application under ORS 537.140 to 537.252, 537.505 to 537.795 or 543A.005 to 543A.300, $10.

(q) For examining an application to store water under ORS 537.409:

(A) A base fee of $40; and

(B) $10 for each acre-foot or fraction thereof, not to exceed a total of $250.

(r) For submitting a notice of intent under ORS 543A.030 or 543A.075, the amount established by the Water Resources Director under ORS 543A.410.

(s) For examining an application for a substitution made under ORS 540.524, $250.

(t) For examining an application for an allocation of conserved water under ORS 537.455 to 537.500, $700.

(u) For submitting a water management and conservation plan pursuant to rules of the Water Resources Commission:

(A) $250, if the plan is submitted by an agricultural water supplier;

(B) $500, if the plan is submitted by a municipal water supplier serving a population of 1,000 or fewer persons; or

(C) $1,000, if the plan is submitted by a municipal water supplier serving a population of more than 1,000 persons.

(v) For examining a new application for an in-stream water right lease under ORS 537.348:

(A) $200 for an application for a lease with four or more landowners or four or more water rights; or

(B) $100 for all other applications.

(w) For examining an application for an in-stream water right lease renewal, $50.

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

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

(b) The right to appropriate water for the purpose of allowing the applicant to water livestock outside of a riparian area, as that term is defined in ORS 541.351.

(3) The Water Resources Director may refund all or part of a fee paid to the department under this section if the director determines that a refund of the fee is appropriate in the interests of fairness to the public or necessary to correct an error of the department.

(4) The director may waive all or part of a fee for a change to a water right permit under ORS 537.211 (4), a change to a water right subject to transfer under ORS 540.520 or 540.523 or an allocation of conserved water under ORS 537.470, if the change or allocation of conserved water is:

(a) Made pursuant to ORS 537.348;

(b) Necessary to complete a project funded under ORS 541.375; or

(c) Approved by the State Department of Fish and Wildlife as a change or allocation of conserved water that will result in a net benefit to fish and wildlife habitat.

(5) All moneys received under this section, less any amounts refunded under subsection (3) of this section, shall be deposited in the Water Resources Department Water Right Operating Fund.

(6) Notwithstanding subsection (5) of this section, all fees received by the department for power purposes under ORS 543.280 shall be deposited in the Water Resources Department Hydroelectric Fund established by ORS 536.015.

Note: Section 2, chapter 745, Oregon Laws 2003, was added to and made a part of ORS chapter 536. See section 1, chapter 745, Oregon Laws 2003. Sections 2 and 4, chapter 745, Oregon Laws 2003, provide:

Sec. 2. Private agreements to expedite regulatory process; fees; use of fees. (1) The Water Resources Department may, with any person, enter into an agreement that sets fees to be paid to the department for the purpose of enabling the department to expedite or enhance the regulatory process to provide services voluntarily requested under the agreement. Pursuant to the agreement, the department may hire additional temporary staff members, contract for services or provide additional services to the person that are within the authority of the department to provide.

(2) Notwithstanding the fees established in ORS 536.050, as part of an agreement entered into under this section, the department may waive all or part of a fee imposed for a service.

(3) The department may not modify existing processing priorities or schedules or create processing priorities or schedules for a particular department-provided service in order to compel a person to enter into an agreement under this section. However, without violating this subsection, the department may modify its processing priorities or schedules based on the overall operating needs of the department.

(4) The department may not require that a person pay more for a service under an agreement entered into under this section than the cost to the department in providing the service to the person.

(5) The department shall review the responsibilities of the department to identify services provided by the department that are appropriate for the department to perform under the provisions of this section. Failure to identify responsibilities under this subsection does not prohibit the department from entering into agreements under this section.

(6) Fees paid under this section shall be deposited in the State Treasury to the credit of the department. Such moneys are continuously appropriated to the department for the purpose of reviewing department responsibilities to determine those services for which the authority provided in this section may be used and for

fulfilling the individual agreements entered into pursuant to this section, including the processing and review of:

(a) Water right permit applications, permit extensions, permit amendments and final proof surveys;

(b) Water right exchanges and transfers; and

(c) Water management and conservation plans required by rule by the department. [2003 c.745 §2]

Sec. 4. Section 2 of this 2003 Act is repealed on January 2, 2006. [2003 c.745 §4]

Note: Sections 11 and 12, chapter 594, Oregon Laws 2003, provide:

Sec. 11. Department directed to establish fee work group; reports. The Water Resources Department shall establish an administrative fee work group consisting of members of constituent groups, the Water Resources Commission and department staff to research and evaluate the relevance, equity and sufficiency of fees established under ORS 536.050 and 537.762. The work group shall consider, at a minimum, opportunities for process streamlining and efficiency, opportunities to contract out process services and functions to private entities, methods of creating financial incentives to promote public interest activities, cost-containment strategies, inflation trends and the workload of the department. The department shall report the findings and recommendations of the work group to the Seventy-third Legislative Assembly and to any interim committee that requests a copy of the report. [2003 c.594 §11]

Sec. 12. Section 11 of this 2003 Act is repealed on January 2, 2006. [2003 c.594 §12]

536.060 [Repealed by 1971 c.734 §21]

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

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

536.075 Judicial review of final order of commission or department; stay of order; scope of review. (1) Any party affected by a final order other than contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the Circuit Court of Marion County or to the circuit court of the county in which all or part of the property affected by the order is situated. The review shall be conducted according to the provisions of ORS 183.484, 183.486, 183.497 and 183.500. A final order other than contested case issued by the Water Resources Commission or the Water Resources Department must state on the first page of the order that the order is a final order other than contested case, that the order is subject to judicial review under ORS 183.484 and that any petition for judicial review of the order must be filed within the time specified by ORS 183.484 (2). Any order other than contested case issued by the Water Resources Commission or by the Water Resources Department that does not comply with the requirements of this section is not a final order.

(2) Any party affected by a final order in a contested case issued by the Water Resources Commission or the Water Resources Department may appeal the order to the Court of Appeals.

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

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

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

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

(7) The provisions of this section shall not apply to any proceeding under ORS 537.670 to 537.695 or ORS chapter 539.

(8) For the purposes of this section, "final order" and "contested case" have the meanings given those terms in ORS 183.310. [1985 c.673 §9; 1999 c.791 §1]

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

536.090 Ground water advisory committee; duties; qualification; term; expenses. (1) In carrying out the duties, functions and powers prescribed by law, the Water Resources Commission shall appoint a ground water advisory committee to:

(a) Advise the commission on all matters relating to:

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

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

(b) Review the proposed expenditure of all revenues generated under ORS 537.762 (5). At least once each year, and before the expenditure of such funds on new program activities, the Water Resources Department and the ground water advisory committee shall develop jointly a proposed expenditure plan for concurrence by the Water Resources Commission. The plan may be modified, if necessary, upon the joint recommendation of the department and the ground water advisory committee with concurrence by the commission.

(2) The committee shall consist of nine members who represent a range of interests or expertise. At least three of the members shall be individuals actively engaged in some aspect of the water supply or monitoring well drilling industry. Members shall serve for such terms as the commission may specify. The committee shall meet at least once every three months and at other times and places as the commission may specify.

(3) A member of the committee shall not receive compensation, but at the discretion of the commission may be reimbursed for travel expenses incurred, subject to ORS 292.495. [1977 c.749 §2; 1981 c.416 §9; 1985 c.673 §18; 1991 c.925 §1; 1993 c.774 §1]

536.100 [1985 c.666 §1; 1989 c.904 §67; repealed by 1995 c.690 §§25,26]

536.104 [Formerly 536.110; repealed by 1995 c.690 §§25,26]

536.108 [Formerly 536.120; 1989 c.833 §52; 1995 c.690 §9; renumbered 468B.162 in 1995]

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

536.112 [Formerly 536.130; 1995 c.690 §10; renumbered 468B.164 in 1995]

536.116 [Formerly 536.140; repealed by 1995 c.690 §§25,26]

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

536.121 [Formerly 536.150; repealed by 1995 c.690 §§25,26]

536.125 [1989 c.833 §20; 1995 c.79 §301; 1995 c.690 §11; renumbered 468B.167 in 1995]

536.129 [1989 c.833 §21; 1995 c.690 §12; renumbered 468B.169 in 1995]

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

536.133 [1989 c.833 §22; 1995 c.690 §13; renumbered 468B.171 in 1995]

536.137 [1989 c.833 §24; 1995 c.690 §14; renumbered 468B.166 in 1995]

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

536.141 [1989 c.833 §34; 1995 c.690 §15; renumbered 468B.177 in 1995]

536.145 [1989 c.833 §35; 1995 c.690 §16; renumbered 468B.179 in 1995]

536.149 [1989 c.833 §39; renumbered 468B.183 in 1995]

536.150 [1987 c.409 §3; renumbered 536.121 in 1989]

536.153 [1989 c.833 §40; 1995 c.690 §17; renumbered 468B.182 in 1995]

536.157 [1989 c.833 §41; 1993 c.18 §127; 1995 c.690 §18; renumbered 468B.184 in 1995]

536.161 [1989 c.833 §42; renumbered 468B.186 in 1995]

536.165 [1989 c.833 §43; 1995 c.690 §19; renumbered 468B.187 in 1995]

536.169 [1989 c.833 §44; 1995 c.690 §20; renumbered 468B.188 in 1995]

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

WATER RESOURCES ADMINISTRATION

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

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

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

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

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

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be

devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468B.155. [1955 c.707 §1; 1989 c.833 §53]

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

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

536.238 Policy on water storage facilities. (1) The Legislative Assembly finds and declares that:

(a) The water resources of the state are critical to the economic and recreational well-being of the people of Oregon.

(b) The future vitality of the state's economy depends on immediate planning to insure future availability of water resources.

(c) Measures to insure adequate water resources to meet the needs of future generations of Oregonians must be pursued.

(d) The potential for a future shortage of water poses serious risks to public health, safety and welfare and therefore is a matter of statewide concern.

(2) Therefore, the Legislative Assembly, in addressing the problem of how to insure adequate water resources for in-stream and out-of-stream uses in the future, declares that it is a high priority of the state to both:

(a) Develop environmentally acceptable and financially feasible multipurpose water storage facilities; and

(b) Enhance watershed storage capacity through natural processes using nonstructural means. [1993 c.386 §1]

Note: 536.238 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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

536.241 Policy on water supply. (1) The Legislative Assembly finds that the availability of an adequate water supply is essential to the continued health and safety of all Oregonians.

(2) The Legislative Assembly declares that it is the policy of the State of Oregon to ensure a water supply sufficient to meet the needs of existing and future beneficial uses of water, and to adequately manage the state's water resources. Further, in recognition of this policy, the Legislative Assembly declares that the planning and management of the water resources of this state shall be conducted in a consistent and coordinated manner. [1999 c.984 §2]

Note: 536.241 was added to and made a part of ORS chapter 536 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

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

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

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

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

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

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

536.295 Conditions for consideration of application for use not classified in basin program; rules. (1) Notwithstanding any provision of ORS 536.300 or 536.340, the Water Resources Commission may allow the Water Resources Department to consider an application to appropriate water for a use not classified in the applicable basin program if the use:

(a) Will be of short duration during each year;

(b) Will be for a continuous period of no longer than five years;

(c) Is largely nonconsumptive in nature and not likely to be regulated for other water rights;

(d) Is necessary to ensure public health, welfare and safety;

(e) Is necessary to avoid extreme hardship;

(f) Will provide a public benefit such as riparian or watershed improvement; or

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

(A) Exploratory thermal drilling;

(B) Heat exchange;

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

(D) Facilitating the watering of livestock away from a river or stream.

(2) A permit granted on or before January 1, 1993, for a quasi-municipal use of water shall be considered a permit for a classified use under ORS 536.340 if at the time the application was submitted or the permit was granted, the basin program identified municipal use as a classified use.

(3) The commission by rule may determine the specific uses permitted within a classified use.

(4) In making the determination under subsection (1) of this section, the commission shall evaluate whether the proposed use is consistent with the general policies established in the applicable basin program.

(5) The Water Resources Department shall process and evaluate an application allowed by the commission under subsections (1) to (4) of this section in the same manner as any other water right application, including determining whether the proposed use would result in injury to an existing water right. [1989 c.9 §1; 1993 c.591 §1; 1999 c.703 §1]

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

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

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

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

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

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

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

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

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

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

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

(8) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

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

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

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

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

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

Note: The Legislative Counsel has not, pursuant to 173.160, undertaken to substitute specific ORS references for the words "chapter 707, Oregon Laws 1955," in 536.310 and 536.330. Chapter 707, Oregon Laws 1955, enacted into law and amended the ORS sections which may be found by referring to the 1955 Comparative Section Table located in Volume 18 of Oregon Revised Statutes.

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

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

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

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

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

536.325 [1979 c.319 §2; 1983 c.796 §4; 1985 c.673 §15; repealed by 1997 c.212 §1]

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

Note: See note under 536.310.

536.340 Classification of water as to highest and best use and quantity of use; enforcement of laws concerning loss of water rights; prescribing preferences for future uses. (1) Subject at all times to existing rights and priorities to use waters of this state, the Water Resources Commission:

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

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

(c) May, by a water resources statement referred to in ORS 536.300 (2) and subject to the preferential uses named in ORS 536.310 (12), prescribe preferences for the future for

particular uses and quantities of uses of the waters of any lake, stream or other source of water supply in this state in aid of the highest and best beneficial use and quantities of use thereof. In prescribing such preferences the commission shall give effect and due regard to the natural characteristics of such sources of water supply, the adjacent topography, the economy of such sources of water supply, the economy of the affected area, seasonal requirements of various users of such waters, the type of proposed use as between consumptive and nonconsumptive uses and other pertinent data.

(2) In classifying or reclassifying a source of water supply or prescribing preferences for the future uses of a source of water supply under subsection (1) of this section, the commission shall:

(a) Comply with the requirements set forth in the Water Resources Department coordination program developed pursuant to ORS 197.180; and

(b) Cause notice of the hearing held under ORS 536.300 (3) to be published in a newspaper of general circulation once each week for four successive weeks in each county:

(A) In which waters affected by the action of the commission under subsection (1) of this section are located; or

(B) That is located within the basin under consideration.

(3) Before beginning any action under subsection (2) of this section that would limit new ground water uses that are exempt under ORS 537.545 from the requirement to obtain a water right, the commission shall:

(a) Review the proposed action to determine whether the proposal is consistent with ORS 537.780;

(b) Provide an opportunity for review by:

(A) Any member of the Legislative Assembly who represents a district where the proposed action would apply; and

(B) Any interim committee of the Legislative Assembly responsible for water-related issues; and

(c) Receive and consider a recommendation on the proposal from the ground water advisory committee appointed under ORS 536.090. [1955 c.707 §10(6); 1963 c.414 §1; 1989 c.9 §2; 1989 c.833 §54; 1997 c.510 §1]

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

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

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

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

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

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

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

536.380 Notification to commission of proposed exercise of power involving water resources required; review and deter-

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

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

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

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

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

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

536.390 Approval without filing notification. The Water Resources Commission may enter into agreements or provide by orders, rules or regulations whereby it approves the exercise of any one or more of the powers, duties or privileges referred to in ORS 536.370 (1) by a state agency or public corporation of this state which has received a copy of a state water resources statement as provided in ORS 536.350, without the filing of the notification as provided in ORS 536.380 (1). Each agreement, order, rule or regulation shall specifically provide for the modification or revocation thereof at the discretion of the commission and upon reasonable notice to the state agency or public corporation, and may contain such other conditions, limitations or requirements as the commission, in its discretion, may require to insure the accomplishment of the purposes of the state water resources policy. [1955 c.707 §13]

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

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

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

uses including exempt uses under ORS 537.545, the commission, on behalf of the state, may issue an order of withdrawal.

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

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

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

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

536.420 Representation of state in carrying out compacts and agreements with other governmental agencies regarding water resources. (1) The Governor shall designate the Water Resources Director or a member or members of the Water Resources Commission to act on behalf of and to represent the state in formulating, entering into and carrying out any formal or informal compact or other agreement authorized by the Legislative Assembly concerning the use and control of the water resources of this state, between this state or any state agency or public corporation thereof and any other state, any state agency or public corporation thereof or the federal government or any agency thereof.

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

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

(4) Any state agency or public corporation of this state required or permitted by law to formulate, enter into or carry out any compact or other agreement referred to in subsection (1) of this section shall give timely and adequate notice to the commission before it undertakes any action under such requirement or permission. [1955 c.707 §17; 1961 c.298 §1; 1975 c.581 §25; 1999 c.59 §169]

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

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

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

536.460 Preparation and submission of information or recommendations to other persons or agencies. The Water Resources Commission may prepare and submit information or proposals and recommendations

relating to the water resources of this state or the functions of the commission as provided by law to any person, local voluntary committee or association, state agency or public corporation of this or any other state, any interstate agency, any agency of the federal government or any committee of the legislature of this or any other state or of the Congress of the United States. [1955 c.707 §22]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MISCELLANEOUS PROVISIONS

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

536.580 Rights acquired prior to August 3, 1955, not affected. Nothing in ORS 509.645, 536.220 to 536.540 or 543.225, as enacted by chapter 707, Oregon Laws 1955, nor in the amendments made by chapter 707, Oregon Laws 1955, to ORS 225.290, 225.300, 261.325, 261.330, 509.610, 509.625, 537.170, 537.200 (1969 Replacement Part), 543.050 or 543.230, nor in sections 38, 41, 43, 45 or 50 of chapter 707, Oregon Laws 1955, nor in ORS 509.585 shall be construed to take away or impair any right to any waters or to the use of any waters vested and inchoate prior to August 3, 1955. [1955 c.707 §55; 1973 c.723 §125; 1985 c.673 §181; 2001 c.923 §15]

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

536.595 Department discussions with Corps of Engineers over operation of Detroit Lake. In discussions held with the United States Army Corps of Engineers over seasonal operations of impoundments within the Willamette Basin reservoir system, including Detroit Lake, the Water Resources Department shall:

(1) Specify that the State of Oregon has determined that Detroit Lake is an important recreational resource to the citizens of Oregon.

(2) Encourage the United States Army Corps of Engineers to place Detroit Lake as the highest priority recreational use lake in the Willamette Basin reservoir system.

(3) If the United States Army Corps of Engineers indicates that recreational use of Detroit Lake will not receive the highest priority, notify communities that may be detrimentally affected by such a decision and hold public meetings within the affected communities. [2001 c.837 §1]

Note: 536.595 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 536 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

536.600 [1993 c.765 §104; renumbered 541.345 in 1995]

EMERGENCY WATER SHORTAGE POWERS

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

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

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

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

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

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

plans as the commission or the Governor may require.

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

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

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

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

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

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

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

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

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

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

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

(f) Utilize an expedited notice and waiting requirement established by rule for the substitution of a supplemental ground water right for a primary water right under drought conditions in place of the notice and waiting requirement provided in ORS 540.524.

(2) The commission by rule may establish procedures for carrying out the provisions of this section and a schedule of fees that must accompany a request under subsection (1) of this section. [1989 c.87 §3; 1999 c.873 §20; 2001 c.788 §1]

536.760 Cessation of actions taken under ORS 536.750. Any action taken under ORS 536.750 may be carried out only during the period of severe, continuing drought. After the drought, any water use undertaken under ORS 536.750 must cease or comply with the applicable provisions of ORS 537.110 to 537.252, 537.505 to 537.795 and 537.992 or 540.520 and 540.530. [1989 c.87 §4]

536.770 Purchase of option or agreement for use of water permit or right during declared drought; application; fee. (1) The Water Resources Commission or a local government, public corporation or water right holder may purchase an option or enter an agreement to use an existing permit or water right during the time in which a severe, continuing drought is declared to exist.

(2) A local government, public corporation or water right holder proposing to purchase an option or enter an agreement under this section shall submit to the commission an application accompanied by the fee required under ORS 536.050 (1)(a).

(3) After approval of the application by the commission, the option or agreement user:

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

(b) May use the water acquired under the option or agreement on property or for a use different than allowed in the permit or water right transferred under the option or agreement, if the water is used to replace water not available to the local government, public corporation or water right holder because of the drought; and

(c) May begin use at any time after approval by the commission so long as the total use by the water right or permit holder and the option or agreement user is within the rate, volume and seasonal limits of the permit or water right. [1989 c.87 §5; 1993 c.349 §1; 1997 c.587 §3; 2001 c.788 §2]

536.780 Water conservation or curtailment plans; contents; review; effect of failure to file or implement. (1) The Water Resources Commission, upon a finding that

a severe or continuing drought is likely to occur, may order individual state agencies and political subdivisions within any drainage basin or subbasin to develop and file with the commission, within 30 days following the order, a water conservation or curtailment plan or both. The commission may allow the state agencies and political subdivisions more than 30 days following the order to file the plan depending on the urgency for the plan.

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

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

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

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

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

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

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

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

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

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

PENALTIES

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

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

(b) Violation of ORS 537.130 or 537.535.

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

(d) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.570 (5), 540.580 (3), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

(2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

(3) In the event the petitioner knowingly misrepresents the map and petition required in ORS 541.329, the commission may assess a penalty of up to $1,000 based upon guidelines to be established by the commission. In addition, the petition and map shall be amended to correct the error at the petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

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

(5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the use of water under ORS 540.150 may not be considered a violation under subsection (1) of this section. [1989 c.618 §1; 1991 c.869 §5; 1993 c.818 §5; 1999 c.873 §21; 2001 c.788 §6; 2003 c.705 §17]

Note: The amendments to 536.900 by section 12, chapter 788, Oregon Laws 2001, become operative July 1, 2005. See section 14, chapter 788, Oregon Laws 2001, as amended by section 20, chapter 705, Oregon Laws 2003. The text that is operative on and after July 1, 2005, including amendments by section 18, chapter 705, Oregon Laws 2003, is set forth for the user's convenience.

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

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

(b) Violation of ORS 537.130 or 537.535.

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

(d) Violation of ORS 540.045, 540.145, 540.210, 540.310, 540.320, 540.330, 540.340, 540.435, 540.440, 540.570 (5), 540.710, 540.720 and 540.730 or rules adopted under ORS 540.145.

(2) A civil penalty may be imposed under this section for each day of violation of ORS 537.130, 537.535, 540.045, 540.310, 540.330, 540.570 (5), 540.710, 540.720 or 540.730.

(3) In the event the petitioner knowingly misrepresents the map and petition required in ORS 541.329, the commission may assess a penalty of up to $1,000 based upon guidelines to be established by the commission. In addition, the petition and map shall be amended to correct the error at the petitioner's cost. Affected users shall be given notice as provided in ORS 541.329 (5).

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

(5) Notwithstanding any term or condition of a permit, certificate or license, the rotation of the use of water under ORS 540.150 may not be considered a violation under subsection (1) of this section.

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

536.905 Notice; application for hearing. (1) Any civil penalty under ORS 536.900 shall be imposed as provided in ORS 183.745.

(2) Notwithstanding ORS 183.745, the person to whom the notice is addressed shall have 10 days from the date of service of the notice in which to make written application for a hearing before the commission. [1989 c.618 §2; 1991 c.734 §50]

Note: See note under 536.900.

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

Note: See note under 536.900.

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

Note: See note under 536.900.

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

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

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

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

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

Note: See note under 536.900.

536.925 [1989 c.618 §12; repealed by 1991 c.734 §122]

536.930 Consequence of failure to follow order. Any owner or operator who fails without sufficient cause to take corrective action as required by an order of the Water Resources Commission shall be liable for damages not to exceed the amount of all expenses incurred by the Water Resources Department in carrying out the department's enforcement duties related to the corrective action. [1989 c.618 §7; 1991 c.734 §51]

Note: See note under 536.900.

536.935 Disposition of penalties; appropriation. All penalties recovered under ORS 536.930 shall be paid into the State Treasury and credited to an account of the Water Resources Department. Such moneys are continuously appropriated to the department to carry out the provisions of ORS chapters 536 to 543A. [1989 c.618 §8; 1999 c.873 §22]

Note: See note under 536.900.