Chapter 541

2005 EDITION

Watershed Enhancement and Protection; Water Development Projects; Miscellaneous Provisions on Water Rights; Stewardship Agreements

WATER COMPANIES ORGANIZED UNDER 1891 ACT

541.010 Furnishing of water for certain purposes declared to be a public use; rates; amendment of law

541.020 Construction of ditches and canals by corporation; route across lands

541.030 Ditches and canals across state lands; grant of right of way

541.040 Headgate; mode of construction

541.050 Leakage or overflow; liability; exception

541.055 District liability for seepage and leakage from water or flood control works; limitation on commencement of action

541.060 Waste of water; flooding premises; unnecessary diversion

541.070 Ditches, canals and flumes as real estate

541.080 Suits involving water rights; parties; decree as to priorities

APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER UNDER 1899 ACT

541.110 Use of water to develop mineral resources and furnish power

541.120 Ditches and canals through lands; two or more prohibited; use of existing ditch by others than owner; joint liability

541.130 Right of way for ditches across state lands granted

APPROPRIATION OF WATER BY THE UNITED STATES

541.220 Survey of stream system; delivery of data to Attorney General; suits for determination of water rights

541.230 State lands within irrigated area; restrictions on sale; conveyance of lands needed by United States

541.240 Right of way for ditches and canals; reservation in conveyances

541.250 Cession to United States not rescinded

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

541.310 Suits for determination of rights; parties; survey of stream; disbursements

541.320 Decrees adjudicating rights; filing; statement as to matters adjudicated

DISTRICT WATER RIGHTS MAPPING

541.325 Definitions for ORS 541.327 to 541.333

541.327 Failure or refusal of district to act; joint applications; eligible participants

541.329 Petition for approval of district map; contents; notice to users; corrections

541.331 Protest against approval of petition; hearing; issuance of water right certificate; land subject to inclusion

541.333 Application for change of place of use, point of diversion or use; contents; form of map

WATERSHED MANAGEMENT AND ENHANCEMENT

(Generally)

541.351 Definitions for ORS 541.351 to 541.415

541.353 Legislative findings; principles of Oregon Plan; policy

541.360 Oregon Watershed Enhancement Board; officers; qualifications

541.362 Executive director of Oregon Watershed Enhancement Board; appointment

541.363 Authority of executive director to enter into interagency agreements

541.365 Board to conduct watershed enhancement program; integration of geographic information

541.368 Board to facilitate implementation of grant programs

541.370 Duties of board; grant program; advisory committees

541.371 Duties of board related to integrated watershed planning and management; allocation of funds to local soil and water conservation districts and watershed councils

541.372 Authority of board to accept moneys; disposition

541.373 Authority of Governor to accept moneys; disposition

541.375 Watershed enhancement projects; grant program; criteria for approval; acquisition of interest in land or water

541.376 Title restrictions on land purchased through grant agreement

541.377 Parks and Natural Resources Fund; sources; subaccounts; uses of subaccounts

541.378 Restoration and Protection Research Fund; creation; sources; uses

541.379 Watershed Improvement Operating Fund; creation; sources; uses

541.381 Flexible Incentives Account; creation; sources; uses

541.384 Watershed management program; project funding; high priority watersheds

541.388 Voluntary local watershed councils; protection against liability

541.390 Duties of Natural Resources Division

541.392 Report to Legislative Assembly

541.395 State agency reports to be provided to board

541.396 Rules

(Watershed Improvement Grant Fund)

541.397 Watershed Improvement Grant Fund; creation; sources; uses

541.399 Purpose of grants from Watershed Improvement Grant Fund

541.401 Criteria for project receiving moneys from Watershed Improvement Grant Fund

(The Oregon Plan)

541.405 Oregon Plan described; goals; elements; Governor to negotiate with federal government

541.407 Healthy Streams Partnership; members; duties

541.409 Independent Multidisciplinary Science Team; duties; agency response to science team recommendations

541.411 Responsibilities of state agency participating in Oregon Plan

541.413 Agency report to legislative committee prior to adjustment of expenditure limitation or additional funding related to Oregon Plan

541.415 Oregon Plan for Salmon and Watersheds Legal Fund; creation; sources; uses

541.420 Oregon Watershed Enhancement Board reports to Governor and Legislative Assembly on Oregon Plan

(Stewardship Agreements)

541.423 Stewardship agreements; contents; procedures for adoption; rules

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

541.430 Use of machinery by riparian owner to raise water; prior rights of others

SPLASH DAMS

541.450 Definitions for ORS 541.450 to 541.460

541.455 Splash dams unlawful

541.460 Abatement proceedings by Attorney General

RELEASE OF WATER FROM IMPOUNDMENT OR DIVERSION STRUCTURE

541.510 Authority of Water Resources Commission to require signs warning public of stream level fluctuation

541.515 Notice by commission when hazard created by release of stored water

541.520 Procedure when owner or operator of structure fails to request hearing; order regulating release of water

541.525 Hearing upon request of owner or operator of structure; notice and conduct of hearing

541.530 Order of commission regulating release of water

541.535 Installation of automatic stream level recording devices

541.540 Procedure in emergency when release of water essential

541.545 Compliance with orders of commission; enforcement

WATER DEVELOPMENT PROJECTS

(Definitions)

541.700 Definitions for ORS 541.700 to 541.855

(Loan Applications)

541.703 Project applications; preference for approval

541.705 Project applications; contents

541.710 Processing project application; fee

541.715 Applicant authorized to obtain private planning, engineering and construction services

541.720 Conditions for project application approval

(Loan Contracts)

541.730 Loan contract; repayment plan; other terms and conditions

541.735 Payment of funds by State Treasurer pursuant to loan contract

541.740 Liens and other loan security; foreclosure

541.741 Recovery of certain interest amounts

541.745 Remedies of commission when water developer fails to comply with contract

541.750 Repayment of moneys to Water Development Administration and Bond Sinking Fund

541.755 Loan becomes immediately due and payable if other funds used for project construction; use of other funds to repay state loan

541.760 Reduction of loan amount when secondary use funding available

541.765 Loans for certain federal projects authorized

541.770 Federal project loan contract terms; foreclosure

(Bonds)

541.780 Bonds to provide project financing

541.785 Disposition and use of bond proceeds

541.800 Payment of bond principal and interest from Water Development Administration and Bond Sinking Fund

541.815 Limitation on bond issuance amount

(Administration)

541.830 Water Development Administration and Bond Sinking Fund; sources; use; Governor's approval

541.835 Water Development Fund; use

541.840 Emergency Board request for funds to pay administrative expenses; repayment of board allocations

541.845 Rules

541.850 Commission authorized to accept gifts or grants

541.855 Biennial report to Legislative Assembly and Governor

NORTH UMPQUA RIVER DAMS

541.875 Dams and use of water for hydroelectric generation on North Umpqua prohibited; exceptions

541.880 Government entity not responsible for repair or maintenance costs of dams on North Umpqua

PENALTIES

541.990 Penalties

WATER COMPANIES ORGANIZED UNDER 1891 ACT

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

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

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

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

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

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

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

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

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

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

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

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

541.080 Suits involving water rights; parties; decree as to priorities. In any suit commenced for the protection of rights to water acquired under the provisions of the Act of 1891, pages 52 to 60, Oregon Laws 1891, the plaintiff may make any or all persons who have diverted water from the same stream or source parties to the suit, and the court may in one decree determine the relative priorities and rights of all parties to the suit. Any person claiming a right on the stream or source, not made a party to the suit, may become such on application to the court, when it is made to appear that the person is interested in the result, and may have the right of the person determined. The court may at any stage, on its own motion, require any persons having or claiming rights to water on the stream or source, to be brought in and made parties, when it appears that a complete determination of the issue involved cannot be made without their presence.

APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER UNDER 1899 ACT

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

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

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

541.210 [Repealed by 1953 c.328 §2]

APPROPRIATION OF WATER BY THE UNITED STATES

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

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

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

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

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

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

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

DISTRICT WATER RIGHTS MAPPING

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

(1) "District" means any district or corporation organized under ORS chapter 545, 547, 552, 553 or 554 or any corporation, cooperative, company or other association formed before 1917 for the purpose of distributing water for irrigation purposes.

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

(3) "User" means an owner of land with an appurtenant water right that is subject to assessment by a district and that would be altered by the petition and map filed under ORS 541.329. [1989 c.1000 §1; 1993 c.818 §1]

Note: 541.325 to 541.333 were enacted into law by the Legislative Assembly but were not added to or made

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

541.327 Failure or refusal of district to act; joint applications; eligible participants. (1) If a district fails or refuses to act under ORS 541.329 and 541.331, the owner of land with an appurtenant water right within a district and subject to assessment by the district may transfer the use or place of use of the water right on or before July 1, 1994, pursuant to ORS 541.333. An owner transferring the use or place of use under this subsection shall comply with ORS 536.050.

(2) If the owners of land within a quarter quarter of a section in a district agree as to the use and place of use of all water rights in the quarter quarter of the section subject to assessment by the district, the owners may jointly submit an application, without the fees required under ORS 536.050, to the Water Resources Department to conform the department's records to the present usage within the quarter quarter of a section. The application must be filed in accordance with ORS 541.333 on or before July 1, 1994.

(3) The district or users within a district authorized to participate in the process described under ORS 541.325 to 541.333 shall be limited to those districts or users who have notified the department on or before July 1, 1993, of their intention to submit a petition.

(4) Notwithstanding subsection (3) of this section, the Walla Walla River Irrigation District, or its successor district formed under ORS chapter 545 and created after July 1, 1994, may participate in the process described under ORS 541.325 to 541.333 if the district notifies the department on or before June 30, 2004. [1989 c.1000 §2; 1991 c.957 §12; 1993 c.818 §2; 1995 c.554 §5; 2003 c.691 §1]

Note: See note under 541.325.

541.329 Petition for approval of district map; contents; notice to users; corrections. (1) Pursuant to the requirements of subsection (2) of this section, a district may petition the Water Resources Commission for approval and acceptance of a district map indicating the location and use of the water rights within the district or any part thereof. The petition and map shall be in a form satisfactory to the commission and shall be certified by the district rather than a certified water right examiner. For a district that notifies the Water Resources Department under ORS 541.327 (4), the map must be submitted in an electronic format meeting the standards set by the department. The petition and map may not expand a water right of the district or its users beyond the total right of record of the district. If the district has met the requirements of ORS 541.325 to 541.331 and after the opportunity for hearing under ORS 541.331, the commission shall instruct the director to issue a new certificate to the district listing the requested locations and uses and retaining the original priority date. If the commission denies the petition, the commission shall hold a hearing on the denial. Notice and conduct of the hearing shall be under the provisions of ORS chapter 183 pertaining to contested cases. The hearing shall be conducted in the area where the right is located unless the parties and the persons who file the protest under this section stipulate otherwise.

(2) The petition required under subsection (1) of this section shall be submitted on or before July 1, 1994, or before June 30, 2010, for a district notifying the department under ORS 541.327 (4), and shall include:

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

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

(c) A general description of the district boundaries.

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

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

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

(3) A petition submitted under this section shall contain no more acres of land than the least of the following:

(a) The number of acres assessed by the district as of July 1, 1989;

(b) The number of acres assessed by the district as of July 1, 1993; or

(c) If a district notifies the department under ORS 541.327 (4), the number of acres assessed by the district as of December 31, 2003.

(4) Before submitting a petition under subsection (2) of this section, the district shall send a notice to the user of every parcel whose right of record is to be altered, as evidenced by the district's records. This notice shall be sent to the last-known address for the user with a return receipt requested. The notice shall include the number of acre-feet of water or its equivalent, for which the

user is being assessed, a general description or tax lot of the land to which the water is assigned, a description of the use and a request for confirmation that the information in the notice is correct. Thirty days after the notice is mailed, the district shall prepare a petition and map as described in subsections (1) and (2) of this section. Payment for water by the user or the user's predecessor for a period of five years before the petition shall create a rebuttable presumption that the number of acres billed and paid by the user or the user's predecessor is equal to the user's water right.

(5) Within 30 days after the commission issues a proposed order regarding the petition, the district shall send notice to the users of the district whose right of record is to be altered by the proposed order. This notice shall be sent to the last-known address of the user with a return receipt requested. The notice shall include the number of acres of land, or its equivalent, for which the user is being assessed, a general description or tax lot number of the land to which the water is assigned and a description of the use. In addition to the notice of the proposed order that the district sends to the users, the district shall publish at the same time notice in a newspaper having general circulation in the area in which the water rights are located for a period of at least three weeks. Not less than one publication in each week shall be made. The notice shall state:

(a) The number of acres of water right that each parcel shall receive and the associated priority dates;

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

(c) That not less than 60 days after the date of first publication, the commission shall approve the petition and map and issue a final order unless a protest is filed or the petition does not meet the requirements of subsections (1) and (2) of this section; and

(d) That the user has the right to protest the proposed order and map as described in ORS 541.331.

(6) If the commission returns a petition or map to a district for correction, the commission may prescribe a deadline for the petitioner to provide additional information or correct the petition or map. If the petitioner fails to meet the deadline prescribed by the commission, the commission may deny the petition. [1989 c.1000 §3; 1991 c.957 §13; 1993 c.818 §3; 2003 c.691 §2]

Note: See note under 541.325.

541.331 Protest against approval of petition; hearing; issuance of water right certificate; land subject to inclusion. (1) Any user may file with the Water Resources Department, within 60 days after the date of first publication, under ORS 541.329, a protest against a proposed order approving the petition. Whenever a timely protest is filed or in the opinion of the Water Resources Director a hearing is necessary to determine whether the district has met the requirements of ORS 541.325 to 541.333 or the proposed changes described in the proposed order would result in injury to existing water rights, the department shall hold a hearing on the matter. The hearing shall be conducted according to the provisions of ORS chapter 183 applicable to contested cases. The hearing shall be held in the area where the rights are located unless the parties and the persons who filed the protest under this section stipulate otherwise.

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

(3) A certificate issued under this section shall have the evidentiary effect provided for in ORS 537.270 except when the right to appropriate water described in the certificate is abandoned after the certificate is amended or issued.

(4) The department may approve for inclusion in a new certificate under ORS 541.329 and this section only land which, on July 1, 1993, or, if a district notifies the department under ORS 541.327 (4), on December 31, 2003, is:

(a) Land within the legal boundaries of the district as those boundaries were originally described or as they may have been changed by legally prescribed inclusion or exclusion proceedings.

(b) Land for which inclusion in the district has been requested previously as prescribed by law.

(c) Land on which a previously perfected water right has been applied beneficially and for which the user has been charged or assessed by the district in at least one of the last five years and for which the user is currently being charged or assessed. [1989

c.1000 §4; 1993 c.818 §4; 1995 c.554 §7; 1999 c.590 §1; 2003 c.691 §3]

Note: See note under 541.325.

541.333 Application for change of place of use, point of diversion or use; contents; form of map. (1) Whenever the owner of a water right for irrigation, domestic use, stock water storage or other use, for any reason desires to change the place of use, the point of diversion or the use made of the water under ORS 541.327, an application shall be filed with the Water Resources Department.

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

(a) The name of the owner;

(b) The previous use of the water;

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

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

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

(f) The reasons for making the proposed change;

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

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

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

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

(4) A certificate issued under this section has the evidentiary effect provided for in ORS 537.270 except when the right to appropriate water described in the certificate is abandoned after the certificate is amended or issued. [1989 c.1000 §5; 1995 c.554 §8]

Note: See note under 541.325.

541.345 [Formerly 536.600; repealed by 1999 c.1026 §29]

541.347 [1993 c.601 §1; repealed by 1999 c.1026 §3 (541.353 enacted in lieu of 541.347)]

541.350 [1987 c.734 §1; 1995 c.187 §1; repealed by 1999 c.1026 §1 (541.351 enacted in lieu of 541.350)]

WATERSHED MANAGEMENT AND ENHANCEMENT

(Generally)

541.351 Definitions for ORS 541.351 to 541.415. As used in ORS 541.351 to 541.415:

(1) "Adaptive management" means applying management or practices over time and across the landscape to achieve site specific resource goals using an integrated and science based approach that results in changes over time in response to feedback or monitoring.

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

(3) "Board" means the Oregon Watershed Enhancement Board created under ORS 541.360.

(4) "Capital expenditures" means direct expenses related to:

(a) Personal property of a nonexpendable nature including items that are not consumed in the normal course of operations, can normally be used more than once, have a useful life of more than two years and are for use in the enforcement of fish and wildlife and habitat protection laws and regulations; or

(b) Projects that restore, enhance or protect fish and wildlife habitat, watershed functions, native salmonid populations or water quality, including but not limited to:

(A) Expenses of assessment, research, design or other technical requirements for the implementation of a project;

(B) The acquisition of determinate interests, including fee and less than fee interests, in land or water in order to protect watershed resources, including appraisal costs and other costs directly related to such acquisitions;

(C) Development, construction or implementation of a project to restore, enhance or protect water quality, a watershed, fish or wildlife, or riparian or other habitat;

(D) Technical support directly related to the implementation of a project; and

(E) Monitoring or evaluation activities necessary to determine the actual effectiveness of a project.

(5) "Independent Multidisciplinary Science Team" means the scientific team of recognized experts in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management created under ORS 541.409.

(6) "Native" means indigenous to Oregon and not introduced.

(7) "Oregon Plan" means the guidance statement and framework described in ORS 541.405.

(8) "Protect" or "protection" means to minimize or mitigate adverse effects on salmonid and habitat to the maximum extent practicable given the anticipated duration, geographic scope and primary purpose of proposed activities.

(9) "Restore" or "restoration" means to take actions likely to achieve sustainable population levels of native fish or wildlife and their habitats.

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

(11) "Soil and water conservation district" means a political subdivision of the state as described in ORS 568.550.

(12) "Stewardship" means the careful and responsible management of the environment.

(13) "Tribe" means a federally recognized Indian tribe in Oregon.

(14) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(15) "Watershed council" means a voluntary local organization, designated by a local government group convened by a county governing body, to address the goal of sustaining natural resource and watershed protection, restoration and enhancement within a watershed. [1999 c.1026 §2 (enacted in lieu of 541.350)]

541.353 Legislative findings; principles of Oregon Plan; policy. (1) The Legislative Assembly finds that:

(a) The long-term protection of the water resources of this state, including sustainable watershed functions, is an essential component of Oregon's environmental and economic stability and growth;

(b) Each watershed in Oregon is unique, requiring different management techniques and programs;

(c) Management techniques and programs for the protection and enhancement of watersheds can be most effective and efficient when voluntarily initiated at the local level;

(d) Cooperative partnerships between affected private individuals, interested citizens, tribes and representatives of local, state and federal agencies may improve opportunities to achieve the protection, enhancement and restoration of the state's watersheds; and

(e) The establishment of such cooperative partnerships should be encouraged by local individuals, local organizations and representatives of state agencies.

(2) The Legislative Assembly declares that the Oregon Plan for integrating regulatory efforts while fostering incentives and voluntary action for environmental stewardship should be founded upon the following principles:

(a) Promoting collaboration and partnerships among local, state, regional, tribal and federal governments and private individuals and organizations;

(b) Establishing clear, technically defensible, practicable and achievable recovery and restoration objectives;

(c) Assessing the conditions in each watershed to determine the quality of the existing environment, to identify the causes for declines in habitat, fish and wildlife populations and water quality, and to assist with the development of locally integrated action plans for watersheds that will achieve agreed-upon protection and restoration objectives;

(d) Coordinating implementation of integrated watershed action plans;

(e) Monitoring and ensuring implementation of the integrated watershed action plans using adaptive management to make appropriate changes in action plans and goals as needed; and

(f) Establishing funding priorities across basins based on the value of programs and projects for watershed and habitat recovery.

(3) It is the policy of the State of Oregon that:

(a) Voluntary programs initiated at the local level to protect and enhance the quality and stability of watersheds are a high priority of the state and should be encouraged;

(b) State agencies are encouraged to respond cooperatively to local watershed protection and enhancement efforts and coordinate their respective activities with other state agencies and affected local, regional, tribal and federal governments and private landowners to the greatest degree practicable; and

(c) State agencies responding to local watershed protection and enhancement efforts are encouraged to foster local watershed planning, protection and enhancement efforts before initiating respective action

within a watershed. [1999 c.1026 §4 (enacted in lieu of 541.347)]

541.355 [1987 c.734 §2; 1995 c.187 §2; 1999 c.1026 §20; repealed by 2001 c.841 §5]

541.360 Oregon Watershed Enhancement Board; officers; qualifications. (1) The Oregon Watershed Enhancement Board is created. The board shall consist of 17 members as set forth in subsection (2) of this section. The chairperson shall have such powers and duties as are provided by the rules of the board.

(2)(a) The 11 voting members of the board shall be knowledgeable about natural resource issues, represent all geographic regions of this state and include at least one representative of a tribe. The board shall consist of the following:

(A) Each of the following boards or commissions shall designate one member of their board or commission to serve on the Oregon Watershed Enhancement Board:

(i) The Environmental Quality Commission;

(ii) The State Fish and Wildlife Commission;

(iii) The State Board of Forestry;

(iv) The State Board of Agriculture; and

(v) The Water Resources Commission; and

(B) Six public members appointed by the Governor and confirmed by the Senate in accordance with ORS 171.562 and 171.565. Each public member shall serve for a term of four years. A member shall be eligible for reappointment, but no member shall serve more than two consecutive terms.

(b) In addition to the voting members, the director of the agricultural extension service of Oregon State University, or the director's designee, shall serve as a nonvoting member of the board and shall participate as needed in the activities of the board.

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

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

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

(C) A representative of the Natural Resources Conservation Service of the United States Department of Agriculture.

(D) A representative of the United States Environmental Protection Agency.

(E) A representative of the National Marine Fisheries Service of the United States Department of Commerce.

(3) The voting members of the board shall select a chairperson from among the voting members of the board.

(4) At least eight voting members of the board must be present to take action to award grant funds under ORS 541.370. If three or more voting members object to an award of grant funds, the board shall reject the proposal and direct the applicant to revise the proposal to comply with the requirements of ORS 541.397, 541.399 and 451.401 and resubmit the proposal. [1987 c.734 §3; 1995 c.187 §3; 1999 c.1026 §8]

541.362 Executive director of Oregon Watershed Enhancement Board; appointment. (1) Subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565, the Governor shall appoint an executive director of the Oregon Watershed Enhancement Board. The executive director shall be an individual qualified by training and experience and shall serve for a term of four years, at the pleasure of the Governor.

(2) The executive director shall receive a salary as provided by law or, if not so provided, as prescribed by the Governor.

(3) In addition to salary, but subject to any applicable law regulating travel and other expenses of state officers and employees, the executive director shall be reimbursed for actual and necessary travel and other expenses incurred by the executive director in the performance of official duties.

(4) Subject to any applicable provisions of the State Personnel Relations Law, the executive director shall appoint all subordinate officers and employees of the board, prescribe their duties and fix their compensation. [1999 c.1026 §9]

541.363 Authority of executive director to enter into interagency agreements. In addition to any other authority granted to the executive director of the Oregon Watershed Enhancement Board, the executive director, on behalf of the board, may enter into interagency agreements necessary to carry out the duties and responsibilities of the board. [1999 c.1026 §10]

541.365 Board to conduct watershed enhancement program; integration of geographic information. (1) The Oregon Watershed Enhancement Board shall conduct a watershed enhancement program to benefit all users of the waters of this state. The board shall conduct the program in a manner that:

(a) Provides the greatest possible opportunity for volunteer participation to achieve the goals of the program; and

(b) Coordinates the information, data and data retrieval needs of the natural resource agencies of the state with the State Service Center for Geographic Information Systems.

(2) In order to effectuate the program described in this section, the board shall establish protocols, policies and procedures necessary to integrate and organize geographic information and make it available to persons and entities involved in implementation of the Oregon Plan.

(3) In working with the State Service Center for Geographic Information Systems, the board shall ensure that:

(a) Information received by the center is formatted in a manner that results in an integrated geographic information system that meets the needs of all local, state, regional, tribal and federal entities involved in implementation of the Oregon Plan; and

(b) The data are available to local, state and federal agencies and to any person implementing activities under the Oregon Plan.

(4) The program developed under this section shall include development and implementation, in coordination with the natural resource agencies of the state, of a statewide monitoring program for activities conducted under the Oregon Plan. [1987 c.734 §5; 2001 c.841 §3a; 2001 c.842 §1]

541.368 Board to facilitate implementation of grant programs. In cooperation with other state, interstate and federal agencies, tribes, local governments, watershed councils, soil and water conservation districts, not-for-profit organizations and volunteer groups, the Oregon Watershed Enhancement Board shall facilitate the implementation of the grant programs established under ORS 541.351 to 541.415. [1999 c.1026 §6]

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

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

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

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

(d) Coordinate and provide for or arrange for assistance in the activities of persons, agencies or political subdivisions developing local watershed enhancement projects funded by the board.

(e) Grant funds for the support of watershed councils in assessing watershed conditions, developing action plans, implementing projects and monitoring results and for the implementation of watershed enhancement projects from such moneys as may be available to the board therefor.

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

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

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

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

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

(k) Determine criteria for utilizing the private sector, both not-for-profit and for-profit organizations, to provide landowners with technical assistance to help develop and implement conservation easements and resource improvement projects.

(2) In accordance with ORS 541.351 to 541.415, the Oregon Watershed Enhancement Board shall administer a watershed improvement grant program using funds from the Watershed Improvement Grant Fund established under ORS 541.397, from the Restoration and Protection Subaccount established under ORS 541.377 and from the Flexible Incentives Account established under ORS 541.381.

(3) To aid and advise the board in the performance of the functions of the board, the board may establish such advisory and technical committees as the board considers necessary. These committees may be continuing or temporary. The board shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The chairperson is ex officio a member of each committee. [1987 c.734 §6; 1995 c.187 §4; 1997 c.8 §8; 1999 c.59 §174; 1999 c.1026 §11; 2001 c.708 §15]

541.371 Duties of board related to integrated watershed planning and management; allocation of funds to local soil and water conservation districts and watershed councils. (1) In addition to the duties set forth in ORS 541.370, in carrying out the provisions of ORS 541.351 to 541.415, the Oregon Watershed Enhancement Board:

(a) Shall establish a framework for a locally based integrated watershed planning and management process designed to assist watershed councils and soil and water conservation districts and to support the efforts of watershed councils and soil and water conservation districts to work within the requirements of state and federal laws without duplication of planning effort. The framework shall include all of the following:

(A) Guidance and protocols for watershed assessments to encourage consistent assessment methods across all watersheds and agencies, including assessment of cumulative effects. At a minimum, such guidance shall address the following plan components:

(i) A description of the watershed;

(ii) An assessment of current watershed conditions and the distribution and condition of habitat; and

(iii) Identification of conditions preventing watershed restoration.

(B) Guidance on how to prepare watershed action plans. At a minimum, such guidance shall address the following plan components:

(i) Applicable water quality standards and native salmonid and habitat recovery objectives;

(ii) Proposed measures needed to restore watershed health;

(iii) Timeline and budget estimates for implementation of action measures in priority order; and

(iv) Monitoring and evaluation systems.

(b) May review plans, actions and rules of state agencies pertaining to restoration and protection grants for the purpose of coordinating the board's grant program with other ongoing grant programs.

(c) Shall establish statewide and regional goals and priorities that shall become the basis for funding decisions by the board. In adopting such goals and priorities, the board shall adopt priorities for grant funding based on the Oregon Plan and on measurable goals. In carrying out this function, the board shall consider local economic and social impacts among the criteria.

(d) Shall support development and implementation of a system that enables standardized collection, management and reporting of natural resources information in Oregon, including water data, geographic information system data and information on native fish and wildlife and habitat.

(e) Shall promote the availability of information on the effects of watershed enhancement.

(f) May not have regulatory or enforcement authority except for the fiscal responsibilities described in ORS 541.351 to 541.415.

(2) In addition to the uses of grant funds described in ORS 541.399, in allocating grant funds under ORS 541.351 to 541.415 that are derived from the Restoration and Protection Subaccount, the board:

(a) May allocate funds to be used for staff for soil and water conservation districts and watershed councils.

(b) May award funds for a specific project or program application or for implementation of an approved action plan.

(3) To the maximum extent practicable, soil and water conservation districts and watershed councils shall share technical staff. [1999 c.1026 §12]

541.372 Authority of board to accept moneys; disposition. (1) The Oregon Watershed Enhancement Board may accept moneys from any public or private source, including the federal government, made available for the purpose of encouraging, promoting and securing watershed enhancement or to facilitate and assist in carrying out the functions of the board, including administrative expenses, as provided by law.

(2) All moneys received by the board under this section shall be deposited in the State Treasury and kept in separate accounts in the General Fund designated according to the purposes for which moneys were made available.

(3) Notwithstanding the provisions of ORS 291.238, all moneys received under this section are continuously appropriated to the board for the purpose for which they were made available and shall be expended in accordance with the terms and conditions upon which they were made available. [1991 c.657 §2]

541.373 Authority of Governor to accept moneys; disposition. (1) The Governor may receive gifts, grants, bequests, endowments and donations of moneys from public and private sources, including the federal government, for the purpose of implementing the Oregon Plan, as described in ORS 541.405.

(2) The Governor shall deposit moneys received under this section in the State Treasury to the credit of the Watershed Improvement Operating Fund established under

ORS 541.379 to be used for the purposes specified in ORS 541.379 (1)(b). [2003 c.452 §3]

541.375 Watershed enhancement projects; grant program; criteria for approval; acquisition of interest in land or water. (1) Any person, tribe, watershed council, soil and water conservation district, community college, state institution of higher education, independent not-for-profit institution of higher education or political subdivision of this state that is not a state agency may submit a request for funding for or for advice and assistance in developing a project under ORS 541.351 to 541.415. A state agency or federal agency may apply for funding under this section only as a coapplicant with one of the other eligible entities.

(2) The request under subsection (1) of this section shall be filed in the manner, be in the form and contain the information required by the Oregon Watershed Enhancement Board.

(3) The board may establish a grant program through soil and water conservation districts organized under ORS 568.210 to 568.808 and 568.900 to 568.933 that provides funds for local implementation of watershed enhancement, education and monitoring efforts.

(4) The board may fund implementation of action plans based on a watershed assessment that addresses water quality and aquatic resources of the watershed.

(5) A project may use mechanical, vegetative or structural methods including, but not limited to, management techniques, erosion control, streambank stabilization, forest, range or crop land treatment, site specific in-stream structures, acquisitions or leases of land or water rights from a willing owner, watershed assessments, landowner incentives and action plan development, implementation and monitoring.

(6) The actions of a soil and water conservation district carried out pursuant to a grant program established by the board under subsection (3) of this section shall not be subject to review and approval by the Natural Resources Division under ORS 561.400.

(7) The Oregon Watershed Enhancement Board shall approve for funding only those projects that:

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

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

(c) Meet the criteria established by the board under ORS 541.396; and

(d) Contribute to either:

(A) The improved health of a stream, lake or reservoir and toward the achievement of standards that satisfy the requirements of the Federal Water Pollution Control Act (P.L. 92-500), as amended; or

(B) The restoration of wildlife, habitat or native fish.

(8) The Oregon Watershed Enhancement Board may fund a project for the restoration of a riparian area or associated upland that is carried out in conjunction with a storage structure. However, the board shall not approve funding for any proposed project that consists solely of construction of a storage structure for out-of-stream use.

(9) The Oregon Watershed Enhancement Board may fund projects involving the acquisition of lands and waters, or interests therein from willing sellers, for the purpose of maintaining or restoring watersheds, habitat and native salmonids. Interests in these lands and waters may be held by local, state and federal agencies, tribes, not-for-profit land conservation organizations and trusts, state institutions of higher education, independent not-for-profit institutions of higher education or political subdivisions of this state, as long as the entity continues to use the land or water for the purposes specified under section 4b, Article XV of the Oregon Constitution.

(10) If the Oregon Watershed Enhancement Board approves funding for a project under this section that requires the applicant to obtain a permit or license from a local, state or federal agency or governing body, the board shall not disburse any funds to the applicant until the applicant presents evidence that the agency has granted the permit or license. [1987 c.734 §7; 1989 c.171 §71; 1995 c.187 §5; 1997 c.7 §8; 1999 c.1026 §13]

541.376 Title restrictions on land purchased through grant agreement. (1) Land purchased through a grant agreement with the Oregon Watershed Enhancement Board shall be subject to title restrictions that give the board the authority to approve, approve with conditions or deny the sale or transfer of the land. Specifically, the board may require conditions on the sale or transfer to:

(a) Ensure consistency with the intent of the original grant;

(b) Ensure the ability of the party receiving the land through the sale or transfer to carry out the obligations under the grant agreement; and

(c) Address the disposition of proceeds from the sale or transfer, including any provisions for repayment, with interest, of any grant funds.

(2) The board may not allow a sale or transfer that results in any profit to any person.

(3) The board shall, by rule, define "profit" for the purpose of not allowing sales or transfers and shall specify the process and criteria that the board will use in considering whether to approve, approve with conditions or deny a sale or transfer. [2001 c.645 §2]

541.377 Parks and Natural Resources Fund; sources; subaccounts; uses of subaccounts. (1) There is established in the State Treasury, separate and distinct from the General Fund, the Parks and Natural Resources Fund to be administered by the Oregon Department of Administrative Services. All moneys transferred from the State Lottery Fund and all other moneys authorized to be transferred to the Parks and Natural Resources Fund from whatever source are appropriated continuously for the public purposes of restoring and protecting Oregon's parks, beaches, watersheds and critical fish and wildlife habitats. Fifteen percent of the net proceeds from the Oregon State Lottery shall be deposited in the Parks and Natural Resources Fund created under this subsection.

(2) Of the moneys deposited into the Parks and Natural Resources Fund from the Oregon State Lottery, 50 percent shall be deposited into a Parks Subaccount for the public purpose of financing the protection, repair, operation, creation and development of state parks, ocean shores, public beach access areas, historic sites and recreation areas. The State Treasurer may invest and reinvest the moneys in the Parks Subaccount as provided in ORS 293.701 to 293.820. Interest from the moneys deposited in the subaccount and earnings from investment of the moneys in the subaccount shall be credited to the subaccount.

(3) All moneys in the Parks Subaccount for financing the protection, repair, operation, creation and development of state parks, ocean shores, public beach access areas, historic sites and recreation areas shall be allocated to the State Parks and Recreation Department. Such moneys shall be deposited into the State Parks and Recreation Department Fund established under ORS 390.134 and shall be used for the following purposes:

(a) Maintaining, constructing, improving, developing, managing and operating state park and recreation facilities, programs and areas.

(b) Acquiring real property, or interest therein, deemed necessary for the creation and operation of state parks, ocean shores, public beach access areas, recreation areas and historic sites or because of natural, scenic, cultural, historic and recreational values.

(c) Operating grant programs for local government entities deemed necessary to accomplish the public purposes of the Parks and Natural Resources Fund.

(4) Of the moneys deposited into the Parks and Natural Resources Fund from the Oregon State Lottery, 50 percent shall be deposited into a Restoration and Protection Subaccount for the public purpose of financing the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality in Oregon. The State Treasurer may invest and reinvest the moneys in the Restoration and Protection Subaccount as provided in ORS 293.701 to 293.820. Interest from the moneys deposited in the subaccount and earnings from investment of the moneys in the subaccount shall be credited to the Restoration and Protection Research Fund created under ORS 541.378.

(5) The moneys in the Restoration and Protection Subaccount for financing the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality shall be administered by the Oregon Watershed Enhancement Board and shall be used for all of the following purposes:

(a) Restoration and protection of watersheds and fish, wildlife, riparian and native species and for habitat conservation activities, including but not limited to planning, coordination, assessment, implementation, restoration, inventory, information management and monitoring activities.

(b) Watershed and riparian education efforts.

(c) Development and implementation of watershed and water quality enhancement plans.

(d) Entering into agreements to obtain from willing owners determinate interests in lands and waters that protect watershed resources, including but not limited to fee simple interests in land, leases of land or water or conservation easements.

(e) Enforcement of fish and wildlife and habitat protection laws and regulations.

(6) Of the moneys deposited into the Restoration and Protection Subaccount from the Oregon State Lottery, the Oregon Watershed Enhancement Board shall deposit:

(a) Sixty-five percent of the funds into the Watershed Improvement Grant Fund established under ORS 541.397 to be used only for funding capital expenditure projects; and

(b) Thirty-five percent of the funds into the Watershed Improvement Operating Fund established under ORS 541.379 to be used for the purposes set forth in ORS 541.379 (1).

(7) The Legislative Assembly shall not limit expenditures from the Parks and Natural Resources Fund. The Legislative Assembly may appropriate other moneys or revenues to the Parks and Natural Resources Fund. [1999 c.1026 §7; 2003 c.14 §346]

541.378 Restoration and Protection Research Fund; creation; sources; uses. (1) There is created in the General Fund of the State Treasury the Restoration and Protection Research Fund. Interest earned by the Restoration and Protection Research Fund shall be credited to the fund. Moneys credited to the fund are continuously appropriated to the Oregon Watershed Enhancement Board for the purpose of funding research and other activities related to the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality, including but not limited to research, monitoring, evaluation and assessment related to the Oregon Plan.

(2) All moneys received by the Oregon Watershed Enhancement Board from interest earned on the Restoration and Protection Subaccount of the Parks and Natural Resources Fund created under ORS 541.377, from the Watershed Improvement Operating Fund created under ORS 541.379 and from the Watershed Improvement Grant Fund created under ORS 541.397 shall be credited to the Restoration and Protection Research Fund. Moneys credited to the fund and not expended by the completion of a biennium shall remain in the fund. [1999 c.1026 §7a]

541.379 Watershed Improvement Operating Fund; creation; sources; uses. (1) The Watershed Improvement Operating Fund is established in the State Treasury separate and distinct from the General Fund. The Watershed Improvement Operating Fund shall consist of all moneys placed in the fund as provided by law. All moneys in the Watershed Improvement Operating Fund are continuously appropriated for the following purposes:

(a) Operational activities of the Oregon Watershed Enhancement Board;

(b) Activities of state and local agencies and other public entities related to the restoration and protection of native salmonid populations, watersheds, fish and wildlife habitats and water quality, including but not limited to activities under the Oregon Plan;

(c) Watershed improvement grants described in ORS 541.399 and 541.401 that are not capital expenditures; and

(d) Watershed improvement grants described in ORS 541.399 and 541.401 that are capital expenditures.

(2) Interest accruing to the Watershed Improvement Operating Fund shall be credited to the Restoration and Protection Research Fund created under ORS 541.378. Funds appropriated and not expended by the completion of a biennium shall remain in the Watershed Improvement Operating Fund.

(3) The Oregon Watershed Enhancement Board created under ORS 541.360 shall administer the Watershed Improvement Operating Fund.

(4) In addition to the funds made available for the purposes of ORS 541.351 to 541.415 under ORS 541.399, the board also may accept gifts and grants from any public or private source for the purposes described in subsection (1) of this section. [1999 c.1026 §7b]

541.380 [1987 c.734 §8; 1997 c.7 §9; 1999 c.270 §5; 1999 c.1026 §14; 2001 c.708 §16; renumbered 541.396 in 2001]

541.381 Flexible Incentives Account; creation; sources; uses. (1) There is created a Flexible Incentives Account in the State Treasury, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. The moneys in the account are continuously appropriated to the Oregon Watershed Enhancement Board for the purposes specified in this section.

(2) The Oregon Watershed Enhancement Board shall use the account to assist landowners in the implementation of strategies intended to protect and restore native species of fish, wildlife and plants and to maintain long-term ecological health, diversity and productivity in a manner consistent with statewide, regional or local conservation plans. The board shall seek to fund those strategies that offer the greatest public benefit at the lowest cost.

(3) The account shall consist of moneys appropriated to it by the Legislative Assembly and moneys provided to the board by federal, state, regional or local governments for the purposes specified in this section. The board may accept private moneys in the form of gifts, grants and bequests for deposit into the account. [2001 c.708 §13]

541.382 [Formerly 541.385; repealed by 1999 c.1026 §29]

541.384 Watershed management program; project funding; high priority watersheds. (1) The Oregon Watershed Enhancement Board shall initiate a watershed management program that relies on the establishment of voluntary local watershed councils comprised of residents, state and federal agency staff, members of federally re-

cognized Indian tribes and other citizens interested in the management of watersheds and that provides for the development by these partnerships of local plans that may include but are not limited to the assessment of the watershed condition, the creation of a watershed action plan and a strategy for implementing the action plan. The program shall focus state resources on the achievement of sustainable watershed health, including funding major projects that contribute to the overall health of a watershed. In addition, the board shall fund smaller, voluntary projects for watershed enhancement and for restoration of riparian areas and associated uplands.

(2) In carrying out the program under subsection (1) of this section, the board may designate high priority watersheds. However, the designation of high priority watersheds is intended only as a management tool for state agencies in allocating resources to support coordinated watershed management activities. Such designation is not intended to establish or confer any right, duty or authority, nor to have any legal significance beyond that described in this section, nor to discourage or prohibit the formation and function of voluntary local watershed councils in other watersheds.

(3) The elected officials representing the appropriate local government groups containing or within a proposed watershed council area shall determine whether to participate in the voluntary formation of a local watershed council. When multiple local government groups are involved within an area that would be served by a watershed council, the affected local government groups shall together determine their respective roles and the appropriate method for appointing members to a local watershed council. [1993 c.601 §2; 1995 c.187 §6]

541.385 [1987 c.734 §4; renumbered 541.382 in 1995]

541.388 Voluntary local watershed councils; protection against liability. (1) Local government groups are encouraged to form voluntary local watershed councils in accordance with the guidelines set forth in subsection (2) of this section. The Oregon Watershed Enhancement Board may work cooperatively with any local watershed council that may be formed. Requests from local watershed councils for state assistance shall be evaluated on the basis of whether the requesting organization reflects the interests of the affected watershed and the potential to protect and enhance the quality of the watershed in question.

(2) Local watershed councils formed under subsection (1) of this section shall consist of a majority of local residents, including local officials. A watershed council may be a new or existing organization as long as the council represents a balance of interested and affected persons within the watershed and assures a high level of citizen involvement in the development and implementation of a watershed action program. A local watershed council may include representatives of local government, representatives of nongovernment organizations and private citizens, including but not limited to:

(a) Representatives of local and regional boards, commissions, districts and agencies;

(b) Representatives of federally recognized Indian tribes;

(c) Public interest group representatives;

(d) Private landowners;

(e) Industry representatives;

(f) Members of academic, scientific and professional communities; and

(g) Representatives of state and federal agencies.

(3) If more than one watershed council exists in a county, each watershed council shall periodically report the activities of the council to the county governing body.

(4) The Oregon Department of Administrative Services may provide to voluntary local watershed councils and their officers, employees and agents acting within the scope of their employment or duties, protection against liability as part of the insurance provided to the Oregon Watershed Enhancement Board pursuant to ORS 278.120 to 278.215. The Oregon Watershed Enhancement Board, after consulting the Oregon Department of Administrative Services and local watershed councils, shall establish guidelines for liability coverage and limits of coverage. The Oregon Department of Administrative Services shall determine any additional contributions to be apportioned to the Oregon Watershed Enhancement Board for extending insurance to voluntary local watershed councils, and the Oregon Watershed Enhancement Board shall pay the assessments from such moneys as may be available for those assessments. [1993 c.601 §3; 1995 c.187 §7; 1999 c.300 §1]

541.390 Duties of Natural Resources Division. In addition to the duties conferred on the Natural Resources Division of the State Department of Agriculture under ORS 561.400 and 568.210 to 568.808 and 568.900 to 568.933, the division shall:

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

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

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

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

(3) Work with the Oregon Watershed Enhancement Board to coordinate the implementation of enhancement projects with the activities of other agencies, including but not limited to, those state and federal agencies participating in coordinated resource management planning. [1987 c.734 §9; 2001 c.104 §228]

541.392 Report to Legislative Assembly. (1) The Oregon Watershed Enhancement Board shall report biennially to the Legislative Assembly on the implementation of the management program under ORS 541.384 and grants awarded under ORS 541.399. The report shall include but need not be limited to:

(a) An explanation of the effectiveness and workability of the partnership process described in ORS 541.384;

(b) A description of any modifications to the process that have been instituted;

(c) Recommendations concerning the need for future legislative action; and

(d) Information about the use of moneys received by and distributed by the board under section 4b, Article XV of the Oregon Constitution.

(2) The board shall include with each report under subsection (1) of this section a copy of each audit completed pursuant to section 4c, Article XV of the Oregon Constitution. [Formerly 541.400; 1999 c.1026 §15]

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

(1) The Department of Environmental Quality.

(2) The State Department of Fish and Wildlife.

(3) The Water Resources Department.

(4) The State Forestry Department.

(5) The State Department of Agriculture.

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

541.396 Rules. (1) In accordance with the applicable provisions of ORS chapter 183, the Oregon Watershed Enhancement Board shall adopt rules and standards to carry out the watershed enhancement program.

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

(a) Grant application requirements and review and selection criteria for projects to receive assistance or funding from the board, including funding from the Flexible Incentives Account established under ORS 541.381.

(b) Criteria for distributing to those entities specified in ORS 541.375 those funds appropriated to the board for funding projects. The criteria shall include a process for periodic review of the distribution by the joint legislative committee created pursuant to ORS 171.551.

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

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

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

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

(D) Provisions for the continued maintenance of the portion of the riparian area or associated uplands enhanced by the project. [Formerly 541.380]

(Watershed Improvement Grant Fund)

541.397 Watershed Improvement Grant Fund; creation; sources; uses. (1) The Watershed Improvement Grant Fund is established separate and distinct from the General Fund. The Watershed Improvement Grant Fund shall consist of all moneys placed in the fund as provided by law. All moneys in the Watershed Improvement Grant Fund are continuously appropriated to fund watershed improvement grants described in ORS 541.399 and 541.401. Interest accruing to the Watershed Improvement Grant Fund shall be credited to the Restoration and Protection Research Fund created under ORS 541.378. Funds appropriated and not expended by the completion of a biennium shall remain in the Watershed Improvement Grant Fund.

(2) The Oregon Watershed Enhancement Board created under ORS 541.360 shall administer the Watershed Improvement Grant Fund and provide grants from the fund for

the purposes described in ORS 541.399 and 541.401 in the manner described under ORS 541.399 and 541.401.

(3) In addition to the funds made available for the purposes of ORS 541.351 to 541.415 under ORS 541.399, the board also may accept gifts and grants from any public or private source for the purpose of providing the grants described in subsection (2) of this section. [1997 c.8 §4; 1999 c.1026 §15b]

541.399 Purpose of grants from Watershed Improvement Grant Fund. The purpose of the Watershed Improvement Grant Fund is to provide funding for grants for:

(1) Expenses of the Independent Multidisciplinary Science Team established under ORS 541.409; and

(2) The following:

(a) Watershed and riparian habitat conservation activities, including but not limited to planning, coordination, assessment, implementation and monitoring activities.

(b) Watershed and riparian education efforts, including peer education about stream processes for landowners.

(c) The implementation of watershed enhancement plans developed by watershed councils.

(d) Water quality improvement plans approved by the State Department of Agriculture or the Department of Environmental Quality.

(e) Entering into an agreement to obtain from a willing owner a determinate interest in lands and waters that protect watershed resources, including but not limited to fee simple interests in land, leases of land and conservation easements.

(f) Activities to implement the provisions of section 4b, Article XV of the Oregon Constitution. [1997 c.8 §5; 1999 c.1026 §16]

541.400 [1993 c.601 §4; 1995 c.187 §8; renumbered 541.392 in 1997]

541.401 Criteria for project receiving moneys from Watershed Improvement Grant Fund. The Oregon Watershed Enhancement Board may award funds from the Watershed Improvement Grant Fund only for the purposes listed in ORS 541.399. Any project that the board approves for funding shall comply with the following criteria:

(1) There is a matching contribution from other program funds, in-kind services or other investment in the project;

(2) The project to be funded is reviewed and approved by a technical committee in accordance with ORS 541.370 (3); and

(3) The project provides a public benefit through improved:

(a) Water quality;

(b) Fish or wildlife habitat; or

(c) Public information or education on a watershed function. [1997 c.8 §6]

541.403 [1997 c.8 §7; repealed by 1999 c.1026 §29]

(The Oregon Plan)

541.405 Oregon Plan described; goals; elements; Governor to negotiate with federal government. (1) As used in this section when referring to salmonid recovery:

(a) "Listed unit" means one population or a group of populations of a species, such as an evolutionarily significant unit, that has been listed as threatened or endangered under the federal Endangered Species Act of 1973 (P.L. 93-205), as amended, or under ORS 496.171 to 496.192.

(b) "Native fish" means a fish indigenous to Oregon and not introduced. Naturally produced fish and hatchery produced fish are both native fish if the fish are indigenous to Oregon and not introduced.

(c) "Naturally produced" means a fish that reproduces and completes its full life cycle in its natural habitat. Naturally produced progeny of hatchery fish are naturally produced.

(d) "Population" means a group of fish that:

(A) Originates and reproduces in a particular area at a particular time;

(B) Does not interbreed to any substantial degree with any other group reproducing in a different area or in the same area at a different time; and

(C) Is composed of naturally produced fish, hatchery produced fish or a combination of both.

(e) "Recovery" means that a proportion of the constituent populations of naturally produced native fish belonging to a listed unit are sufficiently abundant, productive and diverse in life histories and distribution such that the listed unit as a whole is likely to be self-sustaining into the foreseeable future.

(f) "Self-sustaining" means having a sufficient proportion and distribution of constituent populations:

(A) Likely to survive prolonged periods of habitat, oceanic, climatic and environmental conditions that are detrimental to a population; and

(B) Having habitat of sufficient quality and quantity likely to provide survival rates adequate to maintain associated ecological, cultural and economic benefits.

(2) The Legislative Assembly finds that the efforts of many Oregonians have resulted in the creation of the Oregon Plan, and recognizes that the Oregon Plan is guided by the following mission and goals:

(a) The mission of the Oregon Plan is to restore the watersheds of Oregon and to recover the fish and wildlife populations of those watersheds to productive and sustainable levels in a manner that provides substantial ecological, cultural and economic benefits.

(b) The goals of the Oregon Plan that guide the citizens of Oregon in achieving the mission of the Oregon Plan are the:

(A) Establishment and maintenance of an infrastructure that provides long-term continuity in leadership, direction and oversight of watershed restoration and species recovery.

(B) Continued opportunity for a wide range of natural resource uses that are consistent with watershed restoration and species recovery.

(C) Implementation of existing laws and environmental regulations to achieve the mission before enacting new laws and environmental regulations.

(D) Development and maintenance of funding for programs to protect and restore watersheds.

(E) Development of expectations for the sustainability of interrelated natural resources that accurately reflect a scientific understanding of the physical and biological constraints of the ecosystem.

(F) Enhancement of habitat available to support healthy populations of fish and wildlife throughout the state.

(G) Production of populations of threatened or endangered species to achieve levels of natural production consistent with overall restoration goals.

(H) Establishment of a science-based system that supports evaluation of the Oregon Plan and provides a basis for making appropriate future changes to management programs.

(I) Coordination of activities and programs among federal, state and local governments and other entities.

(J) Use of voluntary and collaborative processes to achieve the mission of the Oregon Plan whenever possible.

(3) The Oregon Plan is a comprehensive program for the protection and recovery of species and for the restoration of watersheds throughout this state. The Oregon Plan combines the regulatory and other actions of state and federal agencies and local governments with voluntary watershed restoration by private landowners and others. The Oregon Plan includes, but is not limited to:

(a) Programs and policies found in the following statutes:

(A) ORS 196.600 to 196.905;

(B) ORS chapter 197;

(C) ORS chapter 274;

(D) ORS chapter 366;

(E) ORS chapter 390;

(F) ORS chapters 465, 466, 468 and 468B;

(G) ORS 469.300 to 469.563, 469.590 to 469.619, 469.930 and 469.992;

(H) ORS chapter 477;

(I) ORS chapters 496, 497, 498, 501, 506, 507, 508, 509 and 511;

(J) ORS 517.702 to 517.989;

(K) ORS 527.310 to 527.370, 527.610 to 527.770, 527.990 (1) and 527.992;

(L) ORS chapter 530;

(M) ORS chapters 536 to 543A;

(N) ORS 543A.005 to 543A.415; and

(O) ORS 568.210 to 568.808 and 568.900 to 568.933;

(b) Commitments of state agencies in the form of measures;

(c) Actions of local governments and federal agencies taken in coordination with the state and consistent with the purposes of the Oregon Plan;

(d) Voluntary activities undertaken by watershed councils, soil and water conservation districts, landowners and other entities and consistent with the purposes of the Oregon Plan;

(e) Scientific review by the Independent Multidisciplinary Science Team, and others, of the activities performed under the Oregon Plan;

(f) Programs and activities identified to address a coordinated approach for the recovery of native salmonid populations within Oregon;

(g) The guidance statement and framework provided by the healthy streams partnership developed to provide cooperative solutions and voluntary approaches to improving the water quality of streams and to achieve healthy streams throughout Oregon; and

(h) Programs for the restoration and enhancement of multiple species and of the habitat of those species.

(4) The Oregon Plan is subject to modification and alteration to enhance program efforts consistent with appropriate guidance principles developed by the Legislative As-

sembly and oversight as set forth in ORS 171.551 and 171.553.

(5) The purpose of the Oregon Plan is to enhance, restore and protect Oregon's native salmonid populations, watersheds, fish and wildlife habitat and water quality, while sustaining a healthy economy.

(6) The Oregon Plan shall:

(a) Provide for coordination of local, state, federal and tribal agency responsibilities and authorities for native salmonid, watershed and habitat restoration throughout Oregon.

(b) Rely on watershed councils and soil and water conservation districts, which are directed to cooperate in the development of local watershed plans that assess watershed conditions and create watershed action plans and strategies for the implementation of the local watershed action plans.

(c) Focus state policies and resources on achieving native salmonid recovery and watershed restoration while sustaining a healthy economy and environment.

(7) The Oregon Plan shall focus on aiding the recovery of species listed as threatened or endangered under the federal Endangered Species Act or under ORS 496.171 to 496.192 until such time as recovery is achieved. Once recovery has been achieved for any species listed as threatened or endangered under ORS 496.171 to 496.192, the Governor shall direct the State Fish and Wildlife Commission to begin rulemaking, as provided in ORS 496.176, to remove the species from the list created pursuant to ORS 496.172. Upon recovery, adequate measures pursuant to the Oregon Plan shall remain in place, as necessary, to help a species avoid a return to threatened or endangered status.

(8)(a) The Governor, or the Governor's designee, shall negotiate with federal officials to obtain assurances to the effect that compliance with the Oregon Plan and the programs and policies found in the statutes listed in subsection (3) of this section and implementation of related state programs and policies will satisfy federal requirements imposed by the federal Endangered Species Act. Specifically, the Governor, or the Governor's designee, shall seek an exemption to the requirements of 16 U.S.C. 1533(d), shall seek to enter into a cooperative agreement pursuant to 16 U.S.C. 1535(c) or shall seek to obtain a permit that allows the incidental taking of species under 16 U.S.C. 1539(a).

(b) State agencies responsible for implementing the programs and policies found in the statutes listed in subsection (3) of this section shall work with the Governor, or the Governor's designee, and with federal officials to provide the information necessary to obtain the exemptions, agreement or permit specified in paragraph (a) of this subsection. [1997 c.7 §1; 1999 c.270 §3; 1999 c.1026 §5; 2001 c.841 §4; 2003 c.452 §1]

541.407 Healthy Streams Partnership; members; duties. (1) The Governor, the President of the Senate and the Speaker of the House of Representatives shall appoint a statewide Healthy Streams Partnership. The Healthy Streams Partnership shall consist of 21 persons. Membership shall include:

(a) Seven members who represent watershed groups or soil and water conservation districts;

(b) One member who represents tribal governments and who resides east of the summit of the Cascade Mountain Range;

(c) One member who represents tribal governments and who resides west of the summit of the Cascade Mountain Range;

(d) Two members who represent environmental advocacy or wildlife conservation groups; and

(e) Ten members who represent different in-stream and out-of-stream beneficial uses of water, including but not limited to agricultural, recreational, industrial, municipal and silvicultural uses.

(2) The members of the Healthy Streams Partnership shall serve for four years and may be reappointed for no more than two consecutive terms, but any person may be appointed again to the partnership after an interval of four years.

(3) The Healthy Streams Partnership shall elect a chairperson and vice chairperson for a term of one year and shall determine the duties of the officers.

(4) A majority of the members of the Healthy Streams Partnership constitutes a quorum for the transaction of business. The Healthy Streams Partnership shall operate in accordance with procedures adopted by the members.

(5) The office of the Governor shall provide administrative support and services to the Healthy Streams Partnership.

(6) The duties of the Healthy Streams Partnership shall include but need not be limited to:

(a) Providing information to the joint legislative committee created pursuant to ORS 171.551 about the implementation of the programs from a local and regional perspective; and

(b) Recommending changes necessary to facilitate more efficient implementation of the initiative and other stream improvement programs at the local level.

(7) Members of the Healthy Streams Partnership shall not be compensated for their services but are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495. [1997 c.7 §4; 1999 c.244 §1; 1999 c.270 §6; 1999 c.1026 §21]

541.409 Independent Multidisciplinary Science Team; duties; agency response to science team recommendations. (1) There is created an Independent Multidisciplinary Science Team consisting of up to seven scientists with recognized expertise in fisheries, artificial propagation, stream ecology, forestry, range, watershed and agricultural management. The Governor, the President of the Senate and the Speaker of the House of Representatives shall jointly appoint the Independent Multidisciplinary Science Team. The decision to appoint a member of the team shall be a unanimous decision by the appointing authorities. The members of the Independent Multidisciplinary Science Team shall serve for four years and may be reappointed for a subsequent term. The team shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the National Academy of Sciences.

(2) The Independent Multidisciplinary Science Team shall:

(a) Review implementation of the Oregon Plan and other programs for achieving healthy streams as described in ORS 541.405.

(b) Prepare and submit to the Governor, the Legislative Assembly and the public an annual report on the implementation of the Oregon Plan, including any recommendations for changes or adjustments to the initiative.

(c) Serve as an independent scientific peer review panel to the state agencies responsible for developing and implementing the Oregon Plan and other salmon or stream enhancement programs throughout this state.

(d) Report regularly to the joint legislative committee created pursuant to ORS 171.551 concerning the duties described under this subsection and other requests by that joint legislative committee.

(3) If the Independent Multidisciplinary Science Team submits suggestions to an agency responsible for implementing a portion of the Oregon Plan, the agency shall respond in writing to the team, explaining how the agency intends to implement the suggestion or why the agency does not implement the suggestion. The team shall include any agency responses in its report to the joint legislative committee created pursuant to ORS 171.551.

(4) Members of the Independent Multidisciplinary Science Team shall be compensated for their services and are eligible for reimbursement of travel and other reasonable expenses in accordance with ORS 292.495.

(5) Compensation for members of the Independent Multidisciplinary Science Team shall be cooperatively determined by the appointing authorities and the joint legislative committee created pursuant to ORS 171.551.

(6) The office of the Governor shall provide administrative support and services to the Independent Multidisciplinary Science Team. [1997 c.7 §5; 1999 c.270 §7; 1999 c.1026 §22]

541.410 [Renumbered 541.430 in 1997]

541.411 Responsibilities of state agency participating in Oregon Plan. Any state agency participating in the programs and activities described in ORS 541.405 shall:

(1) Upon request of any person who believes the person's private property rights may be adversely affected by the Oregon Plan, provide the person with written information about the agency's dispute resolution services available pursuant to ORS 183.502.

(2) Report to the joint legislative committee created pursuant to ORS 171.551 any dispute resolution services requested under this section, and the outcome of such dispute resolution. [1997 c.7 §10; 1999 c.270 §8]

541.413 Agency report to legislative committee prior to adjustment of expenditure limitation or additional funding related to Oregon Plan. Notwithstanding any other provision of law, if during the interim between legislative sessions any agency responsible for implementing a portion of the Oregon Plan or a program for the enhancement or restoration of streams throughout the state requires additional funding or an adjustment to the agency's expenditure limitations as approved by the Legislative Assembly to complete implementation of the Oregon Plan, the agency shall first submit a report to the joint legislative committee created pursuant to ORS 171.551. The committee shall review the request and present a recommendation to the Emergency Board at the time the agency submits its request to the Emergency Board. [1997 c.7 §13; 1999 c.270 §9; 1999 c.1026 §23]

541.415 Oregon Plan for Salmon and Watersheds Legal Fund; creation; sources; uses. There is hereby established in the State Treasury the Oregon Plan for Salmon and Watersheds Legal Fund for the purpose of funding the activities of the Department of Justice in providing legal advice to or appearing on behalf of a state agency that takes, funds or authorizes actions when those actions are challenged under the federal Endangered Species Act (16 U.S.C. 1531 et seq.), as amended, or the Federal Water Pollution Control Act (P.L. 92-500), as

amended, to the limits of the fund. The fund created by this section shall consist of all moneys received on behalf of the fund by gift, grant or appropriation, from whatever source. Moneys in the fund are continuously appropriated to the Department of Justice for the uses described in this section. Such uses may include, but need not be limited to, participation in a legal proceeding involving an action taken by a citizen or political subdivision of this state, where that action is authorized or funded by this state, and where:

(1) The state agency that authorizes or funds the action:

(a) Determines that the action is consistent with the Oregon Plan and is in compliance with applicable state laws; and

(b) Recommends to the Attorney General that the state participate in such legal challenge; and

(2) The Attorney General, after consulting with the Governor, the President of the Senate and the Speaker of the House of Representatives, determines that such participation is in the best strategic interest of the state. [1999 c.1026 §17]

541.420 Oregon Watershed Enhancement Board reports to Governor and Legislative Assembly on Oregon Plan. (1) The Oregon Watershed Enhancement Board shall, by January 15 of each odd-numbered year, submit a report to the Governor and to the appropriate committee or committees of the Legislative Assembly that assesses the implementation and effectiveness of the Oregon Plan in the state. The report shall address each drainage basin in the state and shall include, but need not be limited to:

(a) A status report on watershed and key habitat conditions in the drainage basin based on available information;

(b) An assessment of data and information needs deemed critical to monitoring and evaluating watershed and habitat enhancement programs and efforts;

(c) An overview of state agency programs addressing watershed conditions;

(d) An overview of voluntary restoration activities addressing watershed conditions;

(e) A summary of investments made by the board from funds received under section 4b, Article XV of the Oregon Constitution, and all other sources; and

(f) The recommendations of the board for enhancing the effectiveness of Oregon Plan implementation in each drainage basin.

(2) In order to provide the board with the information necessary to complete the report described in subsection (1) of this section, each natural resources agency shall provide information requested by the board in the format and at the times determined by the board.

(3) For purposes of this section, "natural resources agency" includes:

(a) Department of Environmental Quality;

(b) State Department of Agriculture;

(c) State Department of Fish and Wildlife;

(d) State Forestry Department;

(e) Department of State Lands;

(f) Water Resources Department;

(g) Department of Land Conservation and Development;

(h) State Department of Geology and Mineral Industries;

(i) Oregon Watershed Enhancement Board;

(j) Fish and Wildlife Division of the Department of State Police;

(k) Department of Transportation;

(L) State Parks and Recreation Department;

(m) Economic and Community Development Department;

(n) State Marine Board; and

(o) Any other state agency that is required to manage, allocate or protect natural resources, either as the primary responsibility of the agency or in conjunction with the primary responsibilities of the agency.

(4) In addition to the report specified under subsection (1) of this section, the Oregon Watershed Enhancement Board shall report regularly during the interim on the implementation of the Oregon Plan to the joint legislative committee created under ORS 171.551. [2001 c.841 §1]

Note: 541.420 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Stewardship Agreements)

541.423 Stewardship agreements; contents; procedures for adoption; rules. (1) As used in this section, "stewardship agreement" means an agreement voluntarily entered into and signed by a landowner, or representative of the landowner, and the State Department of Agriculture or the State Board of Forestry that sets forth the terms under which the landowner will self-regulate to meet and exceed applicable regulatory requirements and achieve conservation, restoration and improvement of fish and wildlife habitat or water quality.

(2) The State Department of Agriculture and the State Board of Forestry may, individually or jointly, enter into stewardship agreements with landowners.

(3) The purposes of a stewardship agreement are to provide:

(a) An incentive for landowners to provide for conservation, restoration and improvement of fish and wildlife habitat or water quality;

(b) A mechanism to coordinate, facilitate and memorialize a landowner's compliance with the requirements of state and federal regulatory schemes; and

(c) A mechanism to combine or coordinate multiple incentive programs among agencies and levels of government to:

(A) Improve the delivery of financial and technical assistance to landowners engaged in conservation activities;

(B) Reduce redundancy among programs;

(C) Simplify application procedures;

(D) Leverage the investment of federal funds;

(E) Make more efficient use of technical assistance funds;

(F) Provide greater incentives for landowners;

(G) Foster partnerships and improve cooperation with nongovernmental organizations;

(H) Provide greater environmental benefits;

(I) Tailor and more effectively target conservation programs administered by federal, state and local governments to the unique conservation needs of, and opportunities presented by, individual parcels of eligible land; and

(J) Give landowners an increased level of regulatory certainty.

(4) The State Board of Forestry and the State Department of Agriculture, in consultation with the State Department of Fish and Wildlife, shall adopt by rule procedures and criteria for stewardship agreements. The procedures and criteria shall include, but need not be limited to:

(a) The certification of a land management plan which shall, at a minimum, include:

(A) A comprehensive description and inventory of the subject property, its features and uses; and

(B) A prescription for the protection of resources that exceeds land management practices, standards and activities otherwise required by law and that is designed to achieve conservation, restoration and improvement of fish and wildlife habitat or water quality.

(b) A requirement that each landowner subject to a stewardship agreement demonstrate a clear capability to carry out the provisions of the land management plan and have a past record of good compliance with applicable laws and regulations regarding land use and management.

(5) Each government agency that is a party to a stewardship agreement shall conduct periodic audits on lands subject to the stewardship agreement to determine whether the land management plan is being implemented and whether the agreement should be continued, revised or discontinued.

(6) Stewardship agreements may provide benefits to landowners that include, but are not limited to:

(a) Expedited permit processing;

(b) Regulatory certainty;

(c) Priority consideration for cost-share assistance or other financial incentives and technical assistance; and

(d) Government certification that certain land management practices have been implemented. [2003 c.539 §31]

Note: 541.423 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

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

SPLASH DAMS

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

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

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

541.455 Splash dams unlawful. It is unlawful to operate a splash dam on any of the navigable or nonnavigable waters of this state. An officer or agency of this state may not issue any permit for the construction or maintenance of any dam to be used for splash dam purposes. [1957 c.163 §2; 2005 c.22 §380]

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

RELEASE OF WATER FROM IMPOUNDMENT OR DIVERSION STRUCTURE

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

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

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

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

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

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

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

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

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

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

541.520 Procedure when owner or operator of structure fails to request hearing; order regulating release of water. If, within 15 days after the mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure fails to request in writing that the Water Resources Commission hold a hearing, the commission shall make and file in the Water Resources Department an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize unreasonable hazard to human life or property as set forth in the notice. The order shall become effective upon filing a copy in the Water Resources Department. The commission shall cause a copy of the order to be mailed to the owner or operator of the structure. The order is not subject to appeal. [1961 c.379 §2; 1985 c.673 §106]

541.525 Hearing upon request of owner or operator of structure; notice and conduct of hearing. (1) If, within 15 days after mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure requests in

writing that the Water Resources Commission hold a hearing, the commission shall hold a hearing in accordance with ORS chapter 183 on the hazard to human life or property which is or will be created by the rapid increase in the stream level below the structure resulting from the release of water from the structure and the terms, limitations and conditions relating to such release of water necessary to minimize such unreasonable hazard.

(2) At least 10 days prior to the hearing the commission, in addition to the notice requirements of ORS chapter 183, shall cause a copy of the notice to be published in a newspaper of general circulation in each county in which the structure is located and in which unreasonable hazard to human life or property is or may be created. [1961 c.379 §3; 1971 c.734 §83; 1985 c.673 §107]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

541.605 [1967 c.567 §2; 1971 c.509 §4; 1971 c.754 §1; 1973 c.330 §1; 1973 c.674 §1; 1977 c.417 §2; 1977 c.418 §1; 1979 c.564 §1; 1989 c.837 §4; renumbered 196.670 and then 196.800 in 1989]

541.610 [1967 c.567 §1; 1971 c.754 §2; 1973 c.330 §2; 1973 c.674 §2; 1977 c.418 §2; 1979 c.564 §2; renumbered 196.675 and then 196.805 in 1989]

541.615 [1967 c.567 §3; 1971 c.754 §3; 1989 c.837 §15; renumbered 196.680 and then 196.810 in 1989]

541.620 [1967 c.567 §4; 1969 c.338 §4; 1971 c.754 §4; 1973 c.674 §3, 1977 c.418 §3; 1977 c.564 §6; 1989 c.1039 §1; renumbered 196.685 and then 196.815 in 1989]

541.622 [1977 c.120 §2; 1987 c.160 §1; renumbered 196.690 and then 196.820 in 1989]

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

1989 c.904 §70; renumbered 196.695 and then 196.825 in 1989]

541.626 [1979 c.564 §5; 1981 c.796 §2; 1983 c.827 §56; 1989 c.837 §5; renumbered 196.700 and then 196.830 in 1989]

541.627 [1973 c.674 §5; 1979 c.564 §6; renumbered 196.705 and then 196.835 in 1989]

541.630 [1967 c.567 §6; 1971 c.754 §6; 1973 c.330 §4; 1973 c.674 §7; 1981 c.796 §3; renumbered 196.710 and then 196.840 in 1989]

541.635 [1967 c.567 §7; 1971 c.754 §7; renumbered 196.715 and then 196.845 in 1989]

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

541.645 [1967 c.567 §9; 1971 c.754 §9; 1989 c.837 §17; renumbered 196.720 and then 196.855 in 1989]

541.650 [1967 c.567 §10; 1971 c.754 §10; 1973 c.330 §6; 1973 c.674 §9; 1985 c.414 §1; 1989 c.837 §18; renumbered 196.725 and then 196.860 in 1989]

541.655 [1967 c.567 §11; 1971 c.754 §11; 1973 c.330 §7; 1973 c.674 §10; 1985 c.414 §2; renumbered 196.730 and then 196.865 in 1989]

541.660 [1967 c.567 §12; 1973 c.330 §8; 1973 c.674 §11; 1979 c.284 §166; 1985 c.414 §3; renumbered 196.735 and then 196.870 in 1989]

541.662 [Enacted by 1973 c.330 §10 and 1973 c.674 §13; 1985 c.545 §7; renumbered 196.740 and then 196.875 in 1989]

541.665 [1971 c.754 §14; renumbered 196.745 and then 196.880 in 1989]

541.670 [1985 c.545 §6; 1987 c.855 §16; 1989 c.837 §22; renumbered 196.750 and then 196.885 in 1989]

541.675 [1985 c.545 §3; renumbered 196.755 and then 196.890 in 1989]

541.680 [1985 c.545 §4; renumbered 196.760 and then 196.895 in 1989]

541.685 [1985 c.545 §5; renumbered 196.765 and then 196.900 in 1989]

541.695 [1971 c.754 §12; 1977 c.417 §3; 1989 c.837 §19; renumbered 196.770 and then 196.905 in 1989]

WATER DEVELOPMENT PROJECTS

(Definitions)

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

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

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

(a) "Purchasing" means the purchasing of materials, land or existing facilities necessary to complete a water development project.

(b) "Refinancing" includes refinancing existing debt of a water developer, as defined in subsection (7)(f) to (m) and (o) of this section, in order to complete a water development project or to provide adequate security for a water development loan, but does not include refinancing existing debt only to reduce interest rates or costs to the borrower or to pay off existing debt.

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

(4) "Federal water development project" means any water development project that receives funding from the federal government, or any agency or instrumentality of the United States.

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

(A) Any water-related recreational use.

(B) Any flood control use.

(C) Any power generation use.

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

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

(6) "Water development project" means:

(a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including structures for the application of water for agricultural harvest activities, dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments, water supply systems used for the purpose of agricultural temperature control and any other structure, facility and property necessary or convenient for supplying lands with water for irrigation purposes.

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

(c) An undertaking, in whole or in part, in this state for the purpose of providing water for municipal use, which may include safe drinking water for communities with population less than 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, treatment facilities, pipelines, canals, ditches, revetments and all other structures and facilities necessary or convenient for supplying water. An undertaking may provide water to two or more communities with a combined population of more than 30,000. An undertaking may be part of a project that provides water to a community with a population of more than

30,000, but loans of moneys from the Water Development Fund, including moneys in ORS 285B.563 (11) may be made only to communities served by the project that have a population of less than 30,000.

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

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

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

(7) "Water developer" means:

(a) Any individual resident of this state;

(b) Any partnership for profit subject to the provisions of ORS chapter 67 or 70, whose principal income is from farming in Oregon;

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

(d) Any nonprofit corporation subject to the provisions of ORS chapter 65, whose principal income is from farming in Oregon;

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

(f) Any irrigation district organized under or subject to ORS chapter 545;

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

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

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

(j) Any drainage district organized under ORS chapter 547 or subject to all or part of ORS chapter 545;

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

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

(m) Any city or county;

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

(o) Any local soil and water conservation district organized under ORS 568.210 to 568.808 and 568.900 to 568.933. [1977 c.246 §1; 1981 c.166 §1; 1981 c.592 §1; 1985 c.673 §184; 1985 c.677 §65; 1987 c.94 §103; 1987 c.636 §§1, 5; 1989 c.1010 §177; 1991 c.944 §5; 1993 c.765 §89; 1995 c.42 §180; 1997 c.775 §90; 1999 c.212 §1; 1999 c.509 §46]

(Loan Applications)

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

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

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

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

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

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

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

(e) Show that the applicant holds or can acquire all lands, other than public lands, and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project.

(3) If the application is for a safe drinking water project, the applicant also shall demonstrate that:

(a) The applicant is a city, county, district, water authority or other political subdivision of the state or an organization operated on a not-for-profit basis that makes drinking water available to members of the general public;

(b) The primary use of the loan will be to improve a drinking water system for the purpose of complying with applicable state or federal drinking water quality regulations; and

(c) The applicant has:

(A) Developed a water system master plan; and

(B) Either has a coordination agreement in place as defined in ORS 195.020, 195.025 and 197.712 or can demonstrate that options to find a coordinated solution to the system's drinking water problems have been fully explored. [1977 c.246 §2; 1981 c.592 §2; 1985 c.673 §113; 1987 c.636 §2; 1991 c.944 §6; 1993 c.577 §38]

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

(a) Reject the application;

(b) Require the applicant to submit additional information and revision of the feasibility study as may be necessary; or

(c) Make such revisions of the feasibility study as the commission considers necessary to make the plan satisfactory.

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

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

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

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

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

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

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

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

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

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

(7) The construction cost associated with any secondary use does not exceed the construction cost of the primary use of the water development project. [1977 c.246 §5; 1981 c.166 §2; 1981 c.592 §3; 1985 c.673 §115; 1999 c.212 §2]

(Loan Contracts)

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

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

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

(a) Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon not later than two years after the date of the loan contract or at such other time as the commission may provide;

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

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

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

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

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

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

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

(7) That a loan for a water development project is assignable or transferable to a third party only with the prior approval of the commission. The commission may approve a loan assignment or transfer only if the commission finds that the assignee or transferee qualifies as a water developer as defined in ORS 541.700 (7) and the assignment or transfer does not have serious adverse effect upon the family farm unit structure in this state. [1977 c.246 §6; 1981 c.166 §3; 1985 c.673 §116; 1999 c.212 §3]

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

541.740 Liens and other loan security; foreclosure. (1)(a) When a loan is made to a water developer other than a water developer described in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property held in fee simple of the water developer or to the user charges, including interest, owed to or received by the water developer. The lien created by this subsection does not attach to a leasehold. At the discretion of the Water Resources Commission, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project.

(b) Except for tax liens, the lien created by this section is prior and superior to all other liens or encumbrances upon the af-

fected real property or user charges, without regard to the date on which the other liens or encumbrances attached to the real property or user charges. However, the Water Resources Commission may elect to accept a second or parity lien position against the real property or user charges encumbered by this section, if the commission determines the lien position would provide adequate security for the water development loan, as set forth in rules adopted by the commission.

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

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

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

(4) When a loan is made to a water developer under ORS 541.700 to 541.855, the commission shall file notice of the loan with the recording officer of each county in which is situated real property of the water developer or real property to which the lien created by subsection (1) or (2) of this section may attach. The notice shall contain a description of the real property of the water developer, a description of any other real property that will be served by the water development project and to which the lien is to attach, the amount of the loan and a statement that the State of Oregon has a lien against such real property as provided in subsection (1) or (2) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Notwithstanding compliance with paragraph (b) of this subsection, the commission may require that the loan balance be reduced as consideration for granting the requested release. [1977 c.246 §8; 1981 c.166 §4; 1985 c.673 §118; 1987 c.636 §4; 1989 c.950 §3; 1999 c.212 §4]

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

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

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

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

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

(1) If any water development project investigated under ORS 541.700 to 541.855, other than a safe drinking water project financed in whole or in part from moneys in the Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, is constructed with funds other than those loaned under ORS 541.700 to 541.855, the amount expended by the state shall immediately become due and payable, together with interest at the rate provided in ORS 541.730 (2) from the date of notification of the amount due.

(2) If any water development project is refinanced or financial assistance is obtained from other sources, other than a safe drinking water project financed in whole or in part from moneys in the Special Public Works Fund created by ORS 285B.455 or the Water Fund created by ORS 285B.563, after the execution of the loan from the state, all such funds shall be first used to repay the state. [1977 c.246 §14; 1991 c.944 §7; 1995 c.79 §304]

541.760 Reduction of loan amount when secondary use funding available. If a water development project has any secondary use, and if the water developer receives from any source other than the Water Development Fund any funds to assist in the construction, operation or maintenance of such secondary use, the amount of the loan to the water developer from the Water Development Fund shall be limited to that amount necessary for the construction of those portions of the project not funded by other sources. [1977 c.246 §15]

541.765 Loans for certain federal projects authorized. In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855, the Water Resources Commission may authorize loans of such moneys to those persons to whom approval has been granted by the federal government or any agency or instrumentality of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission considers appropriate. [1977 c.246 §16; 1985 c.673 §121; 1991 c.944 §8; 1999 c.212 §5]

541.770 Federal project loan contract terms; foreclosure. If the Water Resources Commission approves an application for the loan of moneys authorized by ORS 541.765, the commission shall enter into a loan con-

tract with the borrower that provides, among other matters:

(1) That the loan be secured by a first lien, or parity or second lien if appropriate, in the same manner as provided in ORS 541.740.

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

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

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

(5) That the commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in foreclosing, into the Water Development Administration and Bond Sinking Fund. [1977 c.246 §17; 1981 c.166 §5; 1985 c.673 §122; 1999 c.212 §6]

(Bonds)

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

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

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

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

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

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

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

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

541.815 Limitation on bond issuance amount. No bonds shall be issued or sold under ORS 541.780 to 541.815 nor indebtedness incurred thereunder, which, singly or in the aggregate with previous debts or liabilities incurred for the construction, operation and maintenance of water development projects and for the acquisition of easements and rights of way for federal water development projects shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds. If the maximum aggregate principal sum of bonds authorized to be issued under ORS 541.780 to 541.815, exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 541.780 to 541.815, in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1977 c.246 §27]

(Administration)

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

(a) Administrative expenses of the Water Resources Commission and the Water Resources Department in processing applications, investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and servicing and collecting outstanding loans made under ORS 541.700 to 541.855, if the expense is not paid directly by the applicant, including principal and interest due on bonds outstanding. These administrative expenses also may include all costs associated with the issuance of bonds and the funding of any credit enhancements or

reserves determined to be necessary or advantageous in connection with the bonds.

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

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

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

(a) Application fees required by ORS 541.710.

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

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

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

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

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

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

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

(i) Moneys transferred from the Water Development Fund.

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

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

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

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

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

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

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board. [1977 c.246 §28; 1981 c.172 §1; 1985 c.673 §123; 1989 c.587 §3; 1989 c.950 §5; 1991 c.944 §9]

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

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

(2) When the commission determines that moneys in sufficient amount are available in the Water Development Administration and Bond Sinking Fund, the commission shall reimburse the General Fund without interest, in an amount equal to the amount allocated by the Legislative Assembly or the Emergency Board pursuant to subsection (1) of this section. The moneys used to reimburse the General Fund under this subsection shall not be considered a budget item on which a limitation is otherwise fixed by law, but shall be in addition to any specific appropriations or amounts authorized to be expended from continually appropriated moneys. [1977 c.246 §30; 1985 c.673 §125; 1991 c.703 §48]

541.845 Rules. (1) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Commission may adopt rules necessary to carry out ORS 541.700 to 541.855.

(2) In adopting rules establishing guidelines or criteria for awarding loans or grants for drinking water projects, the commission shall coordinate the Water Resources Department's rulemaking process with the Eco-

nomic and Community Development Department and the Department of Human Services in order to ensure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and 431.120. The rules adopted under this subsection shall:

(a) Require the installation of meters on all new active service connections from any municipal drinking water distribution lines funded under ORS 285B.560 to 285B.599, 431.120, 541.700, 541.705, 541.755, 541.765, 541.830 and 541.845; and

(b) Require a plan, to be adopted by the municipality, for installation of meters on all service connections throughout the drinking water system.

(3) As used in this section, "service connection" does not include fire hydrants, fire sprinkler system connections, line blow-offs and drains, standby emergency interties, valve controlled drinking fountains and other similar intermittently used connections. [1977 c.246 §13; 1985 c.673 §126; 1991 c.944 §10; 1995 c.212 §2; 2005 c.835 §26]

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

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

NORTH UMPQUA RIVER DAMS

541.875 Dams and use of water for hydroelectric generation on North Umpqua prohibited; exceptions. (1) No person shall construct, operate or maintain, and no officer or agency of this state shall issue any permit for the construction, operation or maintenance of, any dam or hydroelectric facility on:

(a) That portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua River and South Umpqua River; or

(b) The main stem Umpqua River from the confluence of the North Umpqua River and the South Umpqua River to the ocean.

(2) Nothing in this section applies to the repair, structural repair, maintenance or improvement of any dam constructed on the North Umpqua River prior to November 1, 1981, with the approval of the Water Resources Commission and the State Department of Fish and Wildlife. The commission and the State Department of Fish and Wildlife shall not unreasonably withhold or delay such approval, but may withhold approval for reasonable cause, including but not limited to a substantiated finding that the repairs, structural repairs, maintenance or improvements:

(a) Fail to comply with applicable safety rules or regulations;

(b) Raise the height of the dam; or

(c) Diminish the current ability of anadromous fish to travel past the dam.

(3) No person shall appropriate and no officer or agency of this state shall issue or approve any license, permit or certificate for the use of water for hydroelectric generation at a dam at the location referred to in subsection (1) of this section. [1981 c.151 §2; 1983 c.652 §2; 1985 c.673 §129; 1991 c.479 §1]

541.880 Government entity not responsible for repair or maintenance costs of dams on North Umpqua. Nothing contained in ORS 541.875 shall be construed to impose any additional obligation on any governmental entity to pay for the repair, structural repair, maintenance or improvement of any existing dam referred to in ORS 541.875 (2). [1991 c.479 §2]

Note: 541.880 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 541 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

PENALTIES

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

(2) Violation of ORS 541.510 is a misdemeanor.

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