Chapter 543

2003 EDITION

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GENERAL PROVISIONS

543.010 Definitions for ORS 543.010 to 543.610. As used in ORS 543.010 to 543.610:

(1) "Actual original cost" includes the sum paid to the state at the time the application was made for a preliminary permit; the sum paid or secured to be paid to the state by the applicant for license at the time such application was made; such sums as may be paid to the United States or any department thereof; and such sums as shall have been reasonably and prudently expended in preliminary investigations, explorations and organization expenses, as determined by the Water Resources Commission.

(2) "Project" means a complete unit, improvement or development. It includes, among other things, power houses, water wheels, conduits or pipes, dams and appurtenant works and structures, storage, diverting or forebay reservoirs connected therewith, and primary lines transmitting power to the point of junction with a distributing system, or with any interconnected primary system, miscellaneous works and structures used in connection with the unit or any part thereof, rights of way, lands, flowage rights and all other properties, rights and structures necessary or appropriate in the use, operation and maintenance of any such unit. [Amended by 1985 c.673 §139; 1995 c.229 §1]

543.012 Applicability of chapter to reauthorization of existing hydroelectric project. (1) Except for the provisions of ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990, nothing in this chapter shall apply to the reauthorization of an existing project.

(2) All references in ORS 543.300, 543.310, 543.430, 543.440, 543.610, 543.650 to 543.685, 543.710, 543.720, 543.730 and 543.990 to a license or a license issued under ORS 543.010 to 543.610 also shall be considered a reference to a water right issued under ORS 468.065, 468B.040, 468B.045, 468B.046, 536.015, 536.050, 543.012 and 543.710 and ORS chapter 543A. [1997 c.449 §42]

543.015 Policy. The Legislative Assembly declares that it is the policy of the State of Oregon:

(1) To protect the natural resources of this state from possible adverse impacts caused by the use of the waters of this state for the development of hydroelectric power.

(2) To permit siting of hydroelectric projects subject to strict standards established to protect the natural resources of Oregon.

(3) To require the Water Resources Commission, the Energy Facility Siting Council, the Department of Environmental Quality and other affected state agencies to participate to the fullest extent in any local, state or federal proceedings related to hydroelectric power development in order to protect the natural resources of Oregon. [1985 c.569 §2]

543.017 Minimum standards for development of hydroelectric power; public interest considerations; rules. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Water Resources Commission relating to the development of hydroelectric power in Oregon:

(a) The anadromous salmon and steelhead resources of Oregon shall be preserved. The commission shall not approve activity that may result in mortality or injury to anadromous salmon and steelhead resources or loss of natural habitat of any anadromous salmon and steelhead resources except when an applicant proposes to modify an existing facility or project in such a manner that can be shown to restore, enhance or improve anadromous fish populations within that river system.

(b) Any activity related to hydroelectric development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program providing for the protection, mitigation and enhancement of the fish and wildlife resources of the region as adopted by the Pacific Northwest Electric Power and Conservation Planning Council pursuant to Public Law 96-501.

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the commission may allow mitigation if the commission finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation which may result in a wild game fish population or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities which, in the judgment of the commission, are of statewide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the commission shall consult with other local, state and federal agencies.

(d) Other natural resources in the project vicinity including water quality, wildlife, scenic and aesthetic values, historic, cultural

and archaeological sites, shall be maintained or enhanced. No activity may be approved which, in the judgment of the commission after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the commission may consider mitigation if the commission determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable the commission shall consult with appropriate state, federal and local agencies.

(e) In determining whether it is in the public interest to allocate water for a proposed hydroelectric development, the commission shall consider present and future power needs and shall make a finding on the need for the power. For a hydroelectric project with a nominal electric generating capacity of 25 megawatts or more, the Water Resources Commission shall consider any recommendation by the Energy Facility Siting Council. The Energy Facility Siting Council's recommendation shall be based solely on information contained in the hearing record of the Water Resources Commission. The commission's order on the proposed hydroelectric development shall describe the Energy Facility Siting Council's recommendations on the need for the power. If the commission's decision on the need for power is contrary to the Energy Facility Siting Council's recommendation, the commission's order shall explain the commission's failure to follow the recommendation of the Energy Facility Siting Council. The commission also shall consult with the Energy Facility Siting Council on other matters within the expertise of the Energy Facility Siting Council.

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section.

(3) Nothing in this section limits the authority of any state agency to make recommendations regarding appropriate license conditions during the consideration of the issuance of a license or permit for an existing hydroelectric project.

(4) The Water Resources Department and other state agencies shall not apply subsections (1) and (2) of this section to existing water rights or state licenses for existing hydroelectric facilities until January 1, 1998. [1985 c.569 §3; 1993 c.544 §6; 1995 c.229 §2]

543.020 [Repealed by 1961 c.224 §20]

543.030 [Repealed by 1961 c.224 §20]

543.040 [Repealed by 1961 c.224 §20]

543.050 Powers of Water Resources Commission as to permits, licenses, investigations, reports, forms and examination of records. The Water Resources Commission may:

(1) Issue preliminary permits, as provided in ORS 543.210 to 543.250, to any person qualified to become a licensee.

(2) Issue licenses, as provided in ORS 543.260, to citizens of the United States, associations of citizens, or private corporations organized under the laws of the United States or any state of the United States, to appropriate, initiate, perfect, acquire and hold the right to the use of waters within the state, including waters over which the state has concurrent jurisdiction, and to construct, operate and maintain dams, reservoirs, power houses, conduits, transmission lines, and all other works and structures necessary or convenient for the use of the waters in the generation and utilization of electricity.

(3) Conduct investigations and collect information the commission considers necessary or useful for the purposes of ORS 543.010 to 543.610 and cooperate with the federal government and adjoining states concerning all such matters, particularly with reference to waters forming the boundary between this state and another state.

(4) Prescribe the forms of all accounts, records and memoranda to be kept by licensees under ORS 543.010 to 543.610.

(5) Examine at any time all accounts, books of account and documents and data related to the business of a licensee under ORS 543.010 to 543.610; and require a licensee to submit, whenever required by the commission, reports and statements under oath containing information as to assets, liabilities, capitalization, gross receipts, interest and dividend requirements, interest due and paid, amortization and other reserves, net investment, cost of any project constructed, maintained or operated, in whole or in part, cost of maintenance, operation, renewals, replacements, cost of production, transmission, distribution and sale of electricity, and other data as the commission may require.

(6) Perform all acts, exercise all powers and issue all orders which, in the judgment and discretion of the commission, are necessary to effectuate the purposes of ORS 543.010 to 543.610. [Amended by 1955 c.673 §3; 1955 c.707 §39; 1961 c.224 §13; 1985 c.673 §140; 1995 c.229 §3]

543.055 Hearings and witnesses. (1) The Water Resources Commission may hold hearings and take testimony orally, by deposition or in such other form as the commission considers satisfactory, either within or without this state. The Water Resources Commission may require, by subpoena, the attendance of witnesses and the production of documentary evidence.

(2) An administrative law judge assigned from the Office of Administrative Hearings established under ORS 183.605, shall conduct any contested case hearing that the commission is required or permitted by law to hold. The administrative law judge has the same powers with respect to the conduct of the hearing as are granted by law to the commission, including the taking of testimony, the signing and issuance of subpoenas and the administering of oaths and affirmations to witnesses. The administrative law judge shall keep a record of the proceedings on the hearing and shall transmit such record to the commission.

(3) The commission may designate any person to take the testimony, affidavit or deposition of a witness. The person so designated may administer an oath or affirmation to any such witness and take the testimony thereof in accordance with such rules as the commission may prescribe.

(4) Witnesses appearing before the commission or any person designated by the commission to take testimony shall be paid the fees and mileage provided for witnesses in ORS 44.415 (2). [1955 c.673 §2; 1961 c.224 §14; 1985 c.673 §141; 1989 c.980 §15; 1999 c.849 §§112,113; 2003 c.75 §46]

543.060 Investigations; access to project, maps, books and other project data. The Water Resources Commission, the Water Resources Director or any employee of the Water Resources Department, at all reasonable times, shall have free access to any project, addition or betterment during or after construction or acquisition, and to all maps, plans, profiles, estimates, engineers' reports, books, accounts, records and other data relating to the project. [1985 c.673 §142]

543.070 [Repealed by 1975 c.581 §29]

HYDROELECTRIC PROJECT FEES

543.075 Definitions for ORS 543.075 to 543.092. As used in ORS 543.075 to 543.092:

(1) "1998 dollar" means a dollar amount that when adjusted for inflation or deflation equals the value of a dollar in 1998.

(2) "Holder" means a person authorized to operate a hydroelectric project under the authority of either a time-limited water right, a certificated water right or a pre-1909 uncertificated claim. "Holder" includes licensees, power claimants, uncertificated claimants and water right certificants.

(3) "Licensee" means a person authorized to operate a hydroelectric project through the means of a license containing a time-limited water right.

(4) "Power claimant" means a person authorized to operate a hydroelectric project through the means of a water right that does not expire.

(5) "Reauthorize" means the process by which a hydroelectric project holding a time-limited hydroelectric license acquires new authorization to continue operating for an additional fixed amount of time according to ORS chapter 543A.

(6) "Relicense" means the process by which the Federal Energy Regulatory Commission issues a new license to allow a hydroelectric project to continue operating past the expiration date of its current license.

(7) "Team" means a Hydroelectric Application Review Team created pursuant to ORS 543A.035, 543A.075 or 543A.300.

(8) "Uncertificated claimant" means a person authorized to operate a hydroelectric project through the means of an uncertificated claim established prior to 1909.

(9) "Water right certificant" means a person authorized to operate a hydroelectric project through the means of a time-limited certificated water right. [1999 c.873 §4]

543.078 Annual fee for hydroelectric project. (1) On or before January 1 of each year, each holder shall pay to the State of Oregon an annual fee for each hydroelectric project that is subject to this section. The annual fee required by this section shall be based on the theoretical horsepower specified in the water right for each project.

(2) The amount of the annual fee required under subsection (1) of this section shall be determined in the following manner:

(a) Subject to the schedule set forth in subsection (3) of this section, each holder shall pay an amount, in 1998 dollars, equal to $0.405 per theoretical horsepower covered by the water right for the holder's hydroelectric project. The annual fee may be set forth in the water right or may be established by order of the Water Resources Director and shall be adjusted annually for inflation according to rules established by the Water Resources Commission. The annual fee also may be adjusted through the periodic review process established in ORS 543.085.

(b) Each holder of a hydroelectric project that produces 123.5 theoretical horsepower or less shall pay an annual fee of $50 for that project.

(3) The fee determined in subsection (2) of this section shall apply to a project on the January 1 following the occurrence of an event enumerated as follows:

(a) A licensee or water right certificant shall begin to pay the annual fee after the final order for the reauthorized water right is issued under ORS 543A.130.

(b) Notwithstanding paragraph (a) of this subsection, if a licensee holds, on October 23, 1999, an original state hydroelectric license for which the original expiration date was or is more than five years after the expiration date of the original Federal Energy Regulatory Commission license for the project, the licensee shall begin payment of the annual fee established under this section after the expiration date of the original state hydroelectric license.

(c) A power claimant, or uncertificated claimant, licensed by the Federal Energy Regulatory Commission shall begin to pay the annual fee after the Federal Energy Regulatory Commission issues a new license. A power claimant or uncertificated claimant that received a new license from the Federal Energy Regulatory Commission within 10 years prior to October 23, 1999, shall begin to pay the annual fee on January 1, 2000.

(d) A power claimant, or uncertificated claimant, whose project is exempted from licensure by the Federal Energy Regulatory Commission or not licensed by the Federal Energy Regulatory Commission shall begin paying the annual fee under this section on January 1, 2008, for that project.

(4) No fee shall be assessed under ORS 543.710 for a project subject to an annual fee under this section. [1999 c.873 §5]

543.080 Project specific fees; summary of project specific expenditures. (1) In addition to the annual fee set forth in ORS 543.078, a holder may be required to pay project specific fees.

(2) Project specific fees are fees that compensate a state agency for the agency's reasonable and necessary oversight of a holder's implementation of the protection, mitigation and enhancement measures included in a water right for the project, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Federal Energy Regulatory Commission license.

(3) Project specific fees shall be considered at the time of reauthorization or relicensing of a hydroelectric project and, if needed, shall be established before the proposed final order is issued under ORS 543A.115, and shall be included in the reauthorized water right or the certificate issued pursuant to ORS 468B.040 or 468B.045. In the case of power claims and uncertificated claims, project specific fees shall be considered at the time of relicensing and, if needed, shall be included in an order of the Water Resources Director amending the claim pursuant to ORS 543.092 or in a certificate issued for the project pursuant to ORS 468B.040 or 468B.045.

(4) The need for, and amount of, a project specific fee shall be based upon the following factors:

(a) Experimental or unproven nature of the proposed mitigation;

(b) Significance of the resource affected;

(c) Need for ongoing agency involvement in reviewing the effectiveness of the proposed measure;

(d) Need for agency personnel to perform field work or research efforts; and

(e) Overall nature of the protection, mitigation or enhancement measures, including but not limited to consideration of whether the measure is simple, complex, closed-ended or adaptive and whether the measure is determined solely by the holder or by an agency or public committee.

(5) A project specific fee may not be assessed for:

(a) Work on projects other than the project for which the fee is established;

(b) Work that is paid for by the annual hydroelectric fee;

(c) Development of statewide hydroelectric policy;

(d) Coordination of statewide activities within an agency;

(e) Costs to the agency of Attorney General assistance associated with ongoing litigation; or

(f) Routine monitoring of compliance with nonadaptive management provisions of the water right, an uncertificated claim, a certificate issued pursuant to ORS 468B.040 or 468B.045 or a Federal Energy Regulatory Commission license.

(6) A project specific fee shall be time-limited. One year before expiration of a project specific fee, the holder and any affected agency shall review the need, if any, to modify, extend or terminate the project specific fee. After such review, the agency shall propose a fee modification, extension or termination. Any dispute regarding the proposed fee action shall be referred to an independent fact finder selected by mutual agreement, whose costs shall be borne one-half by the holder and one-half by the agency. The fact finder shall review whether the proposed fee action is appropriate under and consistent with the criteria set forth in subsections (2), (4) and (5) of this section.

The fact finder shall not review the substance of the protection, mitigation and enhancement measures contained in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The fact finder shall forward its determination in writing to the holder and agency. Upon receipt and consideration of the fact finder's determination, the agency shall notify the holder whether the project specific fee is modified, extended or terminated. If the holder is dissatisfied with the fee action, the holder may request administrative or judicial review in accordance with statutes or rules applicable to a particular agency's fee action. The written determination of the fact finder shall be admissible in any such administrative or judicial hearing. Notwithstanding any other law, a presumption shall exist in favor of the determination of the fact finder and the burden shall be on the party seeking a fee action contrary to the determination of the fact finder to demonstrate that a different fee action is justified under this section.

(7) Subject to subsections (2) to (5) of this section, the amount of a project specific fee shall be established based on an estimate of the cost to the agency of the labor, supplies and overhead expended by the agency in providing reasonable and necessary oversight of a holder's implementation of the protection, mitigation and enhancement measures included in the water right, the uncertificated claim, the certificate issued pursuant to ORS 468B.040 or 468B.045 or the Federal Energy Regulatory Commission license. The estimate used to derive a project specific fee amount shall be determined by using increments of not more than 0.25 full-time equivalents.

(8) A project specific fee shall be payable after issuance of the final order pursuant to ORS 543A.130, or in the case of power claimants and uncertificated claimants, after the issuance of either the director's order or a certificate issued for the project pursuant to ORS 468B.040 or 468B.045. A project specific fee shall be paid in increments that are reasonably related to the work to be performed and set forth in the final order, certificate issued pursuant to ORS 468B.040 or 468B.045 or the director's order.

(9) Each agency receiving project specific fees shall, on a biennial basis, provide the holder paying the fees with a summary of project specific expenditures. [1999 c.873 §6]

543.082 Invoice for fees; overdue fee; interest on delinquent fees. (1) At least 45 days before the fees required under ORS 543.078 or 543.080 become due, the Water Resources Department shall issue invoices to the holder for each fee.

(2) If any holder fails to pay the fees required under ORS 543.078 or 543.080 within 15 days after the date specified in the invoice, the department shall notify the holder of the amount and nature of the overdue fee. Any such notice shall be sent to the holder by certified mail and shall include notification that the holder has 30 days from the date of the certified delivery of the notice to pay the overdue fee or the holder shall be subject to the late payment penalty provisions of subsection (3) of this section.

(3) Any fee that is not paid within 30 days of the date a holder receives certified delivery of the notice required under subsection (2) of this section shall be considered delinquent and shall be increased by 25 percent. In addition, the state shall have a preference lien for any such fee, together with interest at the rate of 10 percent per annum from the date of delinquency, upon the property of the holder used, or necessary for use, in the development of the water right, together with any improvements erected on the property for such development. Upon notice from the Water Resources Commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(4) The remedy set forth in subsection (3) of this section is in addition to any other remedy provided by law for the collection of moneys or for noncompliance with a condition of a water right order, uncertificated claim or certification under ORS 468B.040 or 468B.045. [1999 c.873 §7]

543.085 Periodic review of annual fee. (1) The Water Resources Director shall appoint a review panel to review the amount of the annual fee established under ORS 543.078 in 2003 and 2009 and every eight years thereafter. The review panel shall consist of at least one representative from the following and others at the director's discretion:

(a) The Department of Environmental Quality;

(b) The State Department of Fish and Wildlife;

(c) The Public Utility Commission;

(d) The Water Resources Department;

(e) Investor owned utilities;

(f) Publicly owned utilities;

(g) Municipalities;

(h) Environmental organizations;

(i) Agricultural organizations; and

(j) Nonutility owners of hydroelectric projects.

(2) All holders paying annual fees under ORS 543.078 shall be notified by the Water Resources Department at least 60 days in advance of the meeting of the review panel established in subsection (1) of this section, and provided the opportunity to submit comments to the panel.

(3) Any periodic review conducted under subsection (1) of this section shall evaluate each agency's hydroelectric program to determine if current staffing levels, activities and funding are appropriate to fulfill program objectives. There shall be a presumption that the fee should not change. To overcome the presumption and alter the existing fee, the panel must find compelling reasons for alteration and must reach unanimous consent on the new fee. If the presumption is overcome, upon completion of the review process the director shall either adjust the annual fee as recommended by the panel or elect not to adjust the fee. Any change in the annual fee as a result of this section shall become effective on the January 1 following the director's action. The director shall notify all holders of any change in the annual fee and the effective date of such change. [1999 c.873 §8]

543.088 Payment of costs or fee for reauthorization or relicensing of project. (1) Notwithstanding ORS 543A.405 and 543A.410, during each year of the interim period established in subsection (2) of this section, any licensee or water right certificant seeking reauthorization of a state water right to operate a federally licensed hydroelectric project shall pay the greater of:

(a) The actual cost of the Hydroelectric Application Review Team's reauthorization activities for the year in question as established pursuant to ORS 543A.405 and 543A.410; or

(b) 12.5 cents per theoretical horsepower as specified in the water right for each project under consideration for reauthorization. This amount shall be calculated in 1998 dollars.

(2) For any project, the interim period referred to in subsection (1) of this section shall begin on the January 1 immediately following submission to the Water Resources Department of a proposed final order for reauthorization of the project under ORS 543A.115 (2). For any project, the interim period referred to in subsection (1) of this section shall end on December 31 of the year the department issues a final order on reauthorization of the project pursuant to ORS 543A.130.

(3) Notwithstanding ORS 543.090, during each year of the interim period established in subsection (4) of this section, any power claimant or uncertificated claimant seeking to relicense a federally licensed hydroelectric project shall pay the greater of:

(a) The actual cost of the team's relicensing activities for the year in question as established pursuant to ORS 543.090; or

(b) 12.5 cents per theoretical horsepower as specified in the water right for each project under consideration for relicensing. This amount shall be calculated in 1998 dollars.

(4) For any project, the interim period referred to in subsection (3) of this section shall begin on the January 1 immediately following issuance of an annual license for the project by the Federal Energy Regulatory Commission. For any project, the interim period referred to in subsection (3) of this section shall end on December 31 of the year the Federal Energy Regulatory Commission issues a new license for the project.

(5) The Water Resources Department shall reimburse a participating agency for costs incurred in the agency's review of a project during the year for which the fees are collected. Such costs shall not include expenses of other state agencies for which a fee is otherwise collected under state law. Any fees collected under subsection (1) or (3) of this section in excess of the team's actual cost of evaluation of the project for the year shall be distributed according to ORS 536.015.

(6) No fee shall be charged under this section unless the project is a federally licensed project.

(7) No fee shall be charged pursuant to subsection (1) of this section unless the Hydroelectric Application Review Team proposes to reauthorize the water right for the project in the proposed final order submitted to the Water Resources Department under ORS 543A.115 (2).

(8) Water right certificants and licensees with water rights or licenses that expire more than five years after the original federal license for the project expires shall not begin paying fees assessed under this section until after the expiration date of the original state hydroelectric license or water right. [1999 c.873 §9]

543.090 Payment of expenses of Hydroelectric Application Review Team for project operating under federal license and state power claim or uncertificated claim. (1) Any project operating under a hydroelectric license issued by the Federal Energy Regulatory Commission and concurrently operating under the authority of a power claim or uncertificated claim

shall pay all expenses related to the review and decision of a Hydroelectric Application Review Team established under ORS 543A.075 that:

(a) Are incurred by the team and any agency participating as part of the team in the federal relicensing process; and

(b) Are not otherwise covered by the reauthorization fee paid under ORS 543A.415.

(2) Not later than six years before the expiration of a hydroelectric license issued by the Federal Energy Regulatory Commission to any project operating concurrently under the authority of a power claim or uncertificated claim, the Water Resources Department shall contact the holder to schedule a consultation meeting regarding expected fees to be incurred by the Hydroelectric Application Review Team.

(3) Relicensing fees shall be calculated and assessed according to the terms and conditions set forth in ORS 543A.405 and 543A.410 for application fees. [1999 c.873 §10]

543.092 Amendment of hydroelectric water right or claim; rules; unilateral amendment of power claim or uncertificated claim to assess project specific fees. (1) Upon the request of the holder and the approval of the Water Resources Department, a hydroelectric water right or claim may be amended.

(2) The Water Resources Department shall develop rules governing the process by which a hydroelectric water right or claim may be amended. Any amendments under subsection (1) of this section shall:

(a) Be consistent with the final unified state position for the project;

(b) Be consistent with the requirements of ORS chapter 543A;

(c) Cause no injury to other water rights; and

(d) Allow for public participation in the amendment process.

(3) The Water Resources Director may unilaterally amend a power claim or uncertificated claim in order to assess project specific fees under ORS 543.080. [1999 c.873 §11]

543.095 Challenges to certain statutes related to hydroelectric projects. (1) As used in this section, "person" has the meaning given that term in ORS 174.100.

(2) No person shall be estopped or precluded from challenging the constitutionality or validity of any provision of chapter 449, Oregon Laws 1997, or the provisions of chapter 873, Oregon Laws 1999, as a result of having received or sought benefits under, complied with, paid fees under or filed an application under those statutes, or as a result of having participated in their drafting, enactment or implementation.

(3) Nothing in this section shall be construed to imply that a person is estopped or precluded from challenging the validity or constitutionality of any statute as a result of having participated in the drafting, enactment or implementation of the legislation that resulted in the enactment of such statute. [1999 c.873 §29]

Note: Legislative Counsel has substituted "chapter 873, Oregon Laws 1999," for the words "this 1999 Act" in section 29, chapter 873, Oregon Laws 1999, compiled as 543.095. Specific ORS references have not been substituted, pursuant to 173.160. The sections for which substitution otherwise would be made may be determined by referring to the 1999 Comparative Section Table located in Volume 18 of ORS.

Note: 543.095 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

APPROPRIATION OF WATER FOR POWER; APPLICATION OF LAW

543.110 Appropriation and use of water for power is governed by this chapter. After February 26, 1931, no right to appropriate or to use the waters of the lakes, rivers, streams or other bodies of water within this state, including water over which this state has concurrent jurisdiction, in connection with the development of any water power project for the generation of electricity, shall be initiated, perfected, acquired or held, except for and during the periods or extensions thereof stated in ORS 543.010 to 543.610, and pursuant to the provisions thereof.

543.120 Water power projects to be in conformity with this chapter. After February 26, 1931, no water power project involving the use of the waters of lakes, rivers, streams or other bodies of water within this state, including waters over which this state has concurrent jurisdiction, for the generation of electricity, shall be begun or constructed except in conformity with the provisions of ORS 543.010 to 543.610.

543.130 [Repealed by 1961 c.224 §20]

543.135 [1961 c.100 §§2,3; repealed by 1985 c.673 §185]

543.140 Projects or developments constructed by federal government excepted from law. The provisions of ORS 543.010 to 543.610 shall not apply to any water power project or development constructed by the United States.

543.150 Municipal corporations and utility districts; applicability of laws; powers of commission respecting districts. The provisions of ORS 543.010, 543.050, 543.210, 543.220, 543.250, 543.260 and 543.290 to 543.610 shall not apply to cities,

towns or other municipal corporations of this state, including utility districts organized under section 12, Article XI, Oregon Constitution, and legislation enacted thereunder; saving, however, to such cities, towns and other municipal corporations the rights and preferences specified in ORS 543.260, 543.270 and 543.610. The Water Resources Commission shall exercise the powers in relation to utility districts as may be conferred upon the commission by any legislation providing for the creation of such utility districts. [Amended by 1985 c.673 §144; 1991 c.869 §7]

543.160 Hydroelectric facility on North Santiam River prohibited; exception. (1) No person shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on the North Santiam River between river mile 27 and Big Cliff Dam.

(2) Nothing in subsection (1) of this section applies to any hydroelectric facility or structure constructed on the North Santiam River prior to October 15, 1983, to the historic uses of such a hydroelectric facility or structure or to the repair or reconstruction of such a hydroelectric facility or structure at the present site. [1983 c.418 §§1,2]

Note: 543.160 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

543.165 Hydroelectric facility on part of Deschutes River prohibited. No person, state agency, local government, district or municipal corporation shall construct, and no officer or agency of the state shall issue any permit for the construction of any hydroelectric facility or structure on the Deschutes River between river mile 172 below Lava Island Falls and river mile 227 below but not including Wickiup Dam. [1985 c.560 §1]

Note: 543.165 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

543.170 Hydroelectric facility on Squaw Creek prohibited. No person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on Squaw Creek. [1985 c.560 §2]

Note: 543.170 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

543.175 Hydroelectric facility on Deschutes River within City of Bend prohibited; exception. (1) Except as provided in subsection (2) of this section, no person, state agency, local government, district or municipal corporation shall construct or maintain, and no officer or agency of the state shall issue any permit for the construction or maintenance of any hydroelectric facility or structure on that portion of the Upper Deschutes River situated within the city limits of the City of Bend except for a facility that meets all of the following criteria:

(a) The facility is located on an existing irrigation diversion facility or structure constructed by persons.

(b) The operation of the facility would not require any water in addition to water appropriated for irrigation purposes.

(c) Operation of the facility would be limited to the period of time during which water is diverted for irrigation purposes and the diversion would not be extended for the purpose of hydroelectric power generation.

(2) Subsection (1) of this section shall not apply to the construction and maintenance of or the issuance of a permit for a hydroelectric facility or structure for which the hearing record is closed on or before the July 12, 1985, whether or not the record is later reopened by or at the direction of the Water Resources Commission for any reason.

(3) As used in this section, "Upper Deschutes River" means that portion of the mainstem Deschutes River between the North Canal Dam at approximately river mile 165 and the head waters of the Deschutes River. [1985 c.560 §3]

Note: 543.175 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PRELIMINARY PERMITS; LICENSES

543.210 Preliminary permits; application; contents; fee. (1) Any person who proposes to operate a hydroelectric project in Oregon shall apply for a state preliminary permit. Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. The Water Resources Commission may issue a preliminary permit to any person possessing the qualifications of a licensee as specified in ORS 543.010 to 543.610.

(2) The application for a preliminary permit shall set forth:

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

(b) The approximate site of any proposed dam or diversion;

(c) The amount of water in cubic feet per second;

(d) The theoretical horsepower; and

(e) Any other data the commission may by rule require.

(3) Upon receipt of an application for a preliminary permit the commission shall indorse on the application the date of receipt, and keep a record of the receipt of the application. The date so indorsed shall determine the priority of the use of water initiated under the provisions of ORS 543.010 to 543.610.

(4) At the time of filing application for preliminary permit the applicant shall pay to the state the portion of the total project fee required in ORS 543.280, to cover costs of recording, publishing notices and making investigations necessary to determine whether or not a preliminary permit should be granted. [Amended by 1961 c.224 §15; 1985 c.673 §147; 1991 c.869 §8]

543.220 Notice of filing of application; waiting period. (1) Whenever an application is made for a preliminary permit and after said application has been referred to hearing, the Water Resources Commission shall give written notice of the filing of the application to:

(a) Any municipality or other person or corporation which, in the judgment of the commission, is likely to be interested in or affected by the proposed project; and

(b) The owner of any land that is:

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

(B) Adjacent to the site of the proposed project.

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

(3) No application for the appropriation or use of water for the development of 1,000 theoretical horsepower or more shall be granted until at least six months after the application for a preliminary permit has been filed. [Amended by 1961 c.224 §16; 1975 c.581 §27; 1985 c.569 §23]

543.225 Hearing on application; notice; policy. (1) The Water Resources Commission shall conduct a public hearing on any application or amended application for a preliminary permit or for a license for a major project of more than 100 theoretical horsepower and an application for preliminary permit or license for a minor project of less than 100 theoretical horsepower if the commission concludes it is in the public interest to do so.

(2) The commission shall give proper notice of the public hearing on an application under subsection (1) of this section, to the applicant and to each protestant, if any. After the hearing, if the commission determines that the proposed project does not comply with the standards set forth in ORS 543.017 or rules adopted by the commission under ORS 543.017, or would otherwise impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned, it shall enter an order rejecting the application or requiring its modification to conform to the public interest, to the end that the highest public benefit may result from the proposed project. The order may set forth any or all of the provisions or restrictions to be included in a preliminary permit or license concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(3) In determining whether the proposed project would impair or be detrimental to the public interest, the commission shall have due regard for:

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

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

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

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

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

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

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

(4) After the entry of the order specified in subsection (2) of this section, the application for a preliminary permit or for a license shall be referred to the Water Resources Director for further proceedings consistent with the commission's order. [1955 c.707 §42; 1961 c.224 §17; 1975 c.581 §28; 1985 c.569 §20; 1985 c.673 §148]

543.230 Hearings on application; rules; protest. (1) The Water Resources Commission shall, by order or rule, provide for the time and manner of hearings upon applications. However, upon request by any person made within 30 days after the Water Resources Director issues an order pertaining to cumulative impacts under ORS 543.255, the Water Resources Commission shall conduct a contested case hearing in accordance with the applicable provisions of ORS chapter 183 and any rules adopted by the commission.

(2) Every application for the appropriation of water for the generation of electricity subject to the terms of ORS 543.010 to 543.610 shall be subject to protest or remonstrance on behalf of the public, or any district organized for public purposes, or any interested private person, on the ground that the proposed construction, development or improvement would damage or destroy the use or utility of the stream or other body of water involved for other beneficial purposes, including propagation of fish, scenic, esthetic, recreational, park, highway or other beneficial use. All protests and remonstrances under this subsection must be filed with the commission within the time specified in the notice and must be in writing and verified by the parties protesting, and a certified copy thereof shall be served upon the applicant for the permit. However, in the discretion of the administrative law judge, at the time of the hearing any interested party may make an oral protest if there exists any good reason therefor, and the administrative law judge shall allow the applicant to be heard in opposition thereto. Every protest or remonstrance under this subsection which is not filed and served as required in this subsection shall be deemed waived. [Amended by 1955 c.673 §4; 1955 c.707 §40; 1961 c.224 §18; 1993 c.544 §7; 1995 c.416 §41; 1999 c.849 §115; 2003 c.75 §98]

543.240 [Repealed by 1991 c.869 §15]

543.250 Permit; duration; transfer; cancellation; priority; terms and conditions; denial. A preliminary permit may be issued for a period not exceeding a total of three years. It shall not be transferable except upon written approval of the Water Resources Commission, and may be canceled by order of the commission at any time upon proof to the commission's satisfaction, after hearing, that the holder is not in good faith complying with the provisions of the permit. The holder of a preliminary permit which has not been canceled shall have priority of right to make application for a license covering the project for which the preliminary permit was issued, within the term of the permit or any lawful extension thereof. Except as otherwise specified in ORS 543.010 to 543.610, the commission may fix the terms and conditions of any preliminary permit issued thereunder, and each preliminary permit issued shall set forth all the terms and conditions. The commission may decline to grant any application for a preliminary permit. [Amended by 1985 c.673 §149; 1993 c.63 §1]

543.255 Determination of cumulative impacts of proposed hydroelectric power projects; consolidated review; applicability. (1) Whenever the Water Resources Department receives an application to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a hydroelectric permit or license under ORS 543.010 to 543.610, the department shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the department; or

(b) Existing hydroelectric projects in the same river basin.

(2) If the department determines that there is no possibility that the hydroelectric projects proposed in pending applications or existing projects may have cumulative effects, the Water Resources Director shall issue an order setting forth the department's determination that there are no cumulative effects and the department's decision that consolidated review is not required.

(3) If the department determines that pending applications or existing projects may have cumulative effects, the Water Resources Commission shall conduct a consolidated review before approving any application in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS chapter 183 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the department and existing hydroelectric projects. In its final order on an application, the commission or the department shall include its findings on cumulative impacts. The findings of the commission or department under this section must be sufficient to support the department's decision to approve or deny an application.

(4) Any application for a project in the same river basin filed after the commission begins a consolidated review contested case hearing shall not be reviewed until the commission has issued final findings on cumula-

tive effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a permit to appropriate water for a new hydroelectric project under ORS 537.140 to 537.320 or for a permit or license under ORS 543.010 to 543.610, the commission may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section. [1985 c.569 §10; 1985 c.673 §193; 1993 c.544 §8; 1995 c.229 §4; 1995 c.416 §39]

543.257 Rules for implementing consolidated review process. The Water Resources Commission shall immediately initiate rulemaking proceedings according to the applicable provisions of ORS chapter 183 to implement the consolidated review process under ORS 543.255. Before adoption of the rules, the commission shall submit the rules to the Joint Legislative Committee on Water Policy for review and recommendation. [1985 c.569 §11; 1985 c.673 §194]

543.260 Licenses; duration; terms and conditions; termination; denial of application; preference of municipality or utility district. (1) A license may be issued by the Water Resources Commission to any qualified person for a period not exceeding 50 years. If the project is subject to regulation by the Federal Energy Regulatory Commission, the term shall be concurrent with and expire upon expiration of the federal license for the project. Each license shall be conditioned upon acceptance by the licensee of all the terms and conditions of ORS 543.010 to 543.610, and such further terms and conditions as the commission may prescribe, not inconsistent with those sections. All such terms and conditions, and their acceptance by the licensee, shall be expressed in the license. A license may be terminated for the reasons and in the manner provided in ORS 543.010 to 543.610. The form of license containing all the terms and conditions may be set forth in the preliminary permit.

(2) The commission may deny any application for a license if it appears that the applicant has failed to comply substantially with the terms and conditions of the preliminary permit or, notwithstanding the commission has issued a preliminary permit, if in the judgment of the commission the project is unfeasible or the public interest requires the denial thereof.

(3) A municipal corporation or people's utility district shall be given preference on any project in the issuance of a license, upon condition that the municipal corporation or people's utility district exercising such preference right shall be required to reimburse the holder of a preliminary permit for all reasonable actual expenditures made by the holder upon the project described or referred to therein. [Amended by 1983 c.740 §214b; 1985 c.673 §150; 1995 c.229 §5]

543.265 Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost. The Water Resources Department shall impose as a condition to any water right permit to appropriate water for hydroelectric purposes granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the hydroelectric project shall, during the operational lifetime of the project, perform or allow the State Department of Fish and Wildlife to perform, any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish. The scope and cost of these studies will be negotiated between the State Department of Fish and Wildlife and the operator. [1985 c.674 §6; 1987 c.158 §116; 1995 c.416 §40]

Note: 543.265 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 543 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

543.270 Preference in granting permit or license; municipal use. In issuing preliminary permits, and in issuing licenses where no preliminary permit is held by an applicant for a license, preference shall be given to the application which appears to the Water Resources Commission to be best adapted to conserve and utilize the water power involved. However, any application for the use of water made by any municipal corporation of this state under any law of the state, before a preliminary permit is issued, or before a license is issued when no preliminary permit upon the proposed project has been issued, shall always have preference. [Amended by 1985 c.673 §151]

543.280 Fee payments by licensee. (1) Any person who applies to the Federal Energy Regulatory Commission for a preliminary permit to operate a hydroelectric project shall, at the same time, apply for a state preliminary permit. An applicant for a state preliminary permit for a new hydroelectric project shall submit to the Water Resources Commission a complete copy of any application for the project filed with the Federal Energy Regulatory Commission or other federal agency. For preliminary permits, if the copy of the federal application is filed with the commission at the same time it is filed with the federal agency, at the commission's discretion, such copy may fulfill the requirements of ORS 543.210, except for the fee requirement in ORS 543.210 (4).

(2) An applicant for a preliminary permit or license for a project or for a permit to

appropriate water for power purposes shall pay to the state a project fee based on the capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a permit should be granted.

(3) The amount of the total project fee required under subsection (2) of this section shall be:

(a) For a project of less than 100 theoretical horsepower, $1,000.

(b) For any project of 100 theoretical horsepower or more, an amount equal to $5,000 plus $1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of $100,000.

(4) Except for projects of less than 100 theoretical horsepower, the project fee required under subsection (2) of this section shall be payable in advance before each of four stages of project review as established by rule by the Water Resources Commission. The payment schedule shall not require the applicant to pay more than $2,500 of the project fee at the first stage of project review or more than 50 percent of the total project fee in the first two stages of the project review. For a project of less than 100 theoretical horsepower, the applicant shall pay 50 percent of the fee at the time of filing the application for a preliminary permit or application for a permit to appropriate water for power purposes and the remaining 50 percent before the commission issues a license or a water right permit. A person may withdraw an application for a hydroelectric project after any stage of project review without further payment of fees under this section.

(5) In addition to the project fee required under subsection (2) of this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.

(6) The commission shall provide an applicant a statement itemizing the staff time, resources and costs expended to review the application at each project stage. The statement shall include the costs expended by the State Department of Fish and Wildlife and the Water Resources Department specific to the project. [Amended by 1957 c.581 §1; 1985 c.673 §152; 1991 c.869 §9]

543.290 Filing of maps, plans, estimates and other materials; incorporation as part of license; alteration; further statements and data. The applicant for a license shall submit to and file with the Water Resources Commission:

(1) All maps, plans, specifications and cost estimates as may be required by the commission for a full understanding of the proposed project. The maps, plans and specifications, when approved by the commission, shall become a part of the license, if one is issued upon the application, and thereafter no change shall be made in any such maps, plans and specifications until the proposed change has been approved by the commission. When a proposed change is approved by the commission, the changes shall become a part of the license.

(2) Any further statements and data as may be required by the commission concerning the proposed project, the market to be served, the financial responsibility of the applicant, the plan of financing and any other matters deemed material by the commission. [Amended by 1985 c.673 §153]

543.300 Conditions governing license; fees; waiver of conditions. Any license issued under ORS 543.010 to 543.610 shall take into consideration, and shall be on, the following conditions:

(1) That the proposed project shall be such as, in the judgment of the Water Resources Commission, is well adapted to the development and utilization of the water power involved.

(2) That the licensee shall construct and build the project according to the maps, plans and specifications filed with and approved by the commission, and within the time fixed by the license or by any lawful extension thereof.

(3) The operations of the licensee so far as they affect the use, storage and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules as the commission may prescribe for the protection of life, health and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes. The licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the commission may prescribe.

(4) That the licensee will maintain the project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the project, and all parts thereof, conformably to

the rules of the commission not inconsistent with ORS 543.010 to 543.610.

(5) That the licensee will pay to the state annually not more than $1 for each horsepower covered by the license. This sum shall constitute a first lien upon the project, which lien may be enforced by suit in equity or other appropriate proceeding, or payment thereof may be enforced by the state in an action for debt. Payment of such license fees may be waived by the commission during all or any part of the period of construction. The fees need not be uniform throughout the entire period of the license, but may be for different amounts for different periods. The amount of the license fees, within the minimum and maximum limits herein specified, shall be determined by the commission and expressed in the license.

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.610 as the commission may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the commission may waive all or any of the conditions and requirements of ORS 543.010 to 543.610 except the period for which a license may be issued, and the annual charge as determined by the commission under subsection (5) of this section. In issuing licenses for projects in excess of 100 horsepower for which the applicants are required to secure permits and licenses from the United States as a condition precedent to the construction of the projects, the commission may waive and modify such of the terms, conditions and requirements of ORS 543.010 to 543.610, except the period for which a license may be issued and the annual charge as determined by the commission under subsection (5) of this section, as the commission, by order, after full investigation and public hearing, shall find to make impracticable the construction of such projects. During the time that a licensee is not a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt against the licensee's plant, the commission may waive the accounting and amortization requirements of ORS 543.010 to 543.610, even where the project involved exceeds 100 horsepower.

(8) Subsection (5) of this section does not apply to a water right reauthorized pursuant to ORS chapter 543A. [Amended by 1959 c.560 §1; 1961 c.224 §19; 1985 c.673 §154; 1999 c.873 §23]

543.310 Disposition of moneys collected. Except as provided in ORS 536.015, all moneys collected under the provisions of ORS 543.010 to 543.610 shall forthwith be paid to the State Treasurer and become a part of the General Fund. [Amended by 1985 c.674 §10; 1991 c.869 §10]

543.320 Effect of amendment or repeal of law. The right to alter, amend or repeal ORS 543.010 to 543.610, or any part thereof, hereby is expressly reserved; but no such alteration, amendment or repeal shall affect any license theretofore issued under the provisions of ORS 543.010 to 543.610, or the rights of any licensee thereunder, unless expressly assented to by the licensee.

TIME FOR CONSTRUCTION; TERMINATION, REVOCATION OR TRANSFER OF LICENSE

543.410 Construction of project; time for commencement and completion; supply of service; extension of time; nonperformance; termination of license. (1) The licensee shall commence the construction of the project works within the time fixed in the license, which shall not be more than two years from the date thereof, shall thereafter in good faith and with due diligence prosecute such construction, and shall, within the time fixed in the license, complete and put into operation such part of the ultimate development as the Water Resources Commission considers necessary to supply the reasonable needs of the then available market, and shall, from time to time thereafter construct such portion of the balance of the development as the commission directs, so as to supply adequately the reasonable market demands until development is completed.

(2) The period for commencement of construction may be extended once but not longer than two additional years, and the period for the completion of construction carried on in good faith and with reasonable diligence may be extended by the commission when not incompatible with the public interests.

(3) If the licensee does not commence actual construction of the project works or of any specified part of the project works, within the time prescribed in the license or as extended by the commission, then, after due notice given, the license shall, as to the project works or part of the project works, be terminated upon written order of the commission. [Amended by 1985 c.673 §155]

543.420 Noncompletion of construction within prescribed time; judicial proceedings; sale of property; disposition of proceeds; rights of purchaser. If construction of a project under license has been begun but has not been completed within the time prescribed in the license or in any lawful extension thereof, then the Attorney General, upon request of the Water Resources Commission, shall institute pro-

ceedings in the circuit court for the county in which some part of the project is situated, for termination of the rights of the licensee under the license, the sale of the property embraced in the project, and for such other relief as the case may demand. Any judgment or decree entered in the proceeding shall provide for distribution of the proceeds of the sale to the parties equitably entitled thereto. The purchaser at any such sale shall take the property subject to all the terms and conditions of the license under which construction was begun, except insofar as they may be modified by the commission. [Amended by 1985 c.673 §156]

543.430 Proceedings after completion of project for violation of license terms; authority of court; sale of project. The Attorney General shall, upon request of the Water Resources Commission, institute proceedings in the circuit court for the county in which any project, or the major part of a project is situated, after the project has been completed, for the purpose of revoking for violation of its terms any license issued under ORS 543.010 to 543.610, or for the purpose of correcting or remedying by injunction, mandamus or other appropriate writ or decree, any act by the licensee in violation of the terms of those sections, or of any rule or order of the commission. The court shall have jurisdiction of the proceedings and may issue and execute all necessary process to compel compliance with the terms of any license, the terms of ORS 543.010 to 543.610, the lawful orders and rules of the commission. If a decree revoking a license is entered, the court may sell the whole, or any part, of a project under the license; wind up the business of the licensee conducted in connection with the project; distribute the proceeds to the parties equitably entitled thereto; and make and enforce such further orders and decrees as equity and justice may require. At any such sale the purchaser shall take the rights and privileges belonging to the licensee and shall perform all the duties of the licensee under the license. The remedies provided by this section are in addition to the remedies otherwise provided by ORS 543.010 to 543.610. [Amended by 1985 c.673 §157]

543.440 Transfer of license, rights or property; effect. No voluntary transfer of any license or any rights under a license or of any property acquired, constructed or operated pursuant to license issued under ORS 543.010 to 543.610 shall be made without written approval of the Water Resources Commission. Any successor or assignee of any licensee under any project acquired, constructed or operated by licensee, whether by voluntary transfer approved by the commission or sale upon foreclosure, execution or otherwise, shall be subject to all the terms and conditions of the license and of the provisions of ORS 543.010 to 543.610 to the same extent as though the successor or assignee was the original licensee thereunder. Any mortgage, deed of trust, or other lien suffered or created upon any such project shall be subject and subordinate to all the terms and conditions of ORS 543.010 to 543.610. However, the provisions of this section shall not apply to any transfer, voluntary or involuntary, to the state or any municipal corporation thereof, and upon such transfer the license shall terminate. [Amended by 1985 c.673 §158]

543.510 [Repealed by 1995 c.229 §9]

543.520 [Repealed by 1995 c.229 §9]

FINANCING OF PROJECTS; LIENS; BOND OF LICENSEE

543.525 ORS 543.530 to 543.550 not applicable to regulated utilities. The provisions of ORS 543.530 to 543.550 shall not apply to any licensee which is a utility as defined in ORS 757.005 and regulated by the Public Utility Commission of Oregon. [1965 c.333 §1]

Note: 543.525 was enacted into law by the Legislative Assembly but was not added to or made a part of 543.010 to 543.610 by legislative action. See Preface to Oregon Revised Statutes for further explanation.

543.530 Issuance of stocks, bonds, etc.; authorization of Water Resources Commission; noncompliance prohibited. (1) No licensee shall issue any share of corporate stock, or any bond, or other evidence of interest in or indebtedness of the licensee, or assume any obligation or liability as lessor, lessee, guarantor, indorser, surety or otherwise, in respect of the corporate shares, bonds or other evidence of indebtedness of any person in connection with the financing, acquisition, construction, maintenance or operation of any project, unless and until, and then only to the extent that, upon application by the licensee, and after investigation by the Water Resources Commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission, by order, authorizes the issue or assumption. The commission shall make the order only if the commission finds that the issue or assumption:

(a) Is for some lawful object of the licensee, compatible with the public interest, and is necessary to, or appropriate for, the proper performance by the licensee of the terms and conditions of the license and will not impair the licensee's ability to perform the terms and conditions; and

(b) Is reasonably necessary and appropriate for such purposes.

(2) The commission may grant or deny the application to authorize the issue or assumption, or grant the same in part and deny in part, and may modify the provisions of any previous order and prescribe such terms and conditions as the commission considers necessary or appropriate in the premises. Every such application shall be made in such form and contain such data as the commission by rule may prescribe.

(3) No licensee or any director, officer, attorney or agent thereof shall knowingly assent to or concur in any issue or assumption contrary to the provisions of this section, or the orders of the commission made pursuant to this section or ORS 543.540. [Amended by 1953 c.271 §1; 1985 c.673 §159]

543.540 Consideration for bonds, stock, etc.; restrictions; corporate shares; sale price of securities; discount from face value. No bonds, notes or other obligations or securities or corporate stock shall be issued in connection with the financing, construction or acquisition of any project or part of a project, under a license issued pursuant to ORS 543.010 to 543.610, except for cash or property. If issued for property, the price or value at which the property is to be acquired by the licensee and made a part of any such project must be submitted to and approved by the Water Resources Commission before it is purchased or acquired. All corporate shares issued in connection with any such project shall have a nominal or par value. All bonds, notes or other obligations or securities, and all shares of corporate stock issued or sold by any licensee in connection with the acquisition, construction or financing of any project, or part of a project, shall be issued or sold or used in the purchase or acquisition of property at the full face or nominal value thereof, unless the commission consents to and approves the sale for cash, or the use of cash in the purchase or acquisition of property at a discount from the face or nominal value of the property. Any discount so approved and consented to shall be considered a part of the cost of financing. [Amended by 1985 c.673 §160]

543.550 Liens prohibited; exceptions; what may be included by mortgage, trust deed, or sale; determination of investment in case of sale of part. No lien for labor, services, materials, machinery or equipment shall exist or be acquired or enforced upon any property acquired, constructed or made a part of any project under license issued pursuant to ORS 543.010 to 543.610. No property shall be put into or made part of any such project unless owned by the licensee free and clear of all liens and claims whatsoever, except a lien created by the licensee upon the whole property embraced in the project by mortgage or deed of trust, to the end that the entire property embraced in the project be kept and maintained as an indivisible whole. The mortgage or deed of trust may include other property. Any voluntary sale or any sale upon a judgment of foreclosure, execution or otherwise, shall be of the whole property embraced in the project unless the Water Resources Commission, by an order in writing, consents to and approves of a sale of a part of the property. If less than the whole of any property embraced in a project is sold with the consent and approval of the commission, the commission shall determine at the time of the sale the actual net investment in the part sold, as well as the actual net investment in the part remaining unsold. [Amended by 1985 c.673 §161; 2003 c.576 §496]

543.560 Bond of licensee or letter of credit securing claims of suppliers; enforcement of obligation; action for sums due State Accident Insurance Fund Corporation. Before entering upon the work of construction or acquisition of any project, the licensee shall execute to the state a bond, with good and sufficient sureties or an irrevocable letter of credit issued by an insured institution, as defined in ORS 706.008, in either case, to be approved by the Water Resources Commission, to the effect that the licensee shall promptly make payment to all persons supplying labor, services, material, machinery or equipment for the prosecution of the work, and all amounts due the State Industrial Accident Fund from the licensee. Any person supplying the licensee with any labor, services, material, machinery or equipment for prosecution of the work who has not been paid therefor within 60 days after the same has been supplied, or when payment is due according to any special agreement, may, within one year after any payment has become due, bring an action against the licensee, and the sureties upon the bond, or the letter of credit issuer for payment of the amount due to the person, and prosecute the same to final judgment and execution. The action shall be brought in the name of the state upon the relation of the person to whom payment is due. The state, at the request of the State Accident Insurance Fund Corporation may prosecute an action to judgment and execution against the licensee and the sureties upon the bond or letter of credit for all sums due the State Industrial Accident Fund. [Amended by 1985 c.673 §162; 1991 c.331 §80; 1997 c.631 §487]

ACQUISITION OF PROJECT BY STATE OR MUNICIPALITY

543.610 Acquisition of project by state or municipality. (1) Upon not less than two years' notice in writing the state, or any municipality thereof, shall have the right at any time to take over and thereafter to maintain and operate any project constructed under a license pursuant to ORS 543.010 to 543.610, upon payment of just compensation, including such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the license, not taken over, as may be caused by the severance therefrom of the property taken, and shall assume all contracts entered into by the licensee which are required to have and do have the express approval of the Water Resources Commission. If the sum to be paid cannot be agreed upon by the holder of the license and the municipality or the state, as the case may be, it shall be determined in a proceeding in equity instituted by the state or municipality, as the case may be, in the circuit court of the county in which the major part of the project is located.

(2) There is also expressly reserved to the state, and any municipality thereof, the right to take over all or any part of any project by condemnation proceedings as may be provided by the laws of Oregon or the charter of any such municipality. [Amended by 1983 c.799 §8]

543.620 [Repealed by 1995 c.229 §9]

POWER GENERATION BY DISTRICTS

543.650 Policy. The Legislative Assembly finds that a significant potential exists for the development of the hydroelectric generation capabilities of water systems serving domestic water supply districts, irrigation districts, drainage districts, water improvement districts and water control districts. The Legislative Assembly also finds that the development of such hydroelectric generation capabilities is desirable for meeting the electrical energy needs of the citizens of the State of Oregon. It is the intent of the Legislative Assembly to provide domestic water supply districts, irrigation districts, drainage districts, water improvement districts and water control districts with the authority and the right to exercise municipal preference in the development of hydroelectric generation capabilities in connection with their water systems. Further, it is the intent of the Legislative Assembly that the development of hydroelectric generation capabilities under ORS 543.650 to 543.685 does not become the primary function of domestic water supply districts, irrigation districts, drainage districts, water improvement districts and water control districts. [1981 c.420 §1]

543.655 Definitions for ORS 543.650 to 543.685. As used in ORS 543.650 to 543.685, unless the context requires otherwise:

(1) "District" means any one of the following:

(a) A domestic water supply district organized under ORS chapter 264.

(b) An irrigation district organized under ORS chapter 545.

(c) A drainage district organized under ORS chapter 547.

(d) A water improvement district organized under ORS chapter 552.

(e) A water control district organized under ORS chapter 553.

(2) "Principal Act" means the statutes, other than ORS 543.650 to 543.685, which describe the powers of a district, including, but not limited to, the statutes under which a district is proposed or is operating.

(3) "Water system" means any structure or facility constructed by persons and used by a district to achieve the district's purpose under the district's principal Act whether or not such structure or facility is owned by the district. [1981 c.420 §2; 1985 c.561 §4]

543.660 Authority of district to enlarge or modify water system and power generating facilities; joint district ventures; prohibitions; sale of energy; regulations. (1) A district, alone or jointly with other districts, electric cooperatives, as defined in ORS 261.010 (7), people's utility districts, a cooperative as defined in ORS 62.015, municipal corporations authorized to engage in generating and distributing electricity or public utilities, as defined in ORS 757.005, engaged in the business of generating and distributing electricity, may enlarge or modify its water system for the purpose of generating electricity and may operate and maintain such facilities, notwithstanding any provision of paragraph (a) of this subsection. If a district already has hydroelectric generating capability, the district may enlarge or modify the district's facilities used for generation of hydroelectric power. Two or more districts may, as a joint venture, generate electricity under ORS 543.650 to 543.685 so long as the structure or facility that is enlarged or modified to produce the electricity is part of the water system of at least one of the districts participating in the joint venture. However, a district may not:

(a) Construct, acquire, operate or maintain any facility or structure that is not an enlargement or modification of the district's water system solely or primarily for the purpose of generating electricity; or

(b) Be created solely or primarily for the purpose of constructing, acquiring, operating or maintaining hydroelectric facilities.

(2) A district shall sell the excess electric energy generated at such hydroelectric facilities to the Bonneville Power Administration, a public utility as defined in ORS 757.005, an electric cooperative as defined in ORS 261.010 (7), a people's utility district, a cooperative as defined in ORS 62.015, a municipal corporation or a municipally owned utility. Any sale of excess electric energy shall be made in accordance with terms and conditions of the Federal Power Act, as amended by the Public Utility Regulatory Policies Act of 1978. As used in this subsection, "excess electric energy" means electric energy not used by the district to meet its own electric pumping requirements.

(3) The board of directors of the district shall establish regulations governing electric energy generation and sale under this section.

(4) Electricity shall be sold under this section only at wholesale. [1981 c.420 §3; 1985 c.561 §5; 1995 c.195 §44; 2003 c.802 §80]

543.662 Authority of district to develop joint project with private person; restrictions. A district may contract with a private person to enlarge or modify the district's water system for the purpose of generating hydroelectric power. The district shall retain sufficient benefit and interest in, and control of a joint project as necessary for the project to be considered a district project. A district and a private person developing a joint project under ORS 543.650 to 543.685 must comply with the rules adopted by the Water Resources Commission under ORS 543.664. [1985 c.561 §2]

543.664 Rules relating to joint projects of districts and private persons. The Water Resources Commission shall establish rules necessary to carry out the provisions of ORS 543.662. The rules shall include the amount of control over and interest in a joint project a district must retain in order to receive the benefit of the municipal preference and proceed under the municipal application process set forth in ORS chapter 537. [1985 c.561 §3]

543.665 Authority to issue revenue bonds to acquire hydroelectric facilities. (1) In addition to any other authority under its principal Act to issue bonds, a district, when authorized at any properly called election, shall have the power to sell and dispose of revenue bonds to construct or acquire hydroelectric facilities in conformance with ORS 543.650 to 543.685 to develop the hydroelectric generation capabilities of the water system, and to pledge as security therefor all or any part of the unobligated net revenue of the district or system.

(2) Revenue bonds may be issued by a district to construct or acquire hydroelectric facilities in connection with its water system in conformance with ORS 543.650 to 543.685, including, but not limited to, dams, canals, generating plants, transmission lines, other power equipment and acquire the necessary property and rights therefor, for the purpose of generating hydroelectric energy.

(3) The revenue bonds authorized by this section shall be issued in the same manner and form as are general obligation bonds of the district, but they shall be payable, both as to principal and interest, from revenues only, as specified by this section. The revenue bonds shall not be subject to the percentage limitation applicable to general obligation bonds and shall not be a lien upon any of the taxable property within the corporate limits of such district, but shall be payable solely from such part of the revenues of the district as remain after payment of obligations having a priority and of all expenses of operation and maintenance of the district, including any taxes levied against it. All revenue bonds shall contain a clause reciting that both the principal and interest are payable solely from operating revenues of the district remaining after paying such obligations and expenses. [1981 c.420 §4; 1985 c.561 §6]

543.670 Manner of issuance of revenue bonds. Except as provided in ORS 287.028, all revenue bonds issued under ORS 543.665 shall be advertised and sold in the manner prescribed in ORS 287.014 to 287.022 for the sale of bonds of cities of this state. [1981 c.420 §5; 1983 c.557 §12]

543.675 Power of eminent domain not to be exercised to acquire hydroelectric facilities. Notwithstanding any powers of eminent domain and condemnation given to a district under its principal Act, a district shall not exercise any power of condemnation or eminent domain to condemn, appropriate or acquire real property for the purpose of constructing, acquiring, operating or maintaining hydroelectric facilities. [1981 c.420 §6]

543.680 Compliance with water appropriation laws required. A district shall comply with all applicable provisions of ORS chapter 537 before enlarging or modifying the district's water system for the purpose of generating hydroelectric energy. [1981 c.420 §7; 1985 c.561 §7]

543.685 District board to require weatherization; Weatherization Fund; purpose. (1) If the board of directors of a district has not adopted an ordinance, resolution or administrative rule requiring the

weatherization of the buildings of the district, the district shall deposit 10 percent of any revenues derived from the sale of excess electric energy under ORS 543.660 with the officer serving as the treasurer of the district to be credited to a special fund designated its Weatherization Fund. Moneys in the fund shall be expended upon written order of the board of directors for the sole purpose of accomplishing weatherization of buildings owned by the district.

(2) As used in this section, "weatherization" means the installation of materials, equipment or fixtures designed primarily to improve the efficiency of space heating and energy utilization of a building. [1981 c.420 §8]

POWER DEVELOPMENT FEES

543.705 Definitions for ORS 543.710 to 543.730. As used in ORS 543.710 to 543.730, "claimant" means any person claiming the right to the use of water for power development. [1957 c.333 §1]

543.710 Annual fee based on horsepower; exemptions; disbursement. Every claimant other than a licensee under ORS 543.010 to 543.610 shall on or before January 1 of each year pay to the state in advance an annual fee based upon the theoretical water horsepower claimed under each separate claim to water, graduated as follows: Thirty cents for each theoretical water horsepower or fraction thereof up to and including 50 and 28 cents for each theoretical water horsepower or fraction thereof in excess of 50. However, upon filing the statement provided in ORS 543.720, the United States or the state, claiming the right to the use of water to any extent for the generation of power, or any other claimant to the right to use water for the generation of 10 theoretical water horsepower or less, shall be exempted from the payment of all fees provided for in this section. Four cents of each 28 cents collected as an annual fee under this section shall be deposited to the Water Resources Department Hydroelectric Fund and disbursed to the Department of Environmental Quality. [Amended by 1957 c.333 §2; 1965 c.185 §1; 1973 c.163 §5; 1997 c.449 §38; 1999 c.873 §24; 2001 c.104 §229]

543.720 Payment of annual fee; accompanying statement; penalty for nonpayment of fees or nonfiling; lien; foreclosure; effect of filing excessive claim; computation of horsepower. (1) The fees provided for in ORS 543.710 shall be paid to the Water Resources Commission in advance, and shall be accompanied by a written statement showing the extent of the claim. The statement shall set forth the name and address of the claimant; the name of the stream from which the water is appropriated or claimed for power development; a description of the 40 acres, or smallest legal subdivision in which the point of diversion and point of return are located; the date of the right as claimed; the maximum amount of water claimed expressed in cubic feet per second of time; the total average fall utilized under such claim; the manner of developing power; and the use to which the power is applied. If the regular flow is supplemented by water stored in a reservoir, the location of the reservoir, its capacity in acre-feet and the stream from which it is filled and fed, should be given, also the date of the right as claimed, for storage purposes.

(2) If any claimant fails or neglects to file the statement or to pay the fees within the time specified, the fees due and payable shall be the amount specified in ORS 543.710 increased 25 percent. The state shall have a preference lien for the fees due, together with interest at the rate of 10 percent per annum from date of delinquency, upon the property of the claimant used, or necessary for use, in the development of the right or claim, together with any improvements erected on the property for such development. Upon notice from the commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.

(3) The filing of a claim to water in excess of the amount to which the claimant is legally entitled shall not operate to vest in the claimant any right to the use of such excess water, nor shall the payment of the annual license fee provided for in ORS 543.710 operate to vest in any claimant any right to the use of such water beyond the amount to which claimant is legally entitled. The filing of any such claim to water shall be conclusive evidence as to the abandonment by the claimant of all rights to water for power purposes in excess of the claim as filed.

(4) The amount of theoretical water horsepower upon which fees shall be paid under the provisions of ORS 543.710 and 543.720 shall be computed by multiplying the maximum amount of water claimed, expressed in cubic feet per second, by the average total fall utilized, expressed in feet, and dividing the product by 8.8. [Amended by 1985 c.673 §163]

543.725 [1985 c.674 §9; repealed by 1991 c.869 §15]

543.730 Failure to file statement or pay fees as evidence of abandonment of claim; cancellation of claim, permit and water right certificate. (1) Failure of any claimant for a period of five successive years ending after August 20, 1957, to file the written statement showing the extent of the

claim as required by ORS 543.720, or failure of any claimant for a period of five successive years ending after August 20, 1957, to pay the annual license fee as required by ORS 543.710, shall be conclusive evidence of the abandonment by the claimant of the claim and of all right to water for power purposes in connection with such claim.

(2) When a claim is abandoned under the provisions of subsection (1) of this section, or whenever a claimant has voluntarily authorized, in writing, the cancellation of a claim or the water right in connection therewith, the Water Resources Commission shall:

(a) Cancel the claim on the records of the Water Resources Department.

(b) Cancel any permit to appropriate water or any water right certificate issued in connection with such claim. [1957 c.333 §3; 1979 c.67 §7; 1985 c.673 §164]

543.810 [Repealed by 2001 c.369 §9]

543.820 [Amended by 1985 c.565 §83; 2001 c.104 §230; repealed by 2001 c.369 §9]

543.830 [Repealed by 2001 c.369 §9]

PENALTIES

543.990 Penalties. (1) Violation of ORS 543.530 (3) is punishable, upon conviction, by a fine of not more than $5,000, or by imprisonment for not more than one year, or both.

(2) Violation of any of the provisions of ORS 543.010 to 543.610, or any of the conditions made a part of any license issued under ORS 543.010 to 543.610, or any subpoena of the Water Resources Commission or of an administrative law judge or any person designated by the commission to take testimony, any lawful order or rule of the commission is a Class B misdemeanor.

(3) Any person who willfully and knowingly gives false testimony concerning a material matter in any hearing before the commission, an administrative law judge or any person designated by the commission to take testimony, or in any deposition or affidavit to be used in a matter pending before the commission or administrative law judge, or willfully and knowingly verifies a false statement or report filed with the commission, shall be guilty of perjury and may be prosecuted and punished as otherwise provided by law for the prosecution and punishment of perjury. [Amended by 1955 c.673 §5; 1985 c.673 §165; 1999 c.849 §117; 2003 c.75 §99]