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WATER PLANNING:
THE OREGON APPROACH

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INNOVATION IN WESTERN WATER LAW AND MANAGEMENT

Natural Resources Law Center
University of Colorado School of Law
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WATER PLANNING: THE OREGON APPROACH

I. Basis for water planning in Oregon

A. 1955 - creation of Water Resources Board as an agency separate from the State Engineer's Office. (536.220, Attachment 1) (536.300 - .310, Attachment 2)

1. Plans were developed basin by basin.

2. Plans dealt with disposition of unallocated water and included, among other things:

   a. Minimum perennial streamflows (536.235)

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

   b. Classifications (536.340)

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

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

c. Withdrawals (536.410)

536.410 Withdrawal of unappropriated waters from appropriation by commission order. (1) When the
Water Resources Commission determines that it is necessary to insure compliance with the state

(MORE)
water resources policy or that it is otherwise necessary in the public interest to conserve the water resources of this state for the maximum beneficial use and control thereof that any unappropriated waters of this state, including unappropriated waters released from storage or impoundment into the natural flow of a stream for specified purposes, be withdrawn from appropriation for all or any uses including exempt uses under ORS 537.545, the commission, on behalf of the state, may issue an order of withdrawal.

3. Judgments on management of unallocated water were made by the state engineer.

B. 1975 - Water Resources Board and State Engineer's Office were merged into a single agency.

1. Merger was incomplete in many respects.

2. Authorities for unallocated water (Water Policy Review Board) and allocated water (Water Resources Department) were still separate.

C. 1985 - Water Resources Commission created

1. All authority except for adjudications belong to Commission

2. Substantial delegation to director for administration

(MORE)
II. New planning approach

A. Basin plans are now more issue-driven.

1. Deal with several major topics, rather than attempting to analyze all aspects of water management in a basin.

2. Time-limited - 1 to 2 years, depending on basin size and complexity

B. Biennial water program – an interagency effort to identify, in one document, the water-related activities of the several agencies involved with water management.

C. Statewide policies (Attachment 3). These policies, as they are developed, are intended to provide a framework within which such things as basin plans and biennial programs function.

1. Instream protection
2. Hydroelectric
3. Interstate cooperation
4. Groundwater
5. Riparian management on public lands
6. Conservation

(MORE)
III. Conservation and waste reduction – background

A. Statutes call for “use without waste.”

ORS 536.310 provides that existing rights to use water are to be protected subject to the principle that all of the waters of the state belong to the public for use by the people for beneficial purposes without waste.

ORS 537.170 requires that, in determining whether proposed uses of water are detrimental to the public interest, the Commission consider conserving the highest use of water for all purposes and the prevention of wasteful, uneconomic, impracticable or unreasonable use of water.

ORS 537.525 provides that beneficial use without waste, within the capacity of available sources, is the basis, measure and extent of the right to appropriate groundwater.

B. Court cases in Oregon limiting waste

Rough v. Porter, 51 Or 318 (1909)

"Can it be...that the old methods, which had their origin when there was but little demand for water and its supply correspondingly abundant, may be continued? In this arid country such manner of use must necessarily be adopted as will insure the greatest duty possible for the quantity available. The wasteful methods so common with early settlers can, under the light most favorable to their system of use, be deemed only a privilege permitted merely because it could be exercised without substantial injury to anyone, and no right to such methods of use was acquired thereby."

*   *   *
"Owing to the little demand and large proportionate supply in use . . . in the early 1880's, together with the lack of general knowledge and experience . . . throughout the state, wasteful methods at that time were common . . . but of recent years improved means throughout the West have come into use, and a scarcity of supply has made a more economic use necessary. The result is that the law has become well settled that beneficial use and the needs of the appropriator, and not the quantity originally diverted, nor the capacity of ditches constructed for the purpose, determines the limit of his right."

*In re Willow Creek*, 74 Or 622 (1915)

"The laws of the state and public policy alike demand that all waters available for irrigation purposes must be conserved and used in a manner that will permit other development of the agricultural and other resources of the state. The best methods for application of water to land should be used. No person should be allowed more water than is necessary when applied by a proper system; this, in order that a larger area may be made productive . . . . While the crude and wasteful manner of irrigating must be replaced by modern, economical methods, yet the ancient means used for applying the water is not a reason for forfeiting the right to a sufficient amount of water to irrigate the land in a proper manner.


"The modern doctrine in the western states is that no person has a right to use more water under his appropriation than can be beneficially applied to some useful purpose. If, therefore, an adjoining landowner and user violated this rule by his excessive use of the water, he had not title to the surplus, and neither could defendant acquire any ownership therein."
Squaw Creek Irrigation District v. Namero, et al., 107 Or 291 (1923)

"... water for irrigation must be used economically and without needless waste .... Public necessity demand such use and conservation of the public waters of the state."

Broughton v. Stricklin, 146 Or 259 (1934)

"Economic use of water for irrigation without excessive waste should be made even though some expense is incurred in constructive facilities therefor."

C. In 1987, a water conservation bill was passed. (SB 24, Attachment 4)

1. Established the notion that a conserver could use part of the conserved water.

2. Has not been heavily used.

   a. Process requires the user to determine recent water use.

   b. Little water is "irretrievably lost."

   d. Water right holders are uncertain about the effects of the program.
IV. 1990 - Conservation policy asserts

A. Statutory language of "use without waste" means something.

B. Efficient, non-wasteful use of water is a contemporaneous decision (may not result in the same quantity as was originally allowed).

C. Conservation and efficiency is a public judgment to be made by Water Resources Commission or Legislature.

V. Next steps in conservation and efficiency effort

A. Administrative

1. Plans by municipalities
   a. Supply
   b. Back-up
   c. Curtailment
   d. Conservation
      (1) Leak detection
      (2) Metering
      (3) Inverted rates

2. Local basin or subbasin plans

3. By July 1995, rules or implementation of conservation techniques or standards

B. Legislative

1. Fixture efficiency legislation (Attachment 5)

2. Capture of conserved water to instream water rights

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

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

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

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

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

(a) It is in the interest of the public welfare that a coordinated, integrated state water resources policy be formulated and means provided for its enforcement, that plans and programs for the development and enlargement of the water resources of this state be devised and promoted and that other activities designed to encourage, promote and secure the maximum beneficial use and control of such water resources and the development of additional water supplies be carried out by a single state agency which, in carrying out its functions, shall give proper and adequate consideration to the multiple aspects of the beneficial use and control of such water resources with an impartiality of interest except that designed to best protect and promote the public welfare generally.

(b) The state water resources policy shall be consistent with the goal set forth in ORS 468.692.  [1955 c.707 §1; 1989 c.833 §531]

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

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

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

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(b) The state water resources policy shall be consistent with the goal set forth in ORS 468.692.  [1955 c.707 §1; 1989 c.833 §531]
536.300 Formulation of state water resources program; public hearing in affected river basin. (1) The Water Resources Commission shall proceed as rapidly as possible to study: Existing water resources of this state; means and methods of conserving and augmenting such water resources; existing and contemplated needs and uses of water for domestic, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses and for pollution abatement, all of which are declared to be beneficial uses, and all other related subjects, including drainage, reclamation, flood plains and reservoir sites.

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

(3) The commission may adopt or amend a basin program only after holding at least one public hearing in the affected river basin. After the commission itself conducts one public hearing in the affected river basin, the commission may delegate to the Water Resources Director the authority to conduct additional public hearings in the affected river basin. [1955 c.707 §10(4), (2); 1965 c.355 §2; 1967 c.673 §14]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Note: The Legislative Counsel has not, pursuant to ORS 173.160, undertaken to substitute specific ORS references for the words "this Act" in ORS chapter 536. Chapter 707, Oregon Laws 1955, enacted into law and amended the ORS sections which may be found by referring to the 1955 Comparative Section Table located in volume 6A of Oregon Revised Statutes.
INTRODUCTION
December 1990

PURPOSE AND AUTHORIZATION

The Oregon Water Management Program establishes statewide policies and principles pertaining to a wide range of water-related topics. All Water Resources Commission and Department activities, including but not limited to: (a) basin planning; (b) interagency coordination; and (c) development and adoption of rules, standards, and implementing strategies to govern Department programs and activities, shall be compatible with the Oregon Water Management Program.

ORS 536.220 authorizes a single state agency, the Water Resources Commission, to formulate and implement an integrated, coordinated state water resources policy. The Water Resources Commission shall progressively formulate plans and programs to develop the water resources of the state and provide for the enforcement of state water policy. State water resources policy must promote the maximum beneficial use of the waters of the state. Multiple water uses shall be preferred over single-purpose uses. Existing water rights shall be protected in accordance with relative priority dates except as they may be temporarily modified under emergency drought circumstances. The Commission shall, in adopting policies that affect the appropriation and control of water resources, design those policies to best protect and promote the general public welfare.

The Water Resources Commission is required by ORS 536.300(2) to develop a
Introduction

state program for managing Oregon's water. The Commission has established the Oregon Water Management Program which consists of statewide policies (OAR Chapter 690, Divisions 400 and 410), basin programs (OAR Chapter 690, Divisions 500 to 520) and non-rule program direction for implementing statewide policies and basin level actions (ORS 536.430).

In formulating the Oregon Water Management Program, the Commission shall consider declarations of policy provided in ORS 536.310. These declarations mandate the consideration of existing rights, economic development, human consumptive needs, multiple uses, groundwater quality, protection of wildlife, recreation, watershed management, and other priorities outlined by the Legislature. This purpose and authorization section and the definitions and policies which follow are adopted as statements for inclusion in the integrated, coordinated state water resources policy required under ORS 536.300.

The programs and plans of the Commission are to reflect all laws that relate to or affect the use and control of the water resources of the state (ORS 536.330). The Legislature, in ORS 536.360, directs every state agency and public corporation to conform to statements of state water resources policy as adopted by the Water Resources Commission.

The purpose and authorization were adopted as rule on June 22, 1990. (OAR 690-400-000)

DEFINITIONS

As used in the Oregon Water Management Program, unless the context requires otherwise:

"Beneficial use" means an instream public use or a use of water for the benefit of an appropriator for a purpose consistent with the laws and the economic and general welfare of the people of the state and includes, but is not limited to, domestic, fish life, industrial, irrigation, mining, municipal, pollution abatement, power development, recreation, stockwater and wildlife uses.

"Conservation" means eliminating waste or otherwise improving efficiency in the use of water while satisfying beneficial uses by modifying the technology or method for diverting, transporting, applying or recovering the water, by changing management of water use, or by implementing other measures.

"Emergencies" mean situations, including but not limited to wildfire, flooding, and toxic spills, which pose an immediate and significant threat to life, health, property, or water or riparian resources.

"Management activity" means an activity in a riparian area which is planned and undertaken to extract, manipulate, or control natural resources or natural processes. Management activities include but are not limited to timber harvest, refores-
Mitigation means the reduction of adverse effects of a proposed project or activity by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environments;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing conditions of comparable substitute value.

"Over-appropriated" means a condition of water allocation in which, for a specified period:

(a) The quantity of surface water available an average of four out of five years is not sufficient to meet the expected demands from all water rights during the specified period; or

(b) The expected depletion of a groundwater resource from all water rights is likely to result in declines in supplies below economic pumping levels, to exceed recharge to the aquifer on an annual basis or to cause significant interference with surface waters.

"Public interest," as a standard for reviewing new uses of water, means a beneficial use which is consistent with state law and includes providing the greatest good for the people of the state based on current values, protecting water rights and conserving water resources for present and future generations.

"Public use" means an instream use of water that is available to the public at large. It includes but is not limited to:

(a) Recreation;

(b) Protection and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values;

(c) Pollution abatement;

(d) Navigation;

(e) Scenic attraction; and

(f) Any other similar or related use.
"Riparian area" means the 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, bog, wet meadow, muskeg, or ephemeral, intermittent or perennial stream. [ORS 541.350(4)]

"Waste" means the continued use of more water than is needed to satisfy the specific beneficial uses for which a right was granted. The need for water shall be based on using the technology and management practices that provide for the efficient use of water considering:

(a) The economic feasibility of use of the technology and management practices by the water user;

(b) The environmental impacts of making modifications;

(c) The available proven technology;

(d) The time needed to make modifications;

(e) Local variations in soil type and weather; and

(f) Relevant water management plans and subbasin conservation plans.

"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. [ORS 541.350(5)]

The definitions were adopted as rule on December 7, 1990. (OAR 690-400-010)
Policy

Benefits are provided by water remaining where it naturally occurs. Protecting streamflows which are needed to support public uses is a high priority for the state. The long term goal of this policy shall be to establish an instream water right on every stream, river and lake which can provide significant public benefits. Where streamflows have been depleted to the point that public uses have been impaired, methods to restore the flows are to be developed and implemented. These activities shall be consistent with the preservation of existing rights, established duties of water, and priority dates, and with the principle that all of the waters within the state belong to the public to be used beneficially without waste.

Principles

Programs to achieve the policy on instream flow protection shall be guided by the following principles:

(a) The Commission shall consider the needs of both instream and out-of-stream uses when reviewing future appropriations and developing streamflow restoration programs.

(b) Preservation of instream flows needed to support the purposes of State Scenic Waterways is a high priority for the state.

(c) Statewide and local programs should be implemented to restore and enhance streamflow and lake levels to
provide public uses. Priority of restoration shall be established by the Water Resources Commission. The Commission shall consult with the Department of Fish and Wildlife, Environmental Quality, Parks and Recreation and the public, to identify those waterways where the greater public benefit could be obtained from additional streamflow restoration.

(d) The Department shall actively encourage the purchase, lease and gift of existing water rights for transfer to instream water rights, and the construction of environmentally sound multipurpose storage projects.

(e) Streamflow restoration programs shall be designed to encourage cooperation and coordination between instream water interests and out-of-stream water users.

(f) Instream water rights are preferred, over the establishment of new minimum perennial streamflows, to protect instream public uses.

The policy and principles were adopted as rule on August 3, 1990. (OAR 690-410-030)

STATUTORY GUIDANCE

ORS 390.010 declares it is state policy to assure adequate outdoor recreation resources for all present and future generations and visitors of Oregon. The public interest is served through the development of all recreation potentials of the river basins, commensurate with need, which are compatible with programs of water use enunciated by the Water Resources Commission.

ORS 390.815 declares that many of the free-flowing rivers of Oregon ... and adjacent lands possess outstanding scenic, fish wildlife, geologic, historic, archaeological, and outdoor recreation values of present and future benefit to the public, and establishes an Oregon Scenic Waterways System. The policy of permitting construction of impoundment facilities on its waterways is to be complemented with a policy to preserve a free-flowing condition and protect and preserve the natural setting, water quality and fulfill other conservation purposes.

ORS 536.235 states that the establishment of minimum perennial streamflows is a high priority of the Commission and the Department.

ORS 536.310 directs the Commission to foster and encourage the maintenance of minimum perennial streamflows sufficient to support aquatic life, to minimize pollution and to maintain recreation values.

ORS 536.325 specifies a process for establishing minimum perennial streamflows.
ORS 537.110 states that all water within the state from all sources of water supply belongs to the public.

ORS 537.135 states that the Water Resources Commission shall not issue a groundwater recharge permit unless the supplying stream has a minimum perennial streamflow established for the protection of aquatic and fish life. The State Department of Fish and Wildlife may waive this prerequisite if a minimum streamflow is not required for the supplying stream.

ORS 537.332 - 537.360 define and establish instream water rights. These statutes call for conversion of minimum perennial streamflows, and establish procedures for the Departments of Fish and Wildlife and Environmental Quality and the Parks and Recreation Department to apply for instream rights. Procedures are also established for the Commission to evaluate the impacts of proposed instream water rights and to establish them in reduced amounts or with conditions if necessary to protect the public interest. A process for transferring or leasing out-of-stream water for use instream is also provided.

ORS 537.334 declares that the recognition of an instream water right ... shall not diminish the public's right in ownership and control of the waters of this state or the public trust therein.

ORS 537.352 establishes a method for proposed multipurpose storage, municipal use or municipal hydroelectric projects to gain precedence over instream water rights created at the request of one of the three state agencies.

ORS 537.356 allows any state agency to request that the Commission reserve unappropriated water for future economic development.

ORS 537.480 directs the Commission to consider the amount of conserved water necessary to satisfy identified instream needs when allocating more or less than 25 percent of conserved water to the State.

**POLICY DISCUSSION**

In many parts of Oregon, the appropriation of water resources has impaired or may soon impair the public benefits derived from instream flows. While most early water rights were established for irrigation and mining, important new demands have emerged during recent years. Growth and development have resulted in continually expanding needs for municipal and commercial water supplies. The importance to Oregon's economy and the quality of life of its citizens of maintaining adequate streamflows to support fish, provide recreational opportunities, and maintain water quality is becoming increasingly apparent.

Until recently, continued consumptive use of the state's water resources was limited only by the availability of supplies. In the later 1950s, the state began a systematic evaluation of available water supplies in
each river basin. Through this process, the state allocated some of the remaining unappropriated water to public uses. This was done through the creation of minimum perennial streamflows for the purpose of protecting aquatic life or minimizing pollution.

Originally, minimum streamflows were not set at levels which exceeded current water availability. They were often set at the lowest levels which would support key fish species, as determined by the Department of Fish and Wildlife, or assure that projected loading levels from treated wastes and non-point source pollution would not violate water quality standards of the Department of Environmental Quality. Therefore, many streams which, due to past appropriation, no longer possessed the potential to provide public benefits received no protection or remedial attention. Additionally, the remaining streamflows which provided important fishery and recreational benefits were not protected in many areas. Due to the initial practice of establishing minimum streamflows only where gaging stations existed, opportunities to establish protective flow levels were often missed. For all of these reasons, low streamflows now limit the availability of fish habitat and recreational opportunities in many parts of the state.

The Scenic Waterways Program was established by initiative petition in 1969. This set into motion a state protection program for certain water bodies throughout Oregon. Currently, 18 water bodies contain sections designated as State Scenic Waterways. The Water Resources Department cannot permit a new appropriation of water within or above a Scenic Waterway which may, by itself or in conjunction with previously issued rights, impair the free flowing character of these waters necessary for recreation, fish and wildlife.

The 1987 legislature, concerned about the over-appropriation of streams, passed Senate Bill 140 which created instream water rights. This legislation recognized that public uses are beneficial uses. Instream water rights are held in trust by the Water Resources Department for the benefit of the people of Oregon to maintain water instream for public use. These water rights may be initiated upon application from the Department of Fish and Wildlife, the Department of Environmental Quality or the Parks and Recreation Department. They may also be established by the conversion of minimum streamflows, or the transfer of an existing appropriation to an instream water right. Additionally, the Commission may allocate a portion of a water right, which is conserved under the provisions of ORS 537.455 to 537.500, to the state as an instream right. Instream water rights may be established at levels which exceed current water availability so long as they do not injure existing water rights or exceed a level which would provide public benefits.

The instream water rights provisions provide a tool for the Commission to protect public benefits provided by instream flows. They also can be used to focus
attention on over-appropriated streams. The ability to transfer existing rights to instream rights and to support environmentally sound multipurpose storage projects will be used to restore and enhance public uses.

The Water Resources Commission has adopted administrative rules for minimum streamflows and instream water rights in OAR Chapter 690, Divisions 76 and 77, respectively.

IMPLEMENTING STRATEGIES

1. Quantify recreational flow needs necessary to protect existing uses in State Scenic Waterways. (1992)

2. Develop a statewide water availability data base to be used when evaluating the cumulative impacts of water appropriations on flows or water levels for all water bodies of the state. (March 1991)

3. Examine the need for increased monitoring of instream water rights to protect instream public uses. If necessary, seek new ways to assure that the flows are protected for the public uses listed in the water right. (Dec 1993)

4. Provide the public and other governmental agencies opportunity to review and comment on the issuance of any water use permits, reservations for future economic development and instream water rights. (Ongoing)

5. Work with the Department of Fish and Wildlife, the Department of Environmental Quality and the Parks and Recreation Department to determine which water bodies could benefit from additional streamflow protection or augmentation. (Ongoing)

6. Focus efforts which encourage conservation and the elimination of waste on areas where public benefits are most likely to increase. (Ongoing)

7. Allocate a percentage of conserved water for public use when an application to use conserved water is received if the source could benefit from additional instream flows. (Ongoing)

8. Explore opportunities to restore and enhance instream flows through the use of transfers of existing rights, improved management of existing waters, watershed enhancement and the construction of multipurpose storage projects. (Ongoing)

9. Inform state agencies about opportunities to request a reservation of water for future economic development to be established prior to or in conjunction with the establishment of an instream water right. (Ongoing)

The statutory guidance, policy discussion and implementing strategies were approved on August 3, 1990.
Policy

Development and production of hydroelectric power is a beneficial use. However, construction and operation of hydroelectric facilities have had significant adverse impacts on the State's natural resources. New hydroelectric development shall be permitted if it can be demonstrated that there will be no harm to the state's anadromous salmon and steelhead fish resource and habitat, and no net loss of the state's other natural resources. Relicensing of existing facilities, which have adversely impacted, or may preclude the recovery of, anadromous fish resources shall include measures to restore, enhance or improve the anadromous fish resource. The relicensing of any facility shall include measures to prevent the net loss of other natural resources resulting from future operation of the facility.

Principles

Programs to achieve the policy on hydroelectric power development shall be guided by the following principles:

(a) Hydroelectric power can provide valuable economic and social benefits when the natural resources of the state are protected from potential adverse impacts.

(b) Proposed or relicensed projects that can be developed consistent with
Oregon’s resource protection standards should be encouraged. New development shall be consistent with the provisions of the Columbia River Basin Fish and Wildlife Program as adopted by the Northwest Power Planning Council pursuant to PL 96-501.

(c) Mitigation shall be required for harm to Oregon’s natural resources caused or likely to be caused by new permitted hydroelectric power development. These natural resources include but are not limited to anadromous fish, wildlife, water quality, scenic and aesthetic values, historic, cultural and archaeological sites.

(d) On relicensing of existing facilities, measures for restoration, enhancement or improvement for past harms to Oregon’s anadromous and steelhead resource shall be considered and implemented.

(e) The state shall ensure that the laws of the state and the rules of the Commission concerning hydroelectric power development are satisfied at every stage of any hydroelectric power project. The state shall assert these laws and rules when participating in federal proceedings involving hydroelectric power. Participation in these proceedings by state agencies shall be fostered through the Strategic Water Management Group (SWMG).

The policy and principles were adopted as rule on June 22, 1990. (OAR 690-410-020)

STATUTORY GUIDANCE

ORS 543.015 sets out the policy of the State of Oregon regarding hydroelectric power development and the protection of natural resources.

ORS Chapter 543 provides the statutory requirements and process for all non-municipal hydroelectric power applications and projects.

ORS 543.017 establishes the minimum standards relating to protection of natural resources that hydroelectric power development must meet in order to be permitted, and directs the Commission to adopt all necessary rules to carry out the policy and implement these minimum standards.

ORS 537.160(4) makes the standards in 543.017 (non-municipal hydroelectric power) and the Commission rules adopted thereunder applicable to municipal applications for use of water for hydroelectric power development.

ORS 537.145 requires that notice be provided to the public and to any adjacent landowners of applications for permits to appropriate water for hydroelectric power purposes.

ORS 537.170(1) requires that a public interest hearing be held whenever an application for hydroelectric power development is received for a project to develop in excess of 100 theoretical horsepower (THP). Subsection (2) directs that if applicable, such applications shall further be subject to the consolidated review and hearings process under ORS 543.255.
ORS 537.282 through 537.299 describes the process and requirements applicable to municipal and joint municipal/private applicants for use of water for hydroelectric power purposes.

ORS 536.100 et seq establishes the SWMG, names the state's natural resource agencies' directors and the Governor as members, and establishes the duties of SWMG. Among those duties are encouraging federal agency actions that are consistent with Oregon's water policies, and monitoring applications and coordinating state responses and interventions in Federal Energy Regulatory Commission (FERC) proceedings involving hydroelectric power projects in Oregon.

ORS 390.835 charges the Commission with the responsibility of administering and enforcing the provisions of the scenic waterways laws regarding appropriations in or near scenic waterways.

Other statutes and basin program classifications prohibit or restrict hydroelectric power development on various rivers, streams, or reaches.

POLICY DISCUSSION

Historically, hydroelectric development was encouraged in Oregon. The electricity produced contributed to the growth of industries and communities. However, there were associated costs borne by the state's natural resources, particularly the anadromous and wild resident fish populations. Spawning and rearing areas, habitat and migration routes were blocked or irretrievably damaged. Endangered flora and fauna, archaeological and Native American cultural resources, and a variety of recreational opportunities were also negatively impacted. From the 1930s through the 1970s, power production took precedence over natural resource considerations.

Since House Bill 2990 passed in 1985, hydroelectric power development is now permitted only where it is demonstrated that the project will not cause unacceptable or impermissible impacts on protected natural, social and cultural resources. The need for power and the economic viability of the project must be also demonstrated before a project will be approved.

Under Oregon laws, municipal water right permits for hydroelectric use have no expiration date. Licenses for private hydroelectric power developments may only be granted for up to 50 years; however, there are no statutes directing relicensing or other activities following license expiration. Once granted, the license or permit can be revoked or terminated for failure to comply with permit or license conditions, or cancelled for non-use.

The Federal Energy Regulatory Commission relicensing process provides the
state with opportunities to recommend or require resource protection or mitigation conditions not previously available or considered at the time of original licensing by FERC.

While the Legislature and the Commission have established stringent standards for new or proposed hydroelectric power projects, standards which continue to apply during the operations of approved projects, little consideration has been given to the consequences of the license expirations of private projects.

IMPLEMENTING STRATEGIES

1. Evaluate all proposed projects under OAR Chapter 690 Division 51, which contain standards for: (on-going)
   - designated resource and special management areas
   - water resources
   - fish resources
   - wildlife
   - plant life
   - recreation
   - historic, cultural and archaeological resources
   - land resources
   - land use
   - economics
   - need for power

2. Develop rules which specifically addresses the issue of relicensing and the application of HB2990 standards to projects with expired licenses. (1993)

3. Consider opportunities for implementing the Northwest Power Planning Council’s (NPPC) protected areas designations in the Division 51 rules and in basin plans. (on-going)

4. Participate in the SWMG Hydro Task Force and seek specific funding to support the activities of the Hydro Task Force, including Attorney General activity on behalf of SWMG, and the cost of processing state applications and monitoring approved projects. (June, 1990)

5. Encourage continued state agency involvement in the state hydroelectric licensing process.

The statutory guidance, policy discussion and implementing strategies were approved on June 22, 1990.
INTERSTATE COOPERATION
June 1990

POLICY AND PRINCIPLES

Policy

The state will seek to cooperate with other states in planning, developing, managing, and resolving conflicts involving surface or groundwater resources. Interstate cooperation shall be actively pursued to benefit the public interest, welfare, health, economy and safety of Oregon’s citizens.

Principles

Programs to achieve the policy on interstate cooperation shall be guided by the following principles:

(a) Existing laws, agreements, water rights, individual state interests and resource conditions shall guide and limit interstate cooperation in order to protect the public interest.

(b) Cooperation is preferred, but not required, over unilateral action, litigation, arbitration, or adjudication.

(c) The meaning, intent and purpose of interstate cooperation as embodied in this policy also applies to federally recognized Indian Tribes, and their governments, located wholly or partially within this state.

The policy and principles were adopted as rule on June 22, 1990. (OAR 690-410-040)
**STATUTORY GUIDANCE**

ORS 190.110 authorizes a state agency to cooperate, by agreement or otherwise, with a unit of local, state, or federal government or American Indian tribe or agency.

ORS 190.410 defines “public agency” as the term applies to those entities in different states that may enter into joint or cooperative agreements.

ORS 190.420 allows public agencies of this state to exercise any of their powers in joint or cooperative agreement with public agencies of other states. Such agreements shall be recorded in a lawful manner and set forth a duration, purpose, method of financing, provisions for termination and identity of any entity created to accomplish the purpose.

ORS 190.430 requires the Oregon Attorney General to review every interstate agreement before it takes effect.

ORS 190.440 allows a public agency to expend funds, sell, lease, give, or otherwise supply personnel and services to administer interstate agreements.

ORS 536.310 (10) declares that the policy in all cooperative programs is to preserve and protect the state’s sovereignty over the waters of this state and to reinforce and strengthen state control.

ORS 536.420 directs the Governor to appoint the Water Resources Director or member(s) of the Water Resources Commission to represent the state in making and carrying out any compact or other agreement for the use and control of the water resources of this state with another state, state agency, public corporation or federal agency. Any such agreement or compact must be in harmony with state water policy and public interest.

ORS 536.440 permits the Water Resources Commission to conduct investigations, surveys, studies, and public hearings on the water resources of this state with other states, state agencies or public corporations of other states.

ORS 536.460 allows the Water Resources Commission to prepare and submit information, proposals and recommendations for the waters of this state to other states.

ORS 536.470 permits the Water Resources Commission to work with agencies and public corporations of other states for the purpose of promoting coordination between local, state interstate and federal plans for the use and control of the water resources of this state.

ORS 536.480 directs the Water Resources Commission to make available to other states, information on the Commission’s responsibilities, water resources policy, plans and programs and the results of any studies, investigations, surveys or public hearings on the development of water resources of this state.

ORS 537.810 prohibits out-of-basin diversion of water in excess of 50 cubic feet per second without legislative consent.
ORS 537.820 applies provisions of ORS 537.810 to 537.860 to waters forming common boundaries of this state and other states.

ORS 537.830 prohibits any other state from filing on or condemning any waters of this state without legislative approval.

SJR 20, Oregon Laws 1987, directed the Governor of Oregon to request that the chairman of the Columbia River Compact Commission convene a series of informal meetings followed by formal negotiations to develop mutual agreement for an interstate compact on management of the waters of the Columbia River.

Chapter 391, Oregon Laws 1989, directed the Governor to designate a representative and request the chairman of the Columbia River Compact Commission to convene informal meetings followed by formal negotiations to develop an interstate compact for the management of the Columbia River.

POLICY DISCUSSION

Oregon shares eight of its major surface drainage basins with four other states. These basins are the Umatilla, Grande Ronde, Owyhee, Malheur Lake, Goose and Summer Lakes, Klamath, Rogue and South Coast. Major basins containing Indian reservations include the Umatilla, Deschutes, Klamath, Malheur Lake, and Umpqua. In addition, the Columbia and Snake Rivers are major interstate rivers forming common boundaries between Oregon and neighbor states. These two rivers are also important resources to Indian Tribes and nations both within and outside of Oregon. Less obvious and not so well defined are the groundwater resources shared with Indian Tribes or neighboring states.

Interstate sharing of surface and groundwater resources presents excellent opportunities for conflict as well as for cooperation. Oregon has experienced both.

Past conflict and cooperation has most often focused on water allocation or apportionment involving interstate surface waters.

Washington v. Oregon (1936) is one example of interstate conflict involving water. In this U.S. Supreme Court case, Washington sought to establish priorities to the use of water from the Walla Walla River which originates in Oregon. The court ruled in favor of Oregon, allowing junior rights in Oregon to preempt senior rights in Washington, the downstream state.

Similar conflict between Oregon and California is being avoided through interstate cooperation as reflected in the Goose Lake and Klamath River Basin Compacts. These compacts, especially the Klamath compact, lay out guidelines for the allocation or apportionment of the surface water
resource shared by the two states. The Klamath compact is a good example of cooperation yielding an agreement which embodies statutory multiple use policies that guide the Water Resources Commission. Interstate compacts are formal agreements requiring ratification by the Legislatures of the involved states as well as Congressional approval.

Not all of Oregon’s interstate water allocation conflicts have been resolved. However, it is certain that the principles of interstate cooperation can be applied to matters besides water allocation.

Oregon’s 1987 and 1989 Legislative Assemblies moved to reactivate discussions among the seven Columbia River Basin states to develop a Columbia River Basin Compact. Initial discussions on such a compact began in 1952. However, ratification votes in the 1950s and 1960s failed to gain approval from all seven states. What issues besides water apportionment such a compact would address remains to be seen.

In another region-wide cooperative effort, Oregon is involved with the Northwest Power Planning Council. The Council is a regional entity representing the four Pacific Northwest states of Oregon, Washington, Idaho and Montana. Though not a federal agency, the Council is Congressionally mandated to coordinate management of hydroelectric development with fish and wildlife resources in the Columbia Basin. Many of the issues the council addresses have direct water management and policy implications at the state level.

In recent years, citizens in Oregon’s Walla Walla drainage have expressed interest in interstate cooperation in water management apart from the question of allocation. Issues of interstate concern in this drainage include groundwater supply, groundwater quality, surface water storage for future development, instream flows for fish life and watershed management impacts on water quality and fish habitat. An Oregon citizens advisory group recommended that interstate cooperation be included as an element in the water use plan and program for the basin. The Umatilla Basin plan adopted in June 1988, commits the Water Resources Department to initiating interstate discussions with Washington by 1990.

An interstate-federal matter involving groundwater-surface water quality is the Hanford Nuclear Reservation on the Columbia River in Washington. Both low level and high level radioactive and chemical waste are produced and stored at the facility. Storage and disposal of radioactive waste at the site has led to contamination plumes percolating into the groundwater and migrating to the Columbia River. To date, this contamination of the Columbia has not exceeded federal drinking water standards. High level radioactive wastes stored at the site are also leaking into the ground. The potential threat from the high-level waste is much more serious. Should such wastes reach the Columbia, they could affect the entire downstream river reach forming the Oregon-Washington border. On-going inter-state-federal cooperative efforts are aimed at preventing the migration of these highly radioactive wastes from reaching the river.
Watershed management, water development projects, groundwater studies, groundwater use and quality, and surface water-groundwater interrelationships are all subjects that fit naturally into the arena of interstate cooperation. Each of these topics is of growing importance in the management of Oregon's water resources. Where these issues affect water resources shared with other states, interstate cooperation in achieving management and development goals should not be overlooked.

IMPLEMENTING STRATEGIES

1. Define the surface and groundwater resources shared with other states. (Completion December 31, 1992.)

2. Advise neighboring states of the Water Resources Commission's policy on interstate cooperation. (July 1990)

3. Explore opportunities for cooperation with neighboring states and/or affected federally recognized Indian Tribes in basin planning or other departmental activities involving shared surface or groundwater resources. (Ongoing.)

4. Coordinate with agencies of this and other states to identify issues, concerns and plans and establish programs to address water-related matters with interstate implications or impacts relating to:

   - Columbia Compact discussions and negotiations called for by Chapter 391, Oregon Laws, 1989 (SB 1). (Initiation depends upon schedule of Columbia River Compact Commission.)
   - Interstate discussions on the Walla Walla drainage to be initiated by 1990 as directed in the Umatilla Basin plan. (Initiate in 1990.)
   - Quantification of Indian reserved rights for the Warm Springs Indian Reservation as provided in ORS 539.300 through 539.350 and other water management issues that may be identified in this process. (Ongoing.)
   - State of Idaho, Snake River Basin adjudication proceedings as they affect Oregon's use of the Snake River. (Ongoing.)
   - Implementation and revision of the Northwest Power Planning Council's Fish and Wildlife Conservation Program and Energy Plan. (Ongoing.)

The statutory guidance, policy discussion and implementing strategies were approved on June 22, 1990.
GROUNDWATER MANAGEMENT
June 1990

POLICY AND PRINCIPLES

Policy

The groundwaters of the State of Oregon belong to the public. The reasonable control, protection, and use of groundwater is governed by the state on behalf of the public. Groundwater shall be managed to promote efficient and sustainable use for multiple purposes. Groundwater overdraft and contamination shall be prevented to avoid health hazards, environmental damage, and costly correction programs. Interference between groundwater uses and competing groundwater and surface water uses shall be prevented and/or controlled to protect the water resource and existing rights. The state shall pursue restoration of contaminated groundwaters to protect present and future uses. Coordinated action by federal, state and local agencies, Indian tribes, and special districts, along with public education, shall be fostered to promote the effective management, protection and beneficial use of groundwater.

Principles

Programs to achieve the policy on groundwater management shall be guided by the following principles:

(a) Groundwater and surface water shall be managed conjunctively where to
do so will protect water resources, existing water rights, and the public interest.

(b) Rules governing well construction, maintenance, and abandonment shall provide minimum standards for protection of the public welfare, safety, and health, and the groundwaters of the state.

(c) Water well constructors, owners, and operators are responsible to construct, alter, maintain, operate, and abandon wells, and any holes through which the groundwater may be contaminated, in accordance with minimum statewide standards and shall undertake measures necessary to prevent waste, undue interference, contamination, or harm to the groundwater.

(d) Low-temperature geothermal fluids are part of the groundwater resources of the state and are subject to applicable laws and plans. These fluids are developed primarily for thermal characteristics and may require special management approaches to promote beneficial use, protect the environment and achieve other policy directives.

(e) Special-area designations (i.e., critical groundwater management areas, serious water management areas, basin plan restriction areas) may be warranted under conditions such as:

(A) past, existing or probable excessive groundwater level declines or overdraft,

(B) substantial interference between two or more wells or between groundwater and surface water uses (including public instream uses), or between groundwater appropriation and geothermal appropriation under ORS Chapter 522, and/or

(C) groundwater contamination.

(f) Special-area designations shall be invoked when site-specific standards and regulations are no longer sufficient to solve or prevent the problem(s). The invoking of special-area designations shall be accompanied by recommended monitoring, reporting, or regulating activities to prevent, correct or control existing or potential declines, overdraft, interference or contamination. Existing groundwater appropriations, which are generally protected from infringement, may be controlled if any of the conditions listed in (e) above are found to exist.

(g) Groundwater appropriation for artificial recharge is a beneficial use and can be approved if such action will not:

(A) cause significant adverse effects on the quantity or quality of the supplying and receiving water sources, or

(B) harm the public interest.

(h) Ongoing collection, analysis, and distribution of hydrogeologic information are necessary to manage groundwater for maximum beneficial use and to protect the public welfare, safety, and health.
(i) Public education programs, research, and demonstration projects are needed to increase citizen awareness of groundwater issues in this state.

(j) Adequate and safe supplies of groundwater for human and livestock consumption are given priority over other uses during times of shortage.

The policy and principles were adopted as rule on June 22, 1990. (OAR 690-410-010)

STATUTORY GUIDANCE

ORS 536.007 through ORS 536.310 include groundwater within the definition of “the waters of this state” and establish statewide policy for the management of water for maximum beneficial use. Statewide policies shall be coordinated, integrated, and designed to protect and promote the public welfare. Purposes and policies to be considered in developing statewide policies include protecting groundwater.

ORS 536.340 allows the Water Resources Commission to classify the waters of the state for highest and best use, and for future uses.

ORS 536.410 allows the Water Resources Commission to withdraw any unappropriated waters of the state if necessary to “insure compliance with the state water resources policy...”.

ORS 536.095 and 537.730 give joint responsibility to the State Geologist and the Water Resources Commission for resolving interference between an existing geothermal well and an existing water appropriation. When developing recommended actions for resolving interference, the State Geologist and Water Resources Commission shall consider goals to maximize beneficial use of water and heat resources, allow to the extent possible all existing uses to continue, and protect the public interest in efficient use of water and heat resources.

ORS 537.135 states that appropriation of water for groundwater recharge is a beneficial use requiring a permit from the Water Resources Commission. This section sets application procedures and authorizes the Commission to develop standards for approval of a permit. The Commission must determine whether the proposed recharge prejudicially affects the public interest and may not issue a groundwater recharge permit unless the supplying stream has an established minimum streamflow for protection of aquatic and fish life.

ORS 537.525 assigns the right to reasonable control of all groundwater within the state to the public. Measures to preserve the public welfare, safety and health include 1) establishing a rights and permits system for groundwater appropriation based on beneficial use without waste, (Note: Uses made prior to 1955 can be validated through a registration process.)
2) making all groundwater rights claims a part of the public record, 3) assuring an adequate and safe supply of groundwater for human consumption, while conserving maximum supplies for other beneficial uses, 4) determining the location, extent, capacity, and quality of groundwater sources, 5) determining and maintaining reasonably stable groundwater levels, and 6) preventing and controlling depletion, impairment, and waste of groundwater.

ORS 537.535 restricts the use and development of groundwater, and the operation of any well to compliance with ORS 537.505 to 537.795 or to any applicable order or rule adopted by the Water Resources Commission. This section also establishes a permit requirement for use of groundwater with the exclusions of exempt uses under ORS 537.545.

ORS 537.545 exempts certain groundwater uses from permit and certificate requirements.

ORS 537.620 provides guidelines for the accepting, recording, and approving of applications for permits to use groundwater. The Commission is authorized to condition or limit groundwater use to prevent wasteful use or undue interference with existing groundwater or surface water uses, or to protect the public welfare, safety, and health. The Commission may also initiate a proceeding to determine whether a designation of 'Critical Groundwater Area' is warranted.

ORS 537.665 requires the Water Resources Commission to proceed with an assessment of the state's groundwater resources.

ORS 537.730 authorizes the Water Resources Commission to initiate a proceeding to determine a critical groundwater area if: 1) groundwater levels are declining or have declined excessively, 2) substantial interference between two or more wells is occurring (includes interference with geothermal use), 3) interference between groundwater and surface water uses is occurring, 4) overdraft is occurring or will occur, or 5) groundwater quality is jeopardized.

ORS 537.735 outlines the contents of an order to declare a critical groundwater area. The order may include withdrawal of the area from further appropriation, spatial, temporal, or quantity limitations on further appropriation, allocation of groundwater for priority uses, require the abatement or sealing of any well responsible for discharge or dispersal of pollutants into groundwater, rotation of use, or any other requirement to protect the public welfare, health and safety.

ORS 537.747 through 537.762 require persons who wish to advertise services for construction or alteration of water wells, or who offer to or enter into contract to construct or alter a well, to obtain a water well constructor's license from the Water Resources Commission. These sections also describe licensing procedures, fees, etc.

ORS 537.765 declares the well construction business to be an activity affecting the public welfare, health and safety. In order to enable the state to protect the welfare, health and safety of its citizens, a licensed well constructor shall furnish a well log to the Water Resources Commis-
sion within 30 days of completing the well construction.

ORS 537.775 and ORS 537.777 authorize the Water Resources Commission to regulate the use of a well or distribution of groundwater if such action is found necessary secure compliance or fair distribution of groundwater, or to stop the wasteful use of the water, undue interference with other water uses, or pollution of water supplies.

ORS 537.780 grants powers to the Water Resources Commission for the purposes of administering ORS 537.505 to 537.795. These powers allow the Commission to: 1) restrict or stop the flow of groundwater when water is not actually being applied, 2) enforce general standards for construction and maintenance of wells and well accessories, 3) enforce uniform standards for measurement of groundwater levels, flows, and withdrawals, 4) enter land to inspect wells and well accessories, 5) prosecute violations of ORS 537.505 to 537.795 or public policy as expressed in ORS 537.525, 6) consult with and enter into agreements with the Environmental Quality Commission or any other agency or person, 7) adopt and enforce rules necessary to carry out the provisions of ORS 537.505 to 537.795, and 8) apply to a proper court for warrant to seize well drilling equipment in violation of ORS 537.747 or ORS 537.753.

ORS 537.787 authorizes the Water Resources Commission to investigate violations of ORS 537.505 to 537.795 and enforce remedies including any reasonable condition on the water well constructor's license to ensure compliance with applicable law to protect groundwater.

POLICY DISCUSSION

Oregon's groundwater and surface water resources comprise "the waters of this state" as defined by statute. Early laws specifically to manage groundwater east of the Cascades were enacted in 1927. Major legislation followed with the Groundwater Act of 1955. In late 1987, the Department of Environmental Quality estimated that about 60 percent of Oregon's population depend on groundwater for all or part of their daily water needs. Estimated groundwater withdrawal in 1980 was 1.1 billion gallons per day (gpd) with 75 percent for irrigation use, 12 percent for livestock use, 7 percent for industrial use, and 6 percent for public water supply use.

There was a rapid increase in acreage irrigated with groundwater from about 1975 to 1985. Based on water permit and rights records, it appears that about 20 percent of the irrigated acreage in Oregon is irrigated with groundwater.

Increasing competition for, and contamination of groundwater has resulted in the adoption of numerous regulations governing the exploration and development of groundwater. The 1989 Groundwater Protection Act placed an emphasis on preventing contamination of Groundwater. The Department of Environmental Quality is designated lead agency to
implement this legislation. The Strategic Water Management Group will participate in the role of multi-agency coordinator. The Water Resources Commission has been granted specific new authority over previously exempt uses and holes in the ground, other than wells, which can lead to contamination.

In addition to state laws, a growing number of land use regulations are being adopted for the primary purpose of protecting groundwater supplies. The statewide groundwater policy and principles presented here reflect existing statute and rule as discussed below.

The groundwater policy statement embodies the fundamental tenets of Oregon water law. Namely, both the Appropriation and Groundwater Acts declare the waters of the state to be in public ownership. In addition, both Acts establish "beneficial use without waste" as a basis for water rights claims and require that the public interest in the waters of the state be protected.

The policy statement also reflects more specific statutory provisions (from the Groundwater Act of 1955) and rules which were adopted to ensure that groundwater supplies are managed to preserve the public welfare, safety and health. These provisions guide groundwater appropriation, critical groundwater areas, well construction and regulation, and geothermal fluids management. Statutes currently require that reasonably stable groundwater levels be maintained, interference be prevented or controlled, and the resource be protected from overdraft and contamination. This emphasis reflects an acknowledgement that groundwater and surface water are components of a single hydrologic system. The groundwater policy statement also requires protection of the resource and public welfare, safety, and health by preventing or controlling overdraft, interference, and contamination.

The principles constitute a foundation and set of guidelines for implementation of the policy statement. The principles provide specific directives for interpretation of groundwater information and standards for decision making. They serve to substantiate the broad policy statement directly, and also make explicit certain concepts underlying the policy. For example, one of the principles assigns well constructors, owners and operators with primary responsibility for protection of the resources. Another states the need for collection, analysis and distribution of groundwater data and information in order to properly manage the resource.

The Water Resources Commission has adopted administrative rules for managing groundwater resources in OAR Chapter 690, Divisions 9 (Interference with Surface Water), 10 (Critical Groundwater Areas), 11 (Permits), and 200 (Well Construction Standards).
IMPLEMENTING STRATEGIES

1. Identify and characterize Oregon’s groundwater resources in priority areas. (Phase 1 - June 30, 1995)

2. Complete the Statewide Groundwater Resources Assessment and develop an integrated geographic information system to characterize and aid in management of groundwater resources. (July 1991, GIS completion date uncertain at this time)

3. Monitor statewide network of geothermal springs and wells, conduct a study of low-temperature geothermal aquifers, and regulate the use of low-temperature geothermal waters (including injection). (Ongoing)

4. Cooperate with the United States Geological Survey in conducting groundwater investigations (Ongoing)

5. Perform well construction, consultation and enforcement activities. (Ongoing)

6. Expand and refine the observation well network. (Phase 1 1990)

7. Assess and regulate well interference. Evaluate potential interference prior to issuance of a groundwater permit. Review procedures for regulating interference between wells to increase protection of the resource while honoring the water rights allocations system. (Phase 1 - 1990)

8. Develop groundwater management strategies in basin plans and programs. The Department has increased the attention to groundwater in its recent updates of the Umatilla, Goose and Summer Lakes, and Willamette-Sandy Basin (in progress) Plans and Programs. However, the majority of basin plans and programs do not fully address groundwater issues. The Department will consider adopting area-wide standards for groundwater use and well construction to include in the basin programs. (Ongoing)

9. Work with local governments and other state agencies to integrate groundwater protection strategies into the land use planning process and future land development. (State Agency Coordination Program to be completed by December 31, 1990. Subsequent land use coordination program will be ongoing.)

10. Consider expanding groundwater permit information submittal requirements in order to enhance evaluation of groundwater conditions and potential impacts. (Tentative date: July 1990)

11. Develop permit conditions aimed at increasing the groundwater database and preventing groundwater level declines, interference, and contamination. (Ongoing)

12. Assess new data pertaining to established Critical Groundwater Areas and evaluate the need for additional critical areas based on evidence of declines, overdraft, interference, and/or contamination. (Ongoing)
13. Provide technical support in hydrology and geology for the Oregon Hanford Waste Board. Coordinate with the U.S. Department of Energy in conducting research and developing mitigation strategies for the Hanford site. (Ongoing)

The statutory guidance, policy discussion and implementing strategies were approved on June 22, 1990.
Policy

The water-related functions of riparian areas on public lands shall be protected. On public lands, management activities in riparian areas shall be planned to maintain or improve riparian conditions that support water-related functions, consistent with the constitutional or statutory purposes of the public land.

(b) Proper land management can provide for many commodity uses of riparian areas while protecting water resources.

(c) The Legislature has made it a goal of the people of the state to enhance Oregon’s waters through the management of riparian areas and associated uplands.

(d) The state’s integrated, coordinated water policy needs to address water-related aspects of land management.

(e) Implementation will be through the programs of public land management.

Principles

The policy is established based on the following principles:

(a) Land and water management are integrally related;
agencies having responsibility over riparian lands.

To implement the policy on protection of water resources on public lands, public land management agencies shall be advised to consider and accommodate the following principles:

(a) Protect water-related riparian functions through public land management plans and practices. Water-related riparian area functions include any or all of the following as applicable to the specific water body segment: providing streambank stability; contributing coarse woody debris to dissipate flood energy and create aquatic habitat; maintaining water tables in relatively close proximity to the ground surface; carrying and storing flood flows; filtering runoff waters of sediment and potential pollutants; insulating streams from summer and winter temperature extremes; and supporting the ecosystem of the adjacent water resource.

(b) Build databases of riparian area condition, by watershed, sufficient to make the planning and management decisions to implement this policy. The condition of riparian areas shall be determined on the basis of the types of functions listed in subsection (a) as known from the best scientific information available.

(c) Monitor the effectiveness of riparian area management and rehabilitation activities within a watershed in accordance with land management plans or programs.

(d) Evaluate the effects of proposed management or rehabilitation activities, taking into account known conditions of riparian areas and uplands within the whole watershed and, to the extent practical, the cumulative impacts of ongoing and proposed management activities.

(e) Mitigate activities in riparian areas which are undertaken in accordance with land management plans. In mitigating activities, actions which avoid and minimize impacts as described in sections (a) and (b) of the mitigation definition found in OAR 690-400-010 are preferred.

(f) Undertake mitigation when emergencies require action that damages riparian areas.

(g) Schedule, implement and monitor efforts to improve impaired water-related functions of riparian areas, considering the natural recovery potential of affected resources and the benefits expected from the recovery. Give preference to improvement strategies which take advantage of natural processes.

(h) Enforce statutes, rules, and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the riparian areas of the state. [ORS 541.355 (2) (b) (C)]

Applicability

The policy and principles shall not apply to:

(a) Privately-owned lands, including those served by a public corporation, such as an irrigation district; or
(b) Facilities constructed for the conveyance of water, including but not limited to irrigation ditches or canals.

Nothing in the policy and principles shall preclude operating or using reservoirs, ponds, wetlands created for treating water, or other water facilities in accordance with the purposes for which they were authorized, built or permitted.

The policy, principles and statement of applicability were adopted as rule on December 7, 1990. (OAR 690-410-050)

STATUTORY GUIDANCE

ORS 541.355 establishes the Governor's Watershed Enhancement Board and makes it a goal of the people of the state to: enhance Oregon's waters through the management of riparian areas and associated uplands; restore, maintain, and enhance the biological, chemical and physical integrity of riparian zones; improve the filtering capability of riparian areas to reduce nonpoint source runoff; and, restore and enhance the ground water storage potential associated with healthy riparian area ecosystems. The goal is to be achieved, in part, through the enforcement of statutes, rules and regulations that require federal land management agencies to exercise their management and trustee responsibilities to restore, maintain and enhance the riparian areas of the state.

ORS 536.220 provides that a coordinated, integrated state water resources policy is to be formulated and implemented by the Water Resources Commission. The Commission is to consider the multiple aspects of beneficial use and control of water resources in order "to best protect and promote the public welfare generally."

ORS 536.007 (12) defines "water resources" as meaning the waters of the state and auxiliary lands whose usage directly affects the development and control of the waters of the state, specifically potential reservoir sites and flood plain areas forming the predictable channels of flood-water drainage of rivers and streams.

ORS 536.315 authorizes the Water Resources Commission to designate the exact land areas included within auxiliary lands as part of the water resources statement required by ORS 536.300.

ORS 536.300 requires the Water Resources Commission to progressively formulate an integrated, coordinated program for the use and control of all the water resources of the state and issue statements thereof.

ORS 536.310 (2) states that it is in the public interest to achieve integrated and coordinated uses of water and to augment existing supplies for all beneficial purposes to obtain the maximum economic development for the benefit of the state as a whole; (8) states that watershed develop-
ment policies that promote balanced multiple uses shall be favored; (10) stresses the importance of state sovereignty over its waters;

ORS 536.420 allows the Governor to designate the Director or members of the Commission to represent the state with regard to "any formal or informal" compact or agreement authorized by the Legislature. The designees are to make every effort practicable to insure that the compact or other agreement is in harmony with the state water resources policy and otherwise with the public interest.

ORS 536.450 and 460 provide that "The commission may ... submit information or proposals and recommendations relating to the water resources of this state ... to any ... state agency or public corporation, [or] ... agency of the Federal Government..."

ORS 468.710 establishes that it is state policy to conserve the waters of the state, and to protect, maintain and improve water quality for public water supplies, wildlife, fish life, aquatic life, recreation, agriculture, industry, municipal use, domestic use, and other beneficial uses. This section also provides for the prevention and control of new or existing water pollution and for cooperation with other state and federal agencies in carrying out the policy.

ORS 496.435 makes it the policy of the state to restore native stocks of salmon and trout by engaging in a program to rehabilitate and improve natural habitat.

ORS 506.109 establishes a state policy that food fish be managed to provide optimum economic, commercial, recreational and esthetic benefits. This is to be achieved by developing and managing the lands and waters of the state in a manner to optimize production, utilization, and public enjoyment of food fish.

Through ORS 526.460 the state recognizes that "the forest" provides environmental benefits including maintenance of water resources. "Management of all forest lands in Oregon should be encouraged to provide continuous production of all forest benefits." Forest benefits include economic, environmental, habitat, recreation, and range benefits.

ORS 527.630 encourages economically efficient forest practices that assure the continuous growing and harvesting of trees "consistent with sound management of soil, air, water and fish and wildlife resources ..."

ORS 527.710 directs that rules adopted by the Board of Forestry must provide for the overall maintenance of water resources and must consider water resources programs administered by the Water Resources Department under ORS 536.220 to 536.540.

ORS 568.225 states that the policy of the Legislative Assembly is to control and prevent soil erosion, control floods, conserve and develop water resources and water quality, conserve natural beauty, promote recreational development, and protect public lands.
POLICY DISCUSSION

Land and water management are integrally related. The quantity and quality of water in a stream system is directly dependent on the nature and management of its watershed. The elevation and aspect of a watershed can determine how much rain or snow it intercepts. Its geology and soils control how quickly precipitation is routed to streams or stored as ground water. Vegetation can shade snow and slow its melting; shield soil from the direct impacts of rain and wind; slowly release intercepted fog, rain and snow to the ground; use up supplies of water for growth; support and shade streambanks; and enter streams to provide organic material for nutrients and natural check dams.

Nowhere is watershed management more important than in riparian areas, where streams and land meet. Riparian areas occupy only small portions of Oregon watersheds, from five to ten percent in most instances. However, they provide essential water-related functions. Riparian areas help maintain floodplain function, contribute large logs that dissipate flood energy and create aquatic habitat, provide bank stability, maintain water tables in relative proximity to the ground surface, and support the ecosystem of the adjacent water resource.

Where riparian areas have been degraded, water users may be exposed to decreased summer flows, increased and damaging peak flows, lowered water tables in adjacent fields, and degraded water quality. Irrigators and municipalities may be forced to deal with decreased supplies, increased competition from other users earlier in the season, or increased costs for water treatment. Instream water uses for fish and other aquatic life may be subjected to decreases in or complete eradication of physical habitat, damaging water temperatures, or increased sediment.

In addition to protecting water quantity and quality, riparian areas provide other important values to the people of the state including: concentrations of biologic diversity; wildlife habitat and migration routes; fish habitat maintenance; forest benefits; forage for livestock; esthetics; and recreation.

Sound riparian area management is important to all lands, both public and private. However, riparian areas on public lands have special values to the public. Public lands are established and managed to produce public benefits, including economic return to the state and local governments. Private lands are managed primarily for economic output or other individual benefit. A policy that protects public benefits in water on public lands is appropriate. Current watershed and riparian area policies on many public lands provide a foundation from which to make further progress in riparian area management. Most public lands are located either in high precipitation areas where careful management may increase natural storage or in dry areas where management is needed to husband supplies. Public agencies generally have more resources for ri-
parian investment and enhancement than individual private landowners. The state supports practices and projects of public agencies that will highlight the benefits of sound riparian area management for all land managers — both public and private. Private land management objectives, however, warrant separate consideration.

Because of the importance of riparian areas to water-related functions, the state places a high priority on the maintenance of healthy riparian areas and the rehabilitation of degraded riparian areas. The goal of riparian area management on public lands is to strongly support the water-related functions of riparian areas. Riparian areas should be used only if their water-related functions are first protected. In protecting these functions, managers should take into account cumulative impacts of all riparian area and uplands management activities within a watershed.

Many riparian areas are in less than satisfactory condition. Rehabilitation of these areas will benefit the state's water users. Continued neglect of these areas impairs the state's ability to manage water. In many cases, deferring rehabilitation will result in further deterioration with significantly increased future repair costs. The state supports aggressive rehabilitation efforts that take advantage of natural processes where possible.

In order to protect and rehabilitate the water-related functions of riparian areas, lands managers need to know how well these functions are occurring throughout the watersheds they administer. Therefore, agencies need to build databases of riparian area condition, by watersheds, based on the water-related functions described above, as determined by the best scientific information available.

Careful monitoring of riparian areas is essential to protect the water resources of the state. Without adequate monitoring, damage may occur to riparian areas before activities can be mitigated or stopped. Monitoring budgets for public agencies must be adequate to protect riparian area resources.

Riparian area management is a major element of many laws affecting Oregon watersheds, including: the National Forest Management Act of 1976, the Oregon Forest Practices Act, the Federal Land Policy and Management Act of 1976, the Public Rangeland Improvement Act of 1978, the Food Security Act of 1985, and the Bureau of Land Management's Oregon/Washington Riparian Enhancement Plan (1987). Riparian area protection is also the focus of a growing number of local plans, policies, and ordinances. There are also many programs and citizen groups through which the people of the state are investing in riparian areas, including: the Governor's Watershed Enhancement Board, the Oregon Watershed Improvement Coalition, Coordinated Resource Management Planning and numerous soil and water conservation district activities.

With the interest in riparian area management growing, it is timely to develop state policy on riparian area management. With the exception of ORS 541.355(2)(a),
the state has not established a riparian area management policy. Although the state Forest Practices Act regulates specific forest practices in some riparian areas, the Act does not represent a broad riparian area policy. For example, it was not designed to address other management activities such as grazing, mining, or recreation that also have significant riparian area effects. While there are policies and programs for managing riparian areas on federal lands, there is still need for state policies, as state and federal interests are not always the same. The policy on riparian area management on public lands seeks to develop the principles of ORS 541.355(2)(a) and articulate the importance of public land riparian areas to the state's water resources.

The policy is intended to be implemented through the programs of the land management agencies which oversee riparian lands. The state is especially interested that existing laws and rules be exercised to the fullest extent possible for the protection and rehabilitation of riparian areas. Where existing laws and rules are not sufficiently providing for the protection or rehabilitation of riparian areas, the state will recommend appropriate changes to the responsible agencies.

IMPLEMENTING STRATEGIES

1. Promote the policy through continued participation in Forest Service, Bureau of Land Management, and other agencies’ land management planning efforts. Participation in federal planning will be coordinated through the Governor’s Forest Planning Team. State agencies will: consult directly with other agency planning staff; provide information and technical assistance; and enter into interagency Memoranda of Understanding where appropriate to arrange for such activities as exchange of information, cooperative monitoring, or mutual notification of projects and activities which affect the agencies involved. [Ongoing]


3. Seek and promote necessary resources for public lands management agencies to complete an inventory of riparian area condition by the year 2000. [Ongoing; review in 1991]

4. The Governor’s Watershed Enhancement Board will provide public information on the benefits of healthy riparian areas at the Department’s Salem, regional, and watermaster offices and at other state agency offices. [Ongoing]

5. Promote the importance of riparian area management in discussions with citizens, other state agencies, federal agencies, and others. Through the basin planning program, the Water Resources Department will consult, at both statewide and local levels, with concerned citizens (including appropriate interest groups) and experts, to identify riparian area problems and needs. [Ongoing]
6. Review research on water resource related functions of riparian areas and impacts of various management activities on those functions. Determine areas of riparian functions and management needing further study. [Ongoing]

7. The Department of Forestry will monitor the effectiveness of current forest practices rules in maintaining or improving riparian resources. [Ongoing]

The statutory guidance, policy discussion and implementing strategies were approved on December 7, 1990.
CONSERVATION AND EFFICIENT WATER USE
December 1990

POLICY AND PRINCIPLES

Policy

The elimination of waste and improving the efficiency of water use are high priorities. Use of water without waste is required by state statute and the prior appropriation doctrine. Programs to eliminate waste shall be implemented. In addition, improving the efficiency of water use through implementation of voluntary conservation measures can help restore instream flows and provide for future needs including public uses and continued economic development. Priority shall be given to developing subbasin conservation plans and providing public assistance in areas of known over-appropriation of surface water and groundwater and of water quality problems.

Principles

Programs to achieve the policy on conservation and efficient water use shall be guided by the following principles:

(a) Water users shall construct, operate and maintain their water systems in a manner which prevents waste and minimizes harm to the waters of the state and injury to other water rights.

(b) Major water users and suppliers shall prepare water management plans under the guidance of schedules, criteria and procedures which shall be adopted by rule. The plans shall evaluate opportunities for conservation and include a quantification of losses of water from the
systems, an evaluation of the effectiveness and costs of alternative measures to reduce losses, and an implementation schedule for all feasible measures. During the planning processes, consideration shall be given to the environmental impacts from and time needed for implementation of system modifications. The Department shall assist water users and suppliers in the preparation of the water management plans.

(c) The Commission shall encourage and facilitate the development of subbasin conservation plans throughout the state by local advisory committees. Subbasin conservation plans shall include measures to assist water users in eliminating waste, other methods to improve water use efficiency in the subbasin, funding proposals to implement the measures and procedures to protect water dedicated to instream uses from further diversion. Priority shall be given to development of subbasin conservation plans in serious water management problem areas, critical ground water areas and other areas where water supplies are not sufficient to meet demands. The Commission shall adopt rules to guide formation of broad-based committees, the preparation of subbasin plans, and the submittal of plans to the Commission for approval.

(d) When wasteful practices are identified in water management plans and subbasin conservation plans, the Commission shall adopt rules prescribing statewide and subbasin standards and practices that ensure beneficial use without waste. The rules shall recognize that conditions vary for different parts of the state and for different uses.

(e) A conservation element shall be developed and included in each basin plan when a major plan review and update is performed.

(f) The collection, analysis and distribution of information on water use and availability are necessary to ensure that the waters of the state are managed for maximum beneficial use and to protect the public welfare, safety and health. The ability to measure flows at authorized points of diversion is essential to the management of water and the elimination of waste.

(g) The Commission shall support public education programs, research and demonstration projects to increase citizen and water user awareness of water conservation issues and measures in the state.

(h) The Commission shall support programs to provide economic assistance to water users to implement desired conservation measures, particularly where the benefits of implementing the measures are high.

The policy and principles were adopted as rule on December 7, 1990. (OAR 690-410-060)
STATUTORY GUIDANCE

ORS 536.220 establishes state policy in the administration of water resources as the use and control of the waters of the state for multiple purposes and the maximum beneficial use of water. ORS 536.300 requires the Water Resources Commission to formulate an integrated, coordinated program for the use and control of all water in the state and, in doing so, to study means and methods for conserving and augmenting water resources.

ORS 536.310 provides that existing rights to use water are to be protected subject to the principle that all of the waters of the state belong to the public for use by the people for beneficial purposes without waste.

ORS 537.170 requires that, in determining whether proposed uses of water are detrimental to the public interest, the Commission consider conserving the highest use of water for all purposes and the prevention of wasteful, uneconomic, impracticable or unreasonable use of water.

ORS 537.455 to 537.500 declares it to be the policy of the state to aggressively promote conservation and encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water.

ORS 537.525 provides that beneficial use without waste, within the capacity of available sources, is the basis, measure and extent of the right to appropriate ground water.

ORS 540.510 allows any right to the use of conserved water to be severed from the land and transferred or sold.

ORS 540.610 provides that beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.

POLICY DISCUSSION

During the last 130 years, Oregon has experienced increasing pressure on its water resources. As the state has developed, the demands for water have grown. While most early water rights were established for irrigation and mining, important new demands have emerged during recent years. The urbanization of the state has resulted in continually expanding needs for municipal water supplies. Growth and economic development have resulted in new demands for commercial and industrial supplies of water. Finally, the importance to the state's economy of maintaining adequate streamflows to support fish, provide recreational opportunities, and maintain water quality is becoming increasingly apparent.

Until recently, continued appropriation of the state's water resources generally was limited only by the availability of
supplies. In the late 1950s, the state began a systematic evaluation of the available water supplies in each of the river basins. Through this process, the state allocated some of the remaining unappropriated water to public uses. However, in many areas, there was no unappropriated water available during periods of seasonal low flows. In addition, the remaining streamflows were not protected in many streams which provided important fishery and recreational benefits.

The lack of unappropriated surface and groundwater constrains the state’s continued development. Junior water right holders regularly lose access to water during the summer. Otherwise productive croplands go unused because of water shortages. Low streamflows annually limit the available fish habitat and recreational opportunities. Finally, water is not available for appropriation for domestic, industrial and municipal uses.

The development of storage offers one method for supplying new out-of-stream uses and for providing additional water instream for use by the public. In many areas, storage projects may be economically feasible if the costs are apportioned among all benefited users. However, prior to agreeing to participate in funding of additional storage projects, the public increasingly is demanding assurances that the development of storage is the least cost alternative and that the existing supplies of water are used as efficiently as possible.

The need for additional supplies of water is not generally understood by the public. Most people perceive the state as having an abundance of water. The lost opportunities for economic development and the support of instream uses of water which are caused by shortages are not readily apparent. Over-appropriation, misuse and waste of water all contribute to lost opportunities for economic and residential development, and to the inability to support instream uses. Successful implementation of a conservation program will require effective public information and education. The information must be oriented not only to water right holders, but also to the general public.

The inefficient use of water is not consistent with the customary appropriation doctrine or with state statutes. The appropriation doctrine holds that a right is limited to the quantity of water which is beneficially used without waste. The state statutes provide that beneficial use shall be the basis, the measure and the limit of all rights to the use of the waters of the state. In addition, the statutes establish as state policy the principle that the waters of the state belong to the public for use by the people for beneficial purposes without waste. These statutes apply to all uses of water including agricultural, domestic, industrial and municipal uses. Finally, the statutes charge the Water Resources Commission with the responsibility for managing the state’s water for multiple purposes and maximum beneficial use.

The costs of many measures to improve the efficiency of water use are minimal. For example, better management and scheduling of water use can be implemented quickly and without major capital investments. These activities can yield
significant savings in both agricultural and municipal settings. In addition, irrigation water users in many areas have been able to increase production by more closely monitoring crop needs and the quantities of water applied. While the installation of measuring devices can help users manage the application of water better, there frequently are lower-cost alternatives which can be used to ensure that water is used efficiently without waste.

Improvements in pumping efficiency frequently can pay for themselves within a few years. However, in many areas of the state, the major capital investments required to develop efficient delivery systems and to convert to better application technologies cannot be justified if based solely on the economic returns to the system owners. Where historic diversions have exceeded legally allowed rates, necessary reductions in water use may result in lower production if efficiency cannot be improved. Major improvements in some of these systems may only be achieved with public assistance.

In some areas adjoining delivery systems where water is lost or spilled, other uses of that water have developed. For example, some wetlands are supplied by seepage from canals and irrigation return flows. In addition, some aquifers are recharged by seepage. Implementation of conservation measures may reduce the supply of water to these uses. There currently is no institutional framework for permitting continued diversion and loss of water to support these incidental uses. In addition, the uncontrolled loss of water is not necessarily the most efficient method for supplying these uses. However, mitigation may be required when conservation measures adversely affect other uses of water which have historically been supplied by seepage and other losses.

IMPLEMENTING STRATEGIES

1. Organize a continuing Conservation Advisory Committee to assist the Commission and Department in implementation of the statewide policy on conservation and efficient water use. (ongoing)

2. Assist a local advisory committee in preparing a test conservation plan in a subbasin to help set the process, determine costs, and identify any needed changes in laws. (Dec. 1991)

3. Following the test conservation plan, develop rules to guide voluntary subbasin plans that describe the process, appointment of advisory committees, standards for the plan and criteria to rank subbasins for development of plans. (July 1992)

4. During basin planning, recommend areas for developing subbasin conservation plans and recommend general conservation measures to improve the efficiency
of water use throughout the basin. (ongoing)

5. Prepare rules prescribing allowable rates and duties for new water rights based on water use requirements and defined efficiency levels, consistent with the elimination of waste and considering conditions in the various geographic areas of the state. (Sept. 1991)

6. Prepare rules to set a schedule based on the size of the major water user or supplier for completing and submitting to the Department for approval water management plans and work with local governments and water users and suppliers to ensure that water management plans are consistent with local comprehensive land use plans. (July 1992)

7. Identify and list efficient and inefficient water use practices to provide guidance for watermasters and others in identification of wasteful operations, refine the list based on information in water management plans and develop procedures for addressing wasteful practices of individual water users. (beginning in Dec. 1990)

8. Prepare statewide and subbasin rules prescribing standards for efficient water use, management practices, system maintenance requirements, and measures necessary to determine quantities of water used. The rules standards will ensure diligent water management, reasonably efficient water use, and effective control over water usage. (beginning in July 1991)

9. Work with volunteer municipal water suppliers, irrigation water suppliers, and major water users to complete development of model water management plans. (Dec. 1991)

10. Seek building code provisions to achieve water conservation in new construction. (June 1991)

11. Assist major water users and suppliers in the preparation of water management plans, including development of a planning procedures manual. (July 1992)

12. Work with the state and local agencies and professional organizations to ensure consideration of conservation in public facilities plans and consideration of water use in land use decisions. Develop model agreements for regionalization of water supplies and preparation of water management plans. (Dec. 1991)

13. Continue developing and distributing water conservation materials to improve public awareness of the benefits of water conservation and to provide technical information and serve as a clearinghouse for educational curricula materials and other information on water conservation. (ongoing)

14. Encourage expansion of programs of other agencies such as the Soil Conservation Service, Oregon State University Extension Service and Soil and Water Conservation Districts to perform farm appraisals to assist irrigators in identifying opportunities for improved management.
Encourage expansion of the Bureau of Reclamation's investigation of existing projects program and irrigation management services. Encourage all electric utilities to sponsor energy conservation programs which provide irrigation scheduling information to customers. (ongoing)

15. Develop a state proposal to assist in financing construction of conservation measures required by subbasin conservation plans and water management plans such as cost-sharing, tax credits, and property tax exemptions. (June 1992)

16. Evaluate the potential for use of the Small Scale Energy Loan and Water Development Loan Programs to fund conservation measures, including possible methods to subsidize loans. (July 1991)

17. Prepare and maintain information of potential funding sources for water conservation measures. Encourage use of these sources including the Bureau of Reclamation's Rehabilitation and Betterment Act and Small Reclamation Projects Act loan and water project planning programs. (ongoing)

18. Encourage improvements in water use efficiency in projects receiving state or federal assistance for water or sewer system improvements. (ongoing)

The statutory guidance, policy discussion and implementing strategies were approved on December 7, 1990.
Enrolled

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PRINTED PURSUANT TO ORS 171.130 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Joint Committee on Water Policy)

AN ACT

Relating to water; creating new provisions; and amending ORS 540.510.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in ORS 540.510 and sections 1 to 10 of this Act:
(1) "Conservation" means the reduction of the amount of water consumed or irretrievably lost in the process of satisfying an existing beneficial use achieved either by improving the technology or method for diverting, transporting, applying or recovering the water or by implementing other approved conservation measures.
(2) "Conserved water" means that amount of water, previously unavailable to subsequent appropriators, that results from conservation measures.
(3) "In stream" means within the natural stream channel or lake bed or place where water naturally flows or occurs.
(4) "Managed as stored water" means to protect water from diversion until the water has served its intended purpose.
(5) "Public use" includes but is not limited to:
(a) Recreation;
(b) Protection and enhancement of fish life, wildlife, fish and wildlife habitat and any other ecological values;
(c) Pollution abatement;
(d) Navigation;
(e) Scenic attraction; or
(f) Any other similar or related use or use protected by the public trust.

SECTION 2. (1) The Legislative Assembly finds and declares that conservation and efficient utilization of water benefits all water users, provides water to satisfy current and future needs through reduction of consumptive waste, improves water quality by reducing contaminated return flow, prevents erosion and allows increased in-stream flow; and
(2) It is therefore declared to be the policy of the State of Oregon to:
(a) Aggressively promote conservation; and
(b) Encourage the highest and best use of water by allowing the sale or lease of the right to the use of conserved water.
(3) As used in this section, "efficient utilization" means use without waste, upgrading of irrigation equipment to comply with modern practices within a reasonable time period or other methods used to meet both current and future water needs at the least cost.

SECTION 3. (1) Any person holding a water right certificate issued under ORS 537.250, 537.630 or 539.140 may submit a conservation proposal to the Water Resources Commission for approval.
(2) A conservation proposal submitted under subsection (1) of this section shall include:
(a) A description of the conservation measures the person proposes to implement;
(b) A statement of the amount of water the holder of the water right is currently using beneficially each year;
(c) The amount of conserved water the holder expects to result from implementation of the conservation measures; and
(d) Any other information the commission considers necessary to evaluate the effectiveness of the proposal.

(3) If a person proposes conservation measures within the boundaries of an irrigation district organized under ORS chapter 545 or a water control district organized under ORS chapter 553, at the time the person submits the proposal, the person also must submit evidence that the district has approved the conservation proposal.

SECTION 4. (1) Upon receipt of a conservation proposal under section 3 of this Act, the Water Resources Commission shall review the proposal and allocate conserved water according to subsections (2) and (3) of this section and the rules and standards adopted by the commission under section 6 of this Act.

(2) The commission shall allocate conserved water if the commission finds that the proposed conservation measure:
(a) Is feasible;
(b) Will produce conserved water;
(c) Can be effected without injury to existing water rights; and
(d) Will not adversely affect the public interest.

(3) In allocating conserved water, the commission shall allocate 25 percent of the conserved water to the state, unless the commission finds that more or less water should be allocated to the state under the criteria established by rule by the commission pursuant to section 6 of this Act.

(4) The commission shall notify the applicant of its action under subsections (2) and (3) of this section. An applicant may request a hearing before the commission according to provisions of ORS 183.310 to 183.550 applicable to review of a final order.

SECTION 5. (1) Upon completion of the conservation measures proposed under section 3 of this Act, the water right holder shall request the Water Resources Commission to determine the quantity of conserved water allocated to the state and to the water right holder according to the percentages established by the commission under section 4 of this Act.

(2) Any person requesting the commission to allocate a quantity of conserved water under subsection (1) of this section must demonstrate:
(a) The amount of water consumed beneficially by the water right holder before implementation of the conservation measures;
(b) The amount of water the water right holder now requires for the same beneficial use after implementation of the conservation measures;
(c) The use the holder intends to put the portion of conserved water to which the holder is allocated; and
(d) That the use of the conserved water by the holder would not harm any other appropriator.

(3) After the commission completes the allocation of conserved water under subsection (1) of this section, the commission shall issue new certificates covering the changes in the original water right. A separate new certificate preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water right and a separate new certificate indicating the priority of rights as set forth in section 7 of this Act shall be issued to cover the right to the use of the conserved water.

SECTION 6. The Water Resources Commission shall adopt rules and standards necessary to carry out the provisions of sections 1 to 10 of this Act. The rules shall include at least the following:

(1) A procedure for managing the state's portion of conserved water as stored water.

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Criteria the commission shall consider in allocating more or less than 25 percent of conserved water to the state. Such criteria shall include, but need not be limited to:

(a) The source of funds used for implementing the conservation measure;
(b) The amount of conserved water to be managed as stored water as necessary to satisfy identified in-stream needs as determined by the commission;
(c) Whether or not the water right is located in a critical ground water area; and
(d) Any pertinent provisions of the applicable basin plan.

Criteria for determining how the state manages the portion of conserved water allocated to the state.

Criteria for determining the stream reach within which conserved water must be managed as stored water.

Criteria for determining the stream reach within which conserved water must be managed as stored water.

The procedure for allocating percentages of conserved water under section 4 of this Act.

The procedure for determining quantities of conserved water under section 5 of this Act.

SECTION 7. Notwithstanding any other provision of ORS chapter 536, 537, 538, 539, 540, 541, 542 or 543, the priority of any right to the use of conserved water under a proposal submitted and approved by the Water Resources Commission under sections 3 and 4 of this Act shall be one minute after the priority of the water right held by the person implementing the conservation measures.

SECTION 8. (1) Any person or agency allocated conserved water under section 5 of this Act may reserve the water in stream for future out-of-stream use or otherwise use or dispose of the conserved water. Any person or agency to whom conserved water is allocated shall notify the commission of the dispensation of the right to the use of conserved water. The notice shall include:
(a) The name and address of the person buying or leasing the right to the use of conserved water;
(b) The use to which the conserved water is to be put; and
(c) The terms of any agreement between the appropriator and the person using the conserved water.

(2) Notwithstanding any other provision of law, a person who holds a water right permit or certificate having a subsequent priority to a certificate issued under section 5 of this Act may not acquire a vested right to any water or return flow of water that results from either the lease of the right to the use of conserved water or the reservation of conserved water in stream for future use under subsection (1) of this section.

(3) Any right to the use of conserved water sold under subsection (1) of this section:
(a) Shall become appurtenant to the premises upon which the purchaser uses the water; and
(b) Shall be subject to the provisions of ORS 540.510 to 540.530 and 540.610 to 540.650.

(4) When the commission receives notice of the sale of the right to the use of conserved water under subsection (1) of this section, the commission shall issue to the purchaser a new water right certificate covering the right to the use of conserved water that was sold. The certificate shall indicate the priority of the water right according to the provisions of section 7 of this Act.

SECTION 9. Any agency or political subdivision of this state may purchase a right to the use of conserved water, as defined under section 1 of this Act, or accept a gift of a right to the use of conserved water as defined under section 1 of this Act. If an agency or political subdivision requests that the conserved water remain in the stream, the commission shall manage the conserved water in a manner that results in the conserved water remaining in the stream.

SECTION 10. (1) A water right for conserved water under this Act shall have the same legal status as any other water right for which a certificate has been issued.

(2) A water right for conserved water that is reserved in stream for future out-of-stream use under section 8 of this Act or that the commission manages under section 9 of this Act is not subject to cancellation under ORS 537.260 or 537.410 to 537.450 or to abandonment under ORS 540.610 to 540.650.

SECTION 11. ORS 540.510 is amended to read:

540.510. (1) Except as provided in subsection (2) of this section, all water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in

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use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the owner of any water right may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use theretofore made of the water in all cases without losing priority of the right theretofore established.

(2) Subject to the limitations in section 8 of this 1987 Act, any right to the use of conserved water allocated by the Water Resources Commission under section 5 of this 1987 Act may be severed from the land and transferred or sold after notice to the commission as required under section 8 of this 1987 Act.

(3) The sale or lease of the right to the use of conserved water under section 8 of this 1987 Act does not constitute a change of use or a change in the place of use of water for purposes of ORS 540.520.
A BILL FOR AN ACT

Relating to water conservation; creating new provisions; and amending ORS 455.610.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 to 4 of this Act are added to and made a part of ORS 447.010 to 447.160.

SECTION 2. Except as provided in section 4 of this 1991 Act, the maximum amount of water used by fixtures approved for installation during construction, reconstruction, alteration and repair of buildings and other structures under ORS 447.020 shall be:

1. 1.6 gallons per flush for toilets;
2. 1.0 gallons per flush for urinals;
3. 2.5 gallons per minute for shower heads;
4. 2.0 gallons per minute for lavatory faucets; and
5. 2.5 gallons per minute for all other interior faucets.

SECTION 3. No person shall sell or offer for sale any toilet, urinal, shower head or faucet that has not been approved under ORS 447.020.

SECTION 4. The State Building Code Administrator by rule shall provide for an exemption to the requirements under section 2 (1) and (2) of this 1991 Act if:
1. The reconstruction, alteration or repair of a building does not include the replacement of the plumbing or sewage system servicing toilets or urinals, shower heads or faucets within the building;
2. The plumbing or sewage system within an existing building, because of its capacity, design or installation, would not meet the recommended performance standards of the American National Standards Institute as adopted by the administrator if the toilets required by section 2 of this 1991 Act were installed;
3. The fixtures and fittings necessary to perform a specialized function, including but not limited to emergency showers, aspirator faucets and blowout fixtures, cannot meet the requirements;
4. The installation of fixtures that do not comply with section 2 of this 1991 Act is necessary to maintain the historic character of a structure listed under ORS 358.475 to 358.565; or
5. The toilets to be installed are specifically designed to withstand unusual abuse or installation in a penal institution.

NOTE: Matter in bold face in an amended section is new; matter [italic and bracketed] is existing law to be omitted.
SECTION 5. ORS 455.610 is amended to read:

455.610. (1) The administrator shall adopt, and amend as necessary, a nationally recognized One and Two Family Dwelling Code.

(2) Changes or amendments shall not be made to the existing code except:

(a) Because of geographic or climatic conditions unique to Oregon;

(b) As necessary to be compatible with other statutory provisions; or

(c) When the national code is updated or changed.

(3) The energy conservation provisions of the One and Two Family Dwelling Code shall be the same as those adopted in the State of Oregon Structural Specialty Code.

(4) The water conservation provisions for toilets, urinals, shower heads and interior faucets of the One and Two Family Dwelling Code shall be the same as those adopted under ORS 447.020 to meet the requirements of sections 2 to 4 of this 1991 Act.

(5) The code shall be adopted and amended as provided by ORS 455.030 and 455.110.

(6) The State Structural Code Advisory Board is the only appropriate board to advise the administrator on the adoption of or amendments to the One and Two Family Dwelling Code covered by the rules adopted under subsections (1) and (2) of this section.

SECTION 6. Except as provided in section 7 of this Act, this Act does not become operative until July 1, 1992.

SECTION 7. The State Building Code Administrator and the Building Codes Agency may take any action before the operative date of this Act that is necessary to enable the administrator and the Building Codes Agency to exercise, on and after the operative date of this Act, all the duties, functions and powers conferred on the administrator by this Act.