AN INVENTORY OF WATER DIVERSIONS IN OREGON NEEDING FISH SCREENS

(Volume I - Summary Results)

Including

Guidelines for Determining Screening Needs, Priorities, and Costs for Installation and Maintenance of Screening Projects

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PREFACE

This report summarizes the results of work required by Senate Bill (SB) 148, enacted by the Oregon Legislature at its 1989 session and referenced in ORS 498.256.

In response to SB 148 the Oregon Department of Fish and Wildlife (Department) developed standards to determine the needs, priorities, and estimated costs for installation and maintenance of fish screening projects at water diversions throughout Oregon.

A listing of individual diversions needing fish screens was compiled and prioritized and a recommended plan for implementing a state-wide fish screening program developed (Volume II of this report, under separate cover, contains the individual project listings).

The equivalent of two person-years of effort went into this project with 41 biologists evaluating over 55,000 individual diversions. This effort cost the Department about $100,000 primarily from state and federal sport angler revenues.

This report defines the overall needs and expected costs of fish screening projects throughout the state. The Department intends for this document to be used to initiate a process to resolve fish screening problems in the state. This report will assist decision makers in developing an implementation plan for a fish screening program that will significantly benefit and protect Oregon’s fishery resources for present and future generations.
combination of biological, physical, habitat, and administrative criteria were used to evaluate and rank each diversion. A total of 3,240 diversions that require screening were identified.

Diversions that require screening range from small projects that divert water at a rate of less than one cubic feet per second (CFS) to large complex projects removing over 1,000 CFS. However, most of the projects identified are small with two thirds of them diverting less than five CFS from the stream.

The estimated cost to install fish screens at the inventoried diversions ranges from less than $10 to as much as $6,000,000 each. The majority of screening projects, however (about 75%), would cost less than $10,000 each.

The estimated cost to screen all 3,240 diversions is about 140 million dollars, but over 90% of the projects (all those up to about 30 CFS) could be built for approximately 22 million dollars. The 290 largest projects would cost about 118 million dollars to construct. Annual maintenance costs for each screening project ranges from five to 15 percent of the initial project cost, dependent upon diversion size and screen type.

The Department recommends implementation of a comprehensive program to install and maintain fish screens at the inventoried diversions. Although this program would affect less than six percent of the unscreened diversions in the state today, it would significantly benefit and protect Oregon's fishery resources for present and future generations.

The Department further recommends that it install and maintain (but not fund) the screening systems for all of the small diversions up to 30 CFS (about 2,950 projects). The diverter would fund the initial cost of the screen system and the state would provide funds for the Department to maintain those screens thereafter. The screen systems at diversions larger than 30 CFS (about 290 projects) would be built and maintained by the diverter, at diverter expense, to Department specifications. Diverter funding for fish screening costs for all size diversions is consistent with Oregon law (ORS 509.615; 498.256).

Public support for funding the construction of fish screening projects would also be provided through special low-interest loan and tax credit programs. These programs are currently available to diverters through the state and can ease the financial burden to most water users. Up to 90% of the projects would be eligible for some portion of the tax credit (50% of the first $10,000 of project costs). Those credits could total eight million dollars.

It would take about 10 years (five bienniums) to fully implement the program with the Department installing about 300 screens per year in priority order. The estimated cost to maintain those screens would be about three million dollars per year (in 1990 dollars) when program construction was complete in 10 years.
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1.0 INTRODUCTION

1.1 BACKGROUND

There are over 55,000 water development projects in Oregon that divert (remove) water from lakes and streams for agricultural, domestic, industrial, and municipal purposes. Water to drink, grow food, and produce power. Most of these projects are small, typically diverting less than one cubic foot of water per second (CFS) from the stream. Some projects, however, divert hundreds or even thousands of CFS. Characteristics of Oregon’s water diversions are illustrated in Figure 1 (page 2).

Water diversions come in many types and sizes and are used for many different purposes, but they all have one thing in common: the potential for significant adverse impacts to publicly owned fishery resources. When water is diverted, fish can also be diverted from the stream into dead end canals, on to fields or into pump intakes. Many of these fish which are owned, used, and enjoyed by the public, are destroyed.

With proper screening of the diversions however, the potential impacts to Oregon’s fishery resources can be reduced. Unfortunately, most diversions do not have fish screens installed. Only about 1,000 of Oregon’s 55,000 diversions (less than 2%) now have screens. While not all water diversions need fish screens, many more are needed throughout the state to adequately protect fishery resources.

What is a fish screen and how does it protect fish at diversions? A fish screen is simply a physical barrier with small holes in it, placed in the stream near the diversion intake. The screen allows water to flow into the diversion, but prevents fish from entering. When an adequate screening system is installed at a diversion, one public resource (water) can be used without loss of another (fish). Several different types and applications of fish screens and diversions are shown in Figures 2 and 3 (pages 3 and 4, respectively).

1.2 LEGISLATIVE REQUIREMENT

During testimony before the 1989 Oregon Legislature, conflicting information was presented concerning the number and types of fish screens needed around the state to adequately protect fish at water diversions. Concerns were also expressed regarding the financial impacts fish screening would have to water users.
Figure 1. Characteristics of Water Diversions in Oregon.

- **Number and Location**
  - Western Oregon: 40,046 (72.0%)
  - Eastern Oregon: 15,597 (28.0%)
  - Total Diversions: 55,645

- **Types of Use**
  - Irrigation: 62.0%
  - Domestic: 20.0%
  - Other: 18.0%

- **Size Distribution**
  - 1 CFS: 85.0%
  - 1-5 CFS: 11.0%
  - 5-25 CFS: 3.0%
  - >25 CFS: 1.0%
Figure 2. Unscreened Water Diversion and Several Examples of Self-Cleaning Fish Screens for Gravity and Pumped Diversions

Unscreened Gravity Diversion About 15 CFS (looking upstream - stream on left)

Rotating Drum Screen For Gravity Diversions From Two to 50 CFS (drum size varies)

Rotating Drum Screen For Pumped Diversions Up To 10 CFS (drum size varies)

Multiple Drum Screen Assembly For Gravity Diversions Up to 1000 CFS (this is 300 CFS)
Figure 3. Examples of Manually Cleaned Fish Screens for Gravity and Pumped Diversions

Left - Fixed Panel Shear Screen Assembly for Gravity Diversions up to Two CFS

Right - Fixed Panel Drum Screen Assemblies for Pumped Diversions up to 10 CFS

Bottom Right - Fixed Panel Infiltration Gallery for Gravity Diversions on Stream Bottom

Bottom Left - Fixed Panel Drum Screen for Gravity Diversions
These issues were addressed in Senate Bill 148, now referenced in ORS 498.256 (Appendix A, page 28) directing the Department of Fish and Wildlife (Department) to develop:

1. guidelines to determine the needs, priorities, and estimated costs for installing and maintaining fish screening projects at water diversions;

2. a prioritized listing of water diversions throughout the state needing fish screens, including cost estimates for those projects; and

3. A recommended implementation plan for installation and maintenance of the fish screening projects identified in the prioritized listing.

Senate Bill 148 directed the Department to complete the required work and report to the Joint Legislative Committee on Water Policy by December 31, 1990. That work has been completed and is reported in two separate volumes. Volume I of the report (this document) summarizes the results of all required work and also discusses the history and status of fish screening in Oregon. Volume II of the report contains the listing of individual diversions that require fish screening.

2.0 FISH SCREENING IN OREGON

2.1 HISTORY

The Oregon State Game Commission (OSGC), one of the Department's predecessor agencies, began building and installing fish screens in the late 1940's. The first fish screen shops were located in Central Point near Medford and in Enterprise in the northeast corner of the state. Later, shops were built in John Day and Corvallis. Fish screens built at these four shops were installed at diversions throughout Oregon in the 50's and 60's.

Consistent with laws at the time, the OSGC installed and maintained fish screens, at agency expense, for diversions of less than 30 CFS that affected game fish. They did this for diversions in all river basins with the exception of the John Day River basin. The need for screening was particularly extensive in that basin system but was beyond the financial means of the agency.

Due to fishery mitigation responsibilities associated with development of dams on the Columbia River system, the federal government paid for the screens in the John Day River basin. This OSGC screening program built and maintained nearly 500 screens in the basin between 1952 and 1957 with funds provided through what is now the National Marine Fisheries Service (NMFS).
From 1947 until merger with the Fish Commission of Oregon in 1975 to form the Oregon Department of Fish and Wildlife, the OSGC installed about 1,000 fish screens around the state. About half of these were built in the John Day basin using federal funds and the other half were built elsewhere in the state with OSGC agency funds. By the time of merger, however, two of the four screen shops had been closed and many of the aging agency funded screens had been abandoned because of financial limitations.

2.2 CURRENT STATUS

There are presently fewer than 1,000 fish screening projects operating throughout the state although there are over 55,000 surface water diversions that potentially impact fish. About three-quarters of those projects have been developed by the Department. Many more screening projects are needed to adequately protect Oregon’s fishery resources.

Most of the Department’s fish screens have been developed through one of two screening programs. The largest program is in John Day which builds and maintains screens for streams in northeast Oregon. The other program is near Medford and primarily serves screening needs for the Rogue River system.

The northeast Oregon screening program currently maintains 550 fish screens in the John Day, Walla Walla, Umatilla, Grande Ronde, Wallowa, and Imnaha river drainages on diversions that impact juvenile salmon and steelhead. This screening program is fully funded by the federal government through NMFS to mitigate for hydropower development of the Columbia River. The program has an annual budget of $575,000 and is staffed with the equivalent of 11 full-time positions. The construction phase of the program is nearing completion but up to 20 new screens per year are still being built.

In southwest Oregon, the Department has a small screening program which maintains about 100 fish screens in the Rogue River system on diversions that affect juvenile salmon and steelhead. This program is funded by the Department with (1) state angler license revenues (30%), (2) state General Funds (30%), and (3) federal monies from taxes on fishing equipment (40%). The total annual budget for this program is $100,000 and is staffed with the equivalent of 2 full-time positions.

The Department has developed about 60 fish screens in the Deschutes River drainage for the protection of juvenile summer steelhead. About 40 of these screens were paid for by Bonneville Power Administration (BPA). The other 20 screens were funded through NMFS. These screens are maintained by the Department through existing habitat restoration programs.

The Department has about 40 other fish screens throughout the state at Department facilities such as fish hatcheries and
wildlife management areas. These screens have been paid for and are maintained with Department funds within existing programs.

The Department estimates about 200 fish screens have been built and maintained by others around the state. This includes those built by irrigation districts, municipalities, PUD's, federal agencies, and individuals at diversions used for many purposes including hydro-power production.

Much concern has been expressed for potential fish losses at diversions used for hydro-power production. Most of this was due to the large number of applications to develop hydro projects around the state that were forthcoming in the early 80's (very few of those proposed projects were subsequently built, however).

As a result of the concern for hydro diversions, additional fish protection legislation was enacted several years ago with very strict standards (ORS 543.017; 543.265; 469.371; in Appendix A, page 28). These new laws, however, only apply to the relatively small number of diversions used for hydro-power purposes (less than one half of one per cent of the total number of diversions state-wide).

With a few notable exceptions, the current need for fish screening protection at hydro diversions is not as great, or as serious a problem, as those at non-hydro diversions. Nearly all hydro diversions have fish screens installed that meet agency specifications. State and federal hydro licensing processes address and enforce strict fish screening protection at diversions used for these purposes.

From a state-wide perspective (excluding the Columbia River system), Oregon's fishery resources have suffered more, and are at a far greater risk today from diversions that are used for purposes other than hydro.

The majority of fish screens that have been installed and maintained in Oregon have been paid for with federal funds. There is some question as to whether this will continue, however, due to the interpretation of state fish screening laws by the federal agencies.

Oregon's fish screening statutes clearly require the diverter to provide and maintain fish screens (at diverter expense) at water diversions to prevent fish from entering the diversion (ORS 509.615; 498.248; Appendix A, page 28). They do not, however, specifically preclude the diverter from using other fund sources, if available, to provide the fish screen.

One year ago BPA notified the Department it would stop funding construction of screening projects in Oregon, citing diverter responsibility as the reason. BPA did, however, agree to continue to fund the maintenance of the 40 screens which they originally paid to have constructed.
NMFS has expressed a desire to stop funding the Department's northeast screening program. They have limited funds in the program which provides the revenues for screening and other activities in the Columbia system. NMFS indicates that any money saved on screening would stay in the program and would be available for other activities such as hatchery restoration.

Most of the fish screens that are in use today throughout Oregon have been installed on diversions that impact salmon and steelhead, particularly on streams that are tributary to the Columbia River. Generally, fish screening protection for resident game fish species such as trout has not received adequate attention.

This is also true for salmon and steelhead in streams outside of the Columbia and Rogue river systems and for non-game species that are classified as "Threatened" or "Endangered" on special species listings maintained by the state and federal governments. These administrative listings identify fish species that are in various degrees of trouble, some critically.

The current status of fish screening in Oregon today can be summed up as follows:

1. There are fewer than 1,000 fish screens in place throughout the state and many more are needed.

2. The Department has built and maintains about 750 of the fish screens that are in place.

3. Most of the fish screens that are in place today, are for the protection of juvenile salmon and steelhead at irrigation diversions in the Columbia and Rogue river systems.

4. Fish screening protection for resident trout state-wide and for salmon and steelhead outside of the Columbia and Rogue systems has not been adequately addressed.

5. There are more fish screening needs today and resource threat from water diversions that are used for purposes other than hydro power production.

6. The Department spends $750,000 per year on fish screening activities. The source of those funds are: NMFS-$575,000; federal angler taxes (USFWS)-$75,000; hydro fund-$40,000; state General Funds-$30,000; state angler licenses-$30,000.

7. The Department uses the equivalent of 15 full-time positions related to screening activities, primarily for screen maintenance.

8. Most of the fish screens that are in place have been built and maintained with federal money. Continued federal funding for maintaining these projects is questionable, however.
2.3 COMPARISON WITH OTHER STATES

Washington

Washington has maintained a small but active fish screening program since the late 1940's which constructed about 350 screens. Today, Washington maintains about 200 screens for diversions mostly in eastern Washington.

Although Washington has laws similar to Oregon requiring diverters to provide and maintain fish screens, in practice the state has generally provided most of the funds to construct and maintain the projects. In recent years, however, Washington has entered into agreements with individual diverters and has provided screen maintenance on a cost reimbursement basis.

Washington has also used federal monies for screening projects at diversions on Columbia River tributaries, but not to the extent Oregon has. Washington's annual screening budget is about $200,000 (plus the maintenance monies from diverter contracts) and is staffed with the equivalent of 6 full time positions.

Idaho

Unlike Oregon and Washington, Idaho has no laws requiring diverters to provide fish screens at water diversions. Instead, the Idaho Fish and Game Department is authorized to build and maintain screens on gravity diversions of 125 CFS or less.

Idaho began fish screening in 1956 with federal money from NMFS and has built about 240 screens in the Salmon River drainage. NMFS provides Idaho about $400,000 annually to maintain existing fish screens and build four or five new ones each year. The Department has built about 10 screens with state funds.

2.4 FISH LOSS AT UNSCREENED DIVERSSIONS

2.4.1 General Concerns

When water is diverted from unscreened rivers and streams, fish can be diverted it into dead end canals, and on to fields or into pump intakes. The precise number of fish lost from all unscreened diversions throughout the state is unknown. The total fish loss, however, is very substantial based upon the results of fish trapping and salvaging efforts at many diversions around the state (see Section 2.4.2. for examples of documented losses).

In addition to the physical loss of fish, unscreened diversions can cause or exacerbate other problems dealing with such factors as fish health, resource management goals, "listed species", instream flows, and fish passage.
Fish Health

In some water bodies, particularly where fish populations have become reduced, genetic diversity that contributes to maintaining healthy and vigorous wild populations of fish may be at risk.

Native fish populations have evolved over thousands of years and are adapted to specific habitat and environmental conditions at particular sites. Once genetic diversity is lost, it is gone forever. This fact is just beginning to be fully understood and appreciated. Additional fish saved by screening can help maintain genetic diversity in wild, self-sustaining stocks of fish and aid in keeping populations healthy.

Resource Management Goals

Losses of fish at unscreened diversions adversely affects the Department's resource management goals. The Department establishes quantifiable production goals for specific fish species in each water basin. It is necessary for all aspects of habitat protection, including fish screening, to function successfully to meet our fishery management goals.

Fish screening is a necessary aspect of a complete habitat protection program which complements other elements such as instream water rights, restoration and enhancement, fill and removal activities, and even the Forest Practices Act.

Species in Trouble

Fish losses at unscreened diversions have additional impacts on species that are in trouble, some critically. Currently, there are seven fish species listed by the Department as "Threaten" or "Endangered" pursuant to statute. Another 30 species are on the "Sensitive" list, including 16 in the "Critical" sub-category. It is expected that seven or eight of the "Critical Sensitive" species will move to the "Threatened" list sometime in 1991.

It is imperative that further population declines of listed species be minimized. Fish screening will help reduce further losses of populations currently in trouble, and that one day could possibly be in danger of extinction. About one-quarter of the diversions that have been identified as needing screening affect species presently classified as "Threatened", "Endangered", or "Sensitive".

Instream Flows

Many unscreened diversions are unregulated at the point where water is diverted from the stream. This means there is no way to control or limit the amount of water entering the diversion.
Flow into the diversion changes as the water level in the source stream changes. It is not uncommon for diversions with unregulated intakes to exceed the amount of water allowed in the water right.

The removal of "extra" water from the stream can adversely impact fish in the stream below the point of diversion. Many of the new screening systems, however, have means to control the flow to the screen to make them work properly. This can keep the extra water out of the diversion and in the stream where it will be available for fish and other beneficial uses downstream of the diversion.

Fish Passage

At some unscreened diversions with unregulated intakes, diverters construct gravel berms across the entire stream. These act as temporary dams to impound water so it will enter the diversion intakes. These gravel berms create barriers that block fish that may need to move up or down the stream to spawn or migrate. Many screen systems have means to control flow which allows diversion intakes to be set lower in the streambed. This can eliminate the need for gravel berms that act as migrational barriers.

Typical Problem

A small irrigation diversion in eastern Oregon which impacts resident trout is shown in Figure 4. This photo illustrates several of the typical problems associated with these types of projects. The problems here include an unscreened and unregulated diversion intake with a diversion fill (in this case unauthorized) that creates a fish passage barrier.

2.4.2 Specific Examples

East Fork Hood River

The East Fork of Hood River has a large irrigation diversion that has been unscreened since 1962. This single diversion removes about 130 CFS from the river for about six months of the year. In some years the entire river’s flow is diverted into the canal. This diversion annually destroys thousands of migratory winter steelhead, chinook and coho salmon, and resident rainbow and cutthroat trout.

The Department, with assistance from local sportman’s groups, annually salvages fish from small sections of the canal. This can only occur after the water has been shut off in the fall however, long after the peak out migration of fish has past. Even so, over 6,000 juvenile coho and chinook salmon, steelhead and other salmonids have been recovered and returned to the river in recent years.
FIGURE 4. Small Unscreened Water Diversion on Ochoco Creek near Prineville in Eastern Oregon

* Orientation - Looking downstream - Gravel berm impounds water for diversion on right - Balance of stream below berm

* Size - One cubic feet per second (1 CFS) of water diverted

* Problems - Unscreened diversion - Fish may end up in field
- Unregulated intake - Exceeds water right at times
- Diversion fill - Creates barrier for fish movement

* Solution - Install shear screen assembly - see Figure 2

* Maintenance - Inspected and cleaned once or twice per week

* Cost - $1,500 installed by Department of Fish and Wildlife
Fish salvaged at the end of the irrigation season represent only a small portion of the total loss at this diversion each year. Fish are lost throughout the irrigation season. The irrigation district manager has had complaints from water users who pump from the canal about fish plugging up sprinkler nozzles.

Coho salmon from Hood River have recently been classified as "critical sensitive" due to their continual decline in numbers. Listing as "threatened" is pending if appropriate conservation actions (like fish screening) are not taken. The Department has spent a great deal of effort attempting to resolve the problem at this diversion and is frustrated by the continued loss of fish.

**John Day River**

As mentioned earlier, the Department has over 300 fish screens in the John Day basin. All the large tributaries and the main river have at least one trap box on a screen bypass to provide information on fish size and time of migration. Trap catches can also provide an indication of how many fish are "saved" by having the screens in operation. These fish would have ended up in a field if the screens were not in place. In a normal year, 29 traps are operated for monitoring purposes.

The Department has monitored juvenile summer steelhead catches at the 29 traps continually since 1964 (Table 1, page 14). The total annual catch has averaged nearly 20,000 fish and has been as high as 82,000 fish. The total steelhead caught by the traps (through 1990) for all years combined is 535,000 fish.

These trap catches illustrate that significant numbers of fish can be saved by having fish screens installed. However, they also point out an alarming trend (and one that is happening to many of our fishery resources elsewhere). Over time, the number of fish has been steadily declining.

For the first five years, the average annual trap catch (1964-1968) was about 50,000 fish. The last five year average catch (1986-1990) was only 11,000 fish. That is nearly an 80 per cent reduction in the number of fish produced in the basin. This also points out that each fish saved by a screen is a significant contribution to the fishery resources of the basin.

The long term decline in fish production in the John Day River system is not attributable to any single factor, even main-stem Columbia River dams. It is, however, indicative of a general overall decline in habitat quality and quantity.

Small incremental losses of many habitat factors add up over time. It illustrates the need to start plugging the gaps in habitat protection wherever we can to stop downward trends in production. Fish screening can significantly help alleviate some of these losses.
Deschutes River

The Department has installed ten small rotary drum screens (see Figure 2, page 3) at diversions on Trout Creek in the Deschutes basin. This was done as part of a BPA funded habitat restoration program. In 1988 Department staff trapped fish from two of the ten screen bypasses during the active spring migration period. Over 13,000 juvenile steelhead were collected from two of the traps. This not only illustrates that significant numbers of fish can be saved with effective fish screening but it also demonstrates the need for fish screening to be a key element of any habitat program. Does it make much sense to produce wild fish (sometimes at considerable expense) and then run them down a ditch and out into a field?
3.0 FISH SCREENING NEEDS AND PRIORITIES

3.1 GUIDELINES

3.1.1 Determining Screening Needs

Department staff reviewed existing Oregon law for statutory guidance in developing criteria for determining when a fish screen would be required at a water diversion. Two statutes specifically address fish screening at diversions (ORS 509.615 & 498.248; Appendix A, page 28).

The two fish protection statutes are nearly identical and require a diverter to provide a screen to prevent fish from leaving the stream and entering the diversion. ORS 509.615 references fish generally and ORS 498.248 refers to game fish.

The Department agrees that screens should be required at diversions when fish are present, with a few exceptions. For instance, at some sites screening may not be technically or economically feasible and mitigation in another form may be more appropriate. Alternative forms of mitigation are authorized by ORS 498.262 (Appendix A, page 28).

In some cases, screening should not be required at all. For instance, some species of abundant non-game fish that are not native to Oregon compete with more desirable indigenous game species. These introduced species do not need screening protection.

The Department developed a simple test to determine when fish screening is required at a water diversion by answering the following questions:

1. Are fish present at the diversion site?
2. If fish are present, are they game or non-game species?
3. If there are only non-game fish species present, are they classified as "Threatened", "Endangered", or "Sensitive"?
4. Are there any special considerations?

Based upon the answers to the previous questions the Department will require a diverter to provide a fish screen at a water diversion when:

1. There are game fish present and there are no overriding special considerations; or
2. There are "Threatened", "Endangered", or "Sensitive" non-game fish species present.
The guidelines for determining when fish screening is required at a water diversion are shown in Figure 5 (page 17).

3.1.2 Determining Priority

After its been determined that a diversion needs a fish screen, its screening priority relative to other diversions around the state needs to be established. The Department had to devise a method to rank and compare diversions that come in many different shapes and sizes and that impact different species of fish with various biological and behavioral characteristics.

The Department developed eight biological, physical, habitat, and administrative criteria to be evaluated at each diversion where a screen is needed to determine its relative screening priority. Points are assigned to each criteria and totaled for each diversion. The range of points possible for a diversion is 14 to 100, with a higher priority diversion having more points.

In this way, every diversion in the state requiring a screen can be evaluated and compared with other diversions throughout the state using the same criteria. The evaluation criteria used to determine screening priorities is presented in Table 2 (page 18).

3.1.3 Costs For Installation and Maintenance

To develop guidelines to determine the costs of installation and maintenance of fish screening projects, the Department reviewed records of projects built in Oregon during the last five years. This review included projects built by the Department through its own screening programs as well of those built by the federal government, and several in the private sector. Costs were generally comparable for similar type projects and conditions.

Screening costs may vary widely however, depending upon the size of the project, condition of existing structure (if any), type and period of use of the diversion, and level or standard of fish protection required. For example, the very smallest pump projects may simply require a $10 check valve for the pump intake (which includes a small screen assembly), while several of the very largest, most complex projects may cost up to six million dollars.

The Department divided projects into size classes and determined what the normal range of costs has been for each one under many different conditions. These are guidelines however, and it is possible that any individual project could cost more or less than indicated. A precise cost estimate can only be determined after a detailed analysis of the site has been made.
Figure 5. Guidelines Used to Determine When Fish Screening is Required at Water Diversions in Oregon.

Are fish present at the diversion site?

- No
  - Habitat potential for fish?
    - No
      - Periodic reconsideration
    - Yes
  - Yes
    - Type of fish
      - Non-game fish
      - Game fish

Threatened, endangered, or sensitive species?

- No
  - Special considerations?
    - Yes
      - Fish screen required
    - No
  - Screening priority determined by an analysis of administrative, biological, and diversion site considerations
- Yes
  - Fish screen required
Table 2. Evaluation Criteria to Determine Screening Priority at Water Diversions.

<table>
<thead>
<tr>
<th>CATEGORY</th>
<th>FACTOR</th>
<th>RESPONSE</th>
<th>POINTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biological</td>
<td>Species Status</td>
<td>Threatened</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Endangered</td>
<td>50</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sensitive</td>
<td>25</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Wild</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Hatchery</td>
<td>2</td>
</tr>
<tr>
<td>Biological</td>
<td>Fish Numbers</td>
<td>High</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Moderate</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low</td>
<td>2</td>
</tr>
<tr>
<td>Biological</td>
<td>Fish Migration</td>
<td>Yes</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>2</td>
</tr>
<tr>
<td>Physical</td>
<td>Diversion Size</td>
<td>&gt;5 CFS</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td>1-5 CFS</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>&lt;1 CFS</td>
<td>2</td>
</tr>
<tr>
<td>Physical</td>
<td>% Flow Diverted</td>
<td>High</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Moderate</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low</td>
<td>2</td>
</tr>
<tr>
<td>Habitat</td>
<td>Habitat Quality</td>
<td>High</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Moderate</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low</td>
<td>2</td>
</tr>
<tr>
<td>Administrative</td>
<td>Plan Reference</td>
<td>Yes</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>No</td>
<td>0</td>
</tr>
<tr>
<td>Administrative</td>
<td>District Priority</td>
<td>High</td>
<td>6</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Moderate</td>
<td>4</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Low</td>
<td>2</td>
</tr>
</tbody>
</table>

Note: Diversion screening priority is the sum of points from one response for each rating factor.

- Total point range for each diversion is 14-100
These cost estimates can be used as a guide for initial planning purposes. These estimates have a wide range to reflect the many potential differences in project requirements. Large projects tend to cost more per unit of water diverted than small projects. Large diversions require unique project designs that need more detailed site evaluations as opposed to standard designs that are commonly used for small diversions.

Large projects also require evaluation and testing after they are built. There are also increased costs associated with additional project administration and management relative to the design, construction and evaluation of the large project.

The Department's experience has been that the annual maintenance costs of a project are approximately five to fifteen per cent of the initial cost to construct the project. However, as with initial project costs, these are guidelines and can vary, dependent upon the particulars of an individual project. The Department's guidelines for estimated fish screening and maintenance costs are presented in Table 3.

<table>
<thead>
<tr>
<th>Diversion Size (CFS)</th>
<th>Screen Class</th>
<th>$/CFS Diverted (In 1,000)</th>
<th>Total Cost ($ In 1,000)</th>
</tr>
</thead>
<tbody>
<tr>
<td>&lt;1</td>
<td>9</td>
<td>.01-1.0</td>
<td>.01-1</td>
</tr>
<tr>
<td>1-5</td>
<td>8</td>
<td>1.0-1.5</td>
<td>1-8</td>
</tr>
<tr>
<td>5-10</td>
<td>7</td>
<td>1.0-1.5</td>
<td>5-15</td>
</tr>
<tr>
<td>10-25</td>
<td>6</td>
<td>1.0-2.0</td>
<td>10-50</td>
</tr>
<tr>
<td>25-50</td>
<td>5</td>
<td>1.0-2.0</td>
<td>25-100</td>
</tr>
<tr>
<td>50-100</td>
<td>4</td>
<td>1.5-3.0</td>
<td>75-300</td>
</tr>
<tr>
<td>100-500</td>
<td>3</td>
<td>2.5-4.0</td>
<td>250-2,000</td>
</tr>
<tr>
<td>500-1,000</td>
<td>2</td>
<td>3.0-4.0</td>
<td>1,500-4,000</td>
</tr>
<tr>
<td>&gt;1,000</td>
<td>1</td>
<td>3.0-6.0</td>
<td>3,000-6,000</td>
</tr>
</tbody>
</table>

**Maintenance Costs**

Annual maintenance cost is five to fifteen percent of the initial project construction costs, dependent upon screen type and diversion size.
3.2 PRIORITY LISTING OF SCREENING PROJECTS

3.2.1 Procedure for Developing

The Department determined there were over 55,000 certificated surface water diversions in the state which could potentially have adverse impacts to fishery resources. Information about each of those diversions was compiled on the computer database, WRIS (Water Right Information System), developed by the Oregon Water Resources Department, and was available for use by the Department.

The Department developed a plan, utilizing WRIS, to have its 22 District Fishery Biologists (DB’s) evaluate the water diversions in each district for screening needs, utilizing the same criteria. The detailed procedure for evaluating the water diversions and developing the priority listing of needed screening projects is included with the listings in Volume II of the report, but the general plan was as follows:

1. Develop a listing of water diversions in each of the Department’s 22 fishery districts throughout the state using the WRIS database. Information provided for each diversion included such things as location, size, and type of use.

2. Have the DB’s evaluate as many diversions as possible in each district, in a prescribed order by the reporting deadline to determine if a screen was required (Figure 5, page 17). Additional evaluations, if any, would be completed at a later date and added to the listing of needed projects.

3. At diversions where screens were needed, evaluate biological, physical, habitat, and administrative rating factors to determine the relative screening priority compared to other diversions around the state (Table 2, page 18).

4. Compile all the water diversion evaluation information for those diversions needing screens into a computer database and assign points for each rating factor (Table 2, page 18).

5. Develop the prioritized listing of water diversions that need fish screens, by arranging the diversions in descending order, by point total of the rating factors.

6. Assign estimated screening costs to each diversion by the amount of water diverted (Table 3, page 19).

3.2.2 Results and Discussion

The Department reviewed over 55,000 water diversions throughout the state to determine fish screening needs and priorities. Based upon that review, the Department identified and prioritized 3,240 diversions throughout the state requiring fish screening.
If these screens are provided, they will provide a significant benefit to Oregon’s fishery resources and complement other habitat programs where considerable dollars and effort have been invested. These 3,240 diversions, however, represent less than six per cent of all diversions in the state.

The prioritized listing of individual diversions needing fish screens installed is contained in Volume II of the report (under separate cover). Each individual diversion listed contains (1) information about the diversion (size, location, type of use, and fish species impacted), (2) the Department evaluations with screening priority points, and (3) the estimated cost to provide the screen.

The format for displaying the diversion listing information contained in Volume II is presented in Figure 6 on page 22 (this is the first page of the actual listing). The remainder of this document will refer to summary information regarding the individual diversion listings contained in Volume II.

Most of the diversions identified as needing fish screening are relatively small with about two-thirds of them diverting water at the rate of five CFS or less. Less than 10 per cent of diversions remove water from the stream at more than 30 CFS.

Of the diversions requiring screening, most of them impact wild self-sustaining stocks of fish (72%). The Department puts a high priority on managing and protecting fish in this classification. The remaining diversions primarily impact species that are classified as "Threatened", "Endangered", or "Sensitive" (26%). The Department puts a particularly high priority on protecting fish in these classifications.

Information related to the diversions requiring fish screens is illustrated in Figure 7 (page 23) and includes number, size distribution, and status of fish species affected.

The estimated cost to install fish screens at the individual diversions identified ranges from less than $10 to as much as $6,000,000. The majority of screening projects however (about 75%), would cost less than $10,000 each.

The estimated cost to screen all 3,240 diversions is about 140 million dollars, but over 90% of the projects could be built for approximately 22 million dollars. The 300 largest projects would cost about 118 million dollars to construct. Annual maintenance costs for each screening project ranges from five to fifteen percent of the installation cost (Table 3, page 19).

The Department recommends implementation of a comprehensive program to install and maintain fish screens at the diversions that have been identified. This program would affect less than six per cent of the diversions in the state today but would provide significant benefits for Oregon’s fishery resources.
Figure 7. Characteristics of Water Diversions Needing Fish Screens.

- Number:
  - No screens needed: 52,405 (94.2%)
  - Screens required: 3,240 (5.8%)

- Size Distribution:
  - <1 CFS: 27.0%
  - 1-5 CFS: 39.0%
  - 5-25 CFS: 26.0%

- Status of Fish:
  - Wild: 72.0%
  - Hatchery: 2.0%
  - T&E: 8.0%
  - Sensitive: 8.0%
3.3 SCREENING IMPLEMENTATION PLAN

3.3.1. Background

The Department was directed to develop an implementation plan for the installation and maintenance of fish screening projects at the identified diversions. Existing screening laws and regulations guided the plans development and helped define basic program responsibilities and support. Some deviation from strict statutory direction was necessary, however, to help ensure the program would be successful and efficient.

The Department’s plan identifies program needs and responsibilities and defines the relationships between the Department, diverters, and the public. Specifically, the plan defines (1) program goals and objectives, (2) funding responsibilities, (3) how projects should be built and maintained, and (4) Department staffing and funding needs.

3.3.2. Proposed Screening Program

Goals and Objectives

A comprehensive state-wide fish screening program is a necessary element of habitat protection. An effective screening program will provide significant benefits for Oregon’s fishery resources for present and future generations. The goal of the screening program is to install effective fish screens at all of the water diversions that have been identified.

This screening program will take a long term commitment and will require many years to fully implement. The objective of the screening program is to install all of the required screens, in priority order, within 10 years.

Construction and Maintenance of Projects

The Department recommends that it construct and maintain (but not fund) the screening systems for all small diversions up to 30 CFS (excluding hydro diversions). These small projects represent over 90% of the identified diversions needing screening throughout the state. The Department further recommends the screening systems for large diversions over 30 CFS (and all hydro diversions) be built and maintained by the diverter to Department standards (about 10% of the projects).

The Department considered a number of issues when determining who should be responsible for maintaining small screening systems (issues like the frequent cleaning and maintenance requirements, and the trapping, hauling and counting of fish sometimes required). In terms of efficiency and to ensure that all systems are maintained and operated properly throughout the state, Department personnel should install and maintain the small fish screening systems up to 30 CFS.
The Department does not want to be responsible for the construction and maintenance of screening systems for large diversions over 30 CFS because (1) each project tends to be different and relatively complex, (2) it would require a much larger Department infrastructure to design, construct, evaluate, and maintain these projects, (3) the potential liability considerations associated with major projects, and (4) diverters with these size projects are more likely to have the desire and capability to build and maintain these facilities themselves.

Funding Responsibilities

The Department recommends diverters fund the costs of fish screening systems at water diversions, with some assistance from the state (diverter funding for fish screening is consistent with Oregon Statutes - ORS 509.615; 498.248; Appendix A, page 28). Partial public funding support for fish screening is justified and will accomplish several things. It will recognize and support public benefits that are derived from water development projects and will help ensure that the program is successful.

Public funding support for fish screening would be provided in two forms. The first would assist diverters with the costs of funding the installation of the screening system. This would be accomplished by diverter utilization of existing tax credit and low interest loan programs that are now available through the State. These programs can greatly ease the financial burden to most diverters.

The second form of public support for fish screening would be with maintenance of the screening systems. The Department recommends the state provide funds to the Department to carry out the necessary maintenance of all screening systems on diversions up to 30 CFS (with the exception of hydro diversions). The Department staffing and funding requirements for maintenance of these projects is discussed later.

Project Tax Credits

The tax credit currently available to a diverter for providing a fish screening system is equal to 50% of the cost of the project with some limitations. The funds for the project can not be provided from the Water Development Fund (low interest loan program) nor can the diversion be used for a hydroelectric project that is licensed by the federal government.

The cost of the screening system has to be certified by the Department and the maximum tax credit allowed is $5,000 (50% of the first $10,000 of project cost). Details of the existing tax credit program are contained in Appendix B, page 29.
The Department believes that up to 90% of the diversions that require screening would be eligible for tax credits on some portion of project costs. The Department estimates that the total cost to build all the projects that are eligible for tax credit provisions, would be about 32 million dollars and the tax credits for those projects could be as high as 8 million dollars.

**Project Loan Program**

The state Water Development Fund is available to make long-term low interest loans for fish screening projects. This program is administered by the Water Resources Department and would probably be of interest to that group of diverters whose projects cost more than $10,000 to build. This group of projects account for nearly 25% of the identified diversions and would cost about 130 million dollars to build. Details of the loan program are contained in Appendix B, page 29.

**Department Staffing and Funding Needs**

The Department would provide administrative and technical support to the fish screening program and would eventually install and maintain about 90% of the screening projects that have been identified (all those for diversions up to 30 CFS excluding hydro). These Department screening activities would be funded with a combination of state and diverter funds as previously described. About 300 screens would need to be built each year to achieve the program implementation goal of 10 years.

The Department would need additional staff and funds to implement the screening that has been identified. Based upon the Department’s current fish screening activities and costs, it would take about $1,000 per year to maintain each new screen. It would require the equivalent of one full time position for the maintenance of every 50 screens installed (which is included in the $1,000 per year per screen maintenance cost).

It would take two new positions to administratively initiate the screening program and six additional positions per year to install and maintain the 300 new screens. When the program was fully implemented in 10 years it would require the equivalent of 60 full-time positions and cost about three million dollars annually (in 1990 dollars) to maintain the 3,000 screens.

Additional fish screening maintenance funds may be necessary from the state. The Department currently spends about $750,000 per year, and uses the equivalent of 15 full-time positions for fish screening activities. Most of these funds come from the federal government and are primarily used for the maintenance of 750 existing fish screens. If federal funding for the existing screening program is discontinued (as discussed in section 2.2), the Department would need an additional $600,000 annually for funding that portion of the program.
4.0 CONCLUSION

This report summarizes the results of work required by the Oregon legislature. It documents fish screening needs throughout the state and indicates the lack of screening is a serious problem. Unscreened diversions are destroying many thousands of wild fish annually. No one disagrees that water developments are necessary and provide many benefits for diverters and the general public. They should not, however, provide these benefits to the detriment of some of our most prized natural resources.

The problem of fish losses at unscreened diversions does not have to continue, however. There is a solution. Implementation of an effective state-wide screening program, as outlined in this report, will save significant numbers of fish and help insure healthy and abundant fishery resources for everyone's benefit. An effective screening program will be a sound investment in Oregon's future; one that will protect our valuable fishery resources, some in critical trouble, for present and future generations.
APPENDIX A

Laws Related to Fish Screening
469.330 Notice of intent to file application for site certificate; public notice. (1) Each applicant for a site certificate shall file with the council a notice of intent to file an application for a site certificate. The notice of intent must describe the proposed site and facility with sufficient detail to enable the council to identify the proposed site and understand its proposed use.

(2) The council shall cause public notice to be given whenever a notice of intent is filed and provide a description of the proposed site in sufficient detail to inform the public of its location.

469.340 Application for site certificate; comment and recommendation. (1) Applications for site certificates shall be made to the council on a form prescribed by the council and accompanied by the fee required by ORS 469.360. An application may be filed not sooner than 180 days after filing a notice of intent.

(2) Proposed use of a site within an area designated by the council pursuant to ORS 469.470 as suitable for location of a particular type of energy facility does not preclude the necessity of the applicant obtaining a site certificate for the specific site.

(3) Copies of the notice of intent and of the application shall be sent for comment and recommendation within specified deadlines established by the council to the Department of Environmental Quality, the Water Resources Commission, the State Fish and Wildlife Commission, the Health Divi-

469.371 Hydroelectric power projects; minimum standards; rules. (1) In order to carry out the policy set forth in ORS 543.015, the following minimum standards shall apply to any action of the Energy Facility Siting Council relating to the development of hydroelectric power projects in excess of 25 megawatts in Oregon:

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

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

(c) Except as provided in this paragraph, no activity may be approved that results in a net loss of wild game fish or recreational opportunities. If a proposed activity may result in a net loss of any of the above resources, the council may allow mitigation if the council finds the proposed mitigation in the project vicinity is acceptable. Proposed mitigation which may result in a wild game fish population or the fishery the wild game fish population provides, being converted to a hatchery dependent resource is not acceptable mitigation. A water dependent recreational opportunity must be mitigated by another water dependent recreational opportunity. Mitigation of water dependent recreational opportunities which, in the judgment of the council, are of state-wide significance with a recreational opportunity that is readily available on other waters of this state is not acceptable mitigation. In deciding whether mitigation is acceptable, the council shall consult with other local, state and federal agencies.
(d) Other natural resources in the project vicinity including water quality, wildlife, scenic and aesthetic values, historic, cultural and archaeological sites shall be maintained or enhanced. No activity may be approved which, in the judgment of the council, after balancing gains and losses to all affected natural resources, may result in a net loss of natural resources. In determining whether the proposed activity may result in a net loss of natural resources, the council may consider mitigation if the council determines the proposed mitigation in the project vicinity is acceptable. Mitigation may include appropriate measures considered necessary to meet the net loss standard. In determining whether mitigation is acceptable the council shall consult with appropriate state, federal and local agencies.

(2) The council shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the council relating to hydroelectric development shall comply with the standards as set forth in this section. In adopting rules under this subsection, the council shall consult with the Water Resources Commission in order to coordinate rules adopted under this section with rules adopted by the Water Resources Commission under ORS 543.017. [1985 c.569 §5]

469.372 Determination of impact of hydroelectric projects required; consolidated review. (1) Whenever the Energy Facility Siting Council receives an application for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council shall determine whether the impacts of the project would be cumulative with:

(a) Impacts of other proposed hydroelectric projects for which an application is pending before the council or before the Water Resources Commission under ORS 537.140 to 537.320 or 543.010 to 543.620; or

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

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

(3) If the council determines that pending applications or existing projects may have cumulative effects, the council shall conduct a consolidated review before issuing any site certificate for a hydroelectric project in the affected river basin. A consolidated review process shall be conducted as a contested case hearing under the applicable provisions of ORS 183.310 to 183.550 and shall include a study of the individual and cumulative effects of proposed hydroelectric projects for which applications are pending before the council or the Water Resources Commission and existing hydroelectric projects. In its final order on a site certificate, the council shall include its findings on cumulative impacts. The findings of the council under this section must be sufficient to support the council’s decision to issue or deny a site certificate.

(4) The council shall not issue a site certificate for any application for a project in the same river basin filed after the council begins a consolidated review contested case hearing until the council issues final findings on cumulative effects for all projects included in the consolidated review proceeding.

(5) At the request of an applicant for a site certificate for a hydroelectric project under ORS 469.320 to 469.440, the council may immediately upon receiving such application begin the consolidated review proceeding under subsection (3) of this section.

(6) The time limits for review of the applications provided by ORS 469.370 are not applicable to applications for site certificates subject to this section. [1985 c.569 §14; 1985 c.673 §196]

469.374 Rulemaking for consolidated review process. The Energy Facility Siting Council shall immediately initiate rulemaking proceedings according to the applicable provisions of ORS 183.310 to 183.550 to implement the consolidated review process under ORS 469.372. Before adoption of the rules, the council shall submit the rules to the Joint Legislative Committee on Water Policy for review and recommendation. [1985 c.569 §15]

WILDLIFE

496.012 Wildlife policy. It is the policy of the State of Oregon that wildlife shall be managed to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of wildlife management are:

(1) To maintain all species of wildlife at optimum levels and prevent the serious depletion of any indigenous species.

(2) To develop and manage the lands and waters of this state in a manner that will enhance the production and public enjoyment of wildlife.
(3) Subsection (1) of this section shall not apply to any applicant for a permit or license for a project producing 100 theoretical horsepower or less. [1985 c.674 §3]

496.830 Penalty fee. A person who fails to pay the fee required under section 4, chapter 674, Oregon Laws 1985, or the assessment under section 5, chapter 674, Oregon Laws 1985, or ORS 543.265 on the due date shall pay in addition to the assessed amount due, a penalty in the amount of one percent of the fee per month for the period that the fee is past due. The director may bring an action to collect an unpaid fee or assessment in the name of the State of Oregon in the Circuit Court of Marion County or the circuit court of the county in which the project is located. The director shall be entitled to recover all costs and attorney fees incurred in the legal action. [1985 c.674 §7]

496.835 Oregon Fish and Wildlife Hydroelectric Fund. (1) There is created within the State Treasury a revolving fund known as the Oregon Fish and Wildlife Hydroelectric Fund, separate and distinct from the General Fund. The moneys in this fund are continuously appropriated for use by the department in its activities related to hydroelectric projects including payment of necessary administrative expenses.

(2) The fund created by subsection (1) of this section shall consist of all moneys received under sections 4 and 5, chapter 674, Oregon Laws 1985, ORS 496.820, 496.825 and 543.265.

(3) Moneys in the fund may be invested as provided in ORS 293.701 to 293.776. Interest from any source derived from the investment of the moneys of the fund shall be credited to the fund. [1985 c.674 §8]

**FISHWAYS**

496.248 Department authorized to require installation of screening or by-pass devices on certain bodies of water; inspection. (1) Any person who diverts water from any body of water in this state in which game fish exist shall install, operate and maintain, at the expense of the person, all fish screening or by-pass devices that the department determines necessary to prevent fish from leaving the body of water and entering the diversion.

(2) Upon failure of any person to install, operate and maintain fish screening or by-pass devices as required under subsection (1) of this section, the department may install, operate and maintain, at the expense of the responsible person, fish screening or by-pass devices necessary to prevent fish from leaving the body of water and entering the diversion.

(3) The department shall have the right of ingress and egress to and from those places where the department determines that fish screening or by-pass devices are required, doing no unnecessary injury to the property of the landowner, for the purpose of installing, maintaining and replacing such fish screening and by-pass devices, and, if installed by a person under subsection (1) of this section, to determine if such fish screening or by-pass devices meet department requirements. The department may order a person responsible under subsection (1) of this section to repair or replace fish screening or by-pass devices found to be noncomplying, at the expense of the responsible person.

(4) If the department considers the installation, operation, maintenance, repair or replacement of fish screening or by-pass devices under subsections (1) to (3) of this section necessary, the department shall notify by certified mail the person who diverts water of the action the person is required to take. The person may request a hearing before the State Fish and Wildlife Commission according to provisions of ORS 183.810 to 183.850.

(5) No person shall interfere with, tamper with, damage, destroy or remove any fish screening or by-pass device installed pursuant to this section.

(6) The department may maintain an action to recover any costs the department incurs in installing, maintaining or replacing fish screening or by-pass devices on behalf of a person responsible under subsection (1) of this section. Such action shall be brought in the district or circuit court for the county in which the fish screening or by-pass devices are located.

(7) As used in this section:

(a) “By-pass device” means any pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted.

(b) “Department” means the State Department of Fish and Wildlife.

(c) “Person” means any person, partnership, corporation, association, municipal corporation, political subdivision or governmental agency.

(d) “Screening” means a screen, grating or other barrier and related improvements or measures necessary to insure efficient operation of the screening device, to prevent the passage of fish from a body of water into a diversion. [1973 c.723 §96; 1987 c.488 §1]
(3) To permit an orderly and equitable utilization of available wildlife.
(4) To develop and maintain public access to the lands and waters of the state and the wildlife resources thereon.
(5) To regulate wildlife populations and the public enjoyment of wildlife in a manner that is compatible with primary uses of the lands and waters of the state and provides optimum public recreational benefits. [1973 c.723 §6]

496.015 [Amended by 1959 c.578 §1; repealed by 1973 c.723 §130]

SALMON AND TROUT ENHANCEMENT

496.430 “Native stocks” defined. As used in ORS 496.435 to 496.455, “native stocks” means those anadromous fish that naturally propagate in a given watershed. [1981 c.317 §2]

496.435 Policy to restore native stocks. Consistent with other provisions of law, it is declared to be a goal of the people of the State of Oregon to restore native stocks of salmon and trout to their historic levels of abundance. In order to achieve this goal in a cost-effective manner, the State of Oregon shall engage in a program to rehabilitate and improve natural habitat and native stocks and insure that the level of harvest does not exceed the capacity of stocks to reproduce themselves. [1981 c.317 §3]

496.440 Enhancement program to be conducted by commission; objective. A salmon and trout enhancement program shall be conducted by the commission to benefit all users of the salmon and trout resources in this state. The program shall be conducted in such manner as to provide the greatest possible opportunity for citizen volunteer participation to achieve the goals of the program. [1981 c.317 §4]

496.445 Duties of commission. In carrying out the salmon and trout enhancement program, the commission shall:
(1) Provide appropriate department personnel to act as community advisors to cooperatively develop enhancement projects with citizen volunteers and to cooperatively evaluate enhancement projects with the citizens responsible for project implementation.
(2) Provide technical assistance to citizens responsible for implementation of enhancement projects.
(3) Coordinate the implementation of enhancement projects with the activities of department staff and other agencies.
(4) Provide educational and informational materials to promote public awareness and involvement in the salmon and trout enhancement program.
(5) Supervise the activities of citizens developing local brood stock for enhancement projects.
(6) Grant funds to citizens for the implementation of approved enhancement projects from such moneys as may be available to the commission therefor. [1981 c.317 §5]

PERMIT FOR WATER FOR HYDROELECTRIC PURPOSES

496.815 Definitions for ORS 496.815 to 496.825. As used in ORS 496.815 to 496.825:
(1) “Department” means the State Department of Fish and Wildlife.
(2) “Director” means the State Fish and Wildlife Director.
(3) “Person” means an individual, corporation, association, firm, partnership, joint stock company, municipal corporations and all other political subdivisions of the State of Oregon. The Federal Government or any of its agencies are specifically excluded. [1985 c.674 §1]

496.820 Permit or license fee. (1) Any person applying for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.250 or any person applying for a preliminary permit or license under ORS 543.010 to 543.620 shall pay an administration fee of $350 to the State Department of Fish and Wildlife.
(2) If a person pays the administration fee under subsection (1) of this section at the time the person applies for a preliminary permit under ORS 543.210, the person shall not also be required to pay the fee when applying for a license for the same project under ORS 543.010 to 543.620. [1985 c.674 §2]

496.825 Application fee; exception. (1) In addition to any other fee required by law, at the time the person applies to the Water Resources Department for a license to operate a hydroelectric project under ORS 543.010 to 543.620 or for a permit to appropriate water for hydroelectric purposes under ORS 537.150 to 537.230, the person shall pay to the director an application fee the amount of which shall be the greater of:
(a) $1,000; or
(b) Thirty-five cents for each kilowatt of proposed capacity of the project.
(2) The director shall postpone the payment of the fee under subsection (1) of this section for a permit to appropriate water under ORS 537.150 to 537.230 until the person submits final plans and specifications for the project to the Water Resources Department under ORS 537.150.
498.252 Date for installing screens on nonhydroelectric-related gravity-fed diversions. No person shall be required to install for any nonhydroelectric-related gravity-fed diversion of less than 30 cubic feet per second, a fish screening or by-pass device as described in ORS 498.248 or 509.615 before July 1, 1991. [1989 c.933 §]

Note: 498.252 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

498.254 [1973 c.723 $99; repealed by 1987 c.488 §]
498.255 [Amended by 1957 c.253 §; repealed by 1959 c.352 §]
498.256 Department guidelines for screening and by-pass projects; expenditure of funds. (1) The State Department of Fish and Wildlife shall establish guidelines to determine the need for and location of potential fish screening and by-pass projects. The guidelines shall include a plan to be used for determining priorities for and expected costs of installing and maintaining the fish screening and by-pass devices.

(2) Nothing in subsection (1) of this section and ORS 498.252 is intended to prevent the State Department of Fish and Wildlife from expending federal or other funds if such funds become available for the installation and maintenance of fish screening and by-pass projects. [1989 c.933 §§6, 7]

Note: 498.256 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 498 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 8, chapter 933, Oregon Laws 1989, provides:

Sec. 8. On or before January 1, 1991, the State Department of Fish and Wildlife shall report to the appropriate legislative review agency on the guidelines adopted under section 6 of this Act [498.256] and shall include its recommendations for implementation of a plan for installation and maintenance of fish screening and by-pass devices, including a priority listing of screening projects and actual costs. [1989 c.933 §]

498.262 Exemption from screening or by-pass devices. ORS 498.248 does not require the installation of fish screening or by-pass devices in those water diversions for which the commission, by contract or other form of agreement with the person diverting the water, has made such other provision as the commission determines is adequate for the protection of the game fish in the body of water from which water is being diverted. [1973 c.723 §100; 1987 c.488 §]

498.265 [Repealed by 1955 c.190 §]

498.268 Fishway required for artificial obstruction across body of water. (1) Except as otherwise provided by law, no person shall construct, operate or maintain any dam or artificial obstruction across any body of water in this state in which game fish exist unless the person provides a fishway in such location and of such design as the State Fish and Wildlife Commission determines will provide adequate upstream and downstream passage for fish at the dam or obstruction.

(2) If the State Fish and Wildlife Commission determines that a fishway required by subsection (1) of this section does not provide adequate passage for fish, the State Fish and Wildlife Commission shall so notify the person who constructed or who operates or maintains the dam or obstruction. The notice shall also specify the manner in which the fishway is inadequate, and shall require the person who constructed or who operates or maintains the dam or obstruction to make appropriate alterations, specifying a reasonable time for the completion thereof.

(3) A person required to alter a fishway pursuant to subsection (2) of this section may file with the Water Resources Commission a protest against the alteration requirements on the grounds that such alterations are not in the public interest. A person who protests pursuant to this subsection must file the protest with the Water Resources Commission not later than the 10th day after the date of the notice of alteration requirements from the State Fish and Wildlife Commission.

(4) Within a reasonable time after receiving a protest, the Water Resources Commission shall give notice to the protestant and the State Fish and Wildlife Commission and hold a hearing to determine whether the fishway alterations are in the public interest. In making the determination, the Water Resources Commission shall approve, disapprove or approve with modifications the fishway alterations required by the State Fish and Wildlife Commission. In making the determination, the Water Resources Commission shall consider the state water resources policy and the considerations set forth in ORS 536.310.

(5) If the person required by this section to make alterations to a fishway fails to make the alterations in the manner and within the time required by the State Fish and Wildlife Commission or the Water Resources Commission, as the case may be, the State Fish and Wildlife Commission may remove the dam or obstruction, or any parts thereof.

(6) No person who has constructed or who operates or maintains a dam or artificial obstruction for which a fishway is required by this section shall fail to keep the fishway free from obstruction to the passage of fish. However, no prosecution for violation of this subsection shall be commenced unless the
violation continues after the State Fish and Wildlife Commission has given written notice of the violation to the person who is to be prosecuted. Every day of violation of this subsection after the date written notice was given to the person to be prosecuted constitutes a separate offense. [1973 c.723 §101]

COMMERCIAL FISHING AND FISHERIES

506.109 Food fish management policy. It is the policy of the State of Oregon that food fish shall be managed to provide the optimum economic, commercial, recreational and aesthetic benefits for present and future generations of the citizens of this state. In furtherance of this policy, the goals of food fish management are:

1. To maintain all species of food fish at optimum levels in all suitable waters of the state and prevent the extinction of any indigenous species.
2. To develop and manage the lands and waters of this state in a manner that will optimize the production, utilization and public enjoyment of food fish.
3. To permit an optimum and equitable utilization of available food fish.
4. To develop and maintain access to the lands and waters of the state and the food fish resources thereon.
5. To regulate food fish populations and the utilization and public enjoyment of food fish in a manner that is compatible with other uses of the lands and waters of the state and provides optimum commercial and public recreational benefits.
6. To preserve the economic contribution of the sports and commercial fishing industries in a manner consistent with sound food fish management practices.
7. To develop and implement a program for optimizing the return of Oregon food fish for Oregon’s recreational and commercial fisheries. [1975 c.253 §15; 1985 c.529 §2]

FISHWAYS; SCREENING DEVICES; HATCHERIES NEAR DAMS

509.605 Fishways required over artificial obstructions; approval by director; failure to complete fishway. (1) Except as otherwise provided in ORS 496.268 or 509.640 or 509.645 or the state water resources policy formulated under ORS 536.300 to 536.350, it is unlawful for any person, municipal corporation, political subdivision or governmental agency to construct or maintain any dam or artificial obstruction across any stream in this state frequented by anadromous or food fish without providing a passageway for such fish over the dam or artificial obstruction as near the main channel as practicable.

2. The director shall examine, from time to time, all dams and artificial obstructions in all waters of this state frequented by anadromous or food fish. If in the opinion of the director there is not a free passage for such fish over any dam or artificial obstruction, and except as otherwise provided in ORS 509.640, the director may notify the owner or occupant thereof to provide free passage within a reasonable time with a durable and efficient fishway, of such form and capacity and in such location as shall be determined by the director. Except as otherwise provided in ORS 509.645, no owner or occupant of such dam or artificial obstruction shall fail to complete such fishway to the satisfaction of the director within the time specified.

(3) Any person, municipal corporation, political subdivision or governmental agency shall, prior to construction of any dam or artificial obstruction in any waters of this state, obtain a determination from the director as to the need or lack of need for passage for anadromous or food fish. If the director determines that a fish passage facility is needed, approval of the proposed plans and specifications for such facility must be obtained from the director prior to construction of the dam or artificial obstruction. [Amended by 1955 c.707 §40; 1963 c.178 §1; 1965 c.570 §11; 1973 c.723 §12]

509.610 Maintenance of fishway required. (1) Subject to ORS 509.645, when the director requires a fishway to be provided pursuant to ORS 509.608, the owner or occupant of a dam or artificial obstruction shall keep the fishway in repair and open and free from obstruction to the passage of anadromous or food fish at all times.

(2) Each day of neglect or refusal to comply with subsection (1) of this section, after notification in writing by the director, constitutes a separate offense. [Amended by 1955 c.707 §52; 1965 c.570 §132]

509.615 Commission authorized to require installation of screening or by-pass devices in certain water diversions. (1) Any person who diverts water from any body of water in this state in which fish exist shall install, operate and maintain, at the expense of the person, such fish screening or by-pass devices that the department determines are necessary to prevent fish from leaving the body of water and entering the diversion.

(2) Upon failure of any person to install, operate and maintain fish screening or by-pass devices as required under subsection (1) of this section, the department may install, operate and maintain, at the expense of the responsible person, fish screening or by-pass devices necessary to prevent the fish from
leaving the body of water and entering the
diversion.

(3) The department shall have the right
of ingress and egress to and from those
places where the department determines that
fish screening or by-pass devices are re-
quired, doing no unnecessary injury to the
property of the landowner, for the purpose
of installing, maintaining and replacing such
fish screening or by-pass devices, and, if in-
stalled by a person under subsection (1) of
this section, to determine whether such fish
screening and by-pass devices meet depart-
ment requirements. The department may or-
der a person responsible under subsection (1)
of this section to repair or replace fish
screening or by-pass devices found to be
noncomplying, at the expense of the respon-
sible person.

(4) If the department considers the in-
stallation, operation, maintenance, repair or
replacement of fish screening or by-pass de-
vices under subsections (1) to (3) of this sec-
tion necessary, the department shall notify
by certified mail the person who diverts wa-
ter of the action the person is required to
take. The person may request a hearing be-
fore the State Fish and Wildlife Commission
according to provisions of ORS 183.310 to
183.550.

(5) No person shall interfere with, tamper
with, damage, destroy or remove any fish
screening or by-pass devices installed pursuant
to this section.

(6) The department may maintain an
action to recover any costs the department
incurs in installing, maintaining or replacing
fish screening or by-pass devices on behalf
of a person responsible under subsection (1)
of this section. Such action shall be brought
in the district or circuit court for the county
in which the fish screening or by-pass de-
vices are located.

(7) As used in this section:
(a) “By-pass device” means any pipe,
flume, open channel or other means of
conveyance that transports fish back to the
body of water from which the fish were di-
verted.

(b) “Department” means the State De-
partment of Fish and Wildlife.

(c) “Person” means any person, partner-
ship, corporation, association, municipal cor-
poration, political subdivision or
governmental agency.

(d) “Screening” means a screen, grating
or other barrier and related improvements or
measures necessary to insure efficient opera-
tion of the screening device to prevent the
passage of fish from a body of water into a
diversion. [Amended by 1957 c.135 §1; 1963 c.111 §1;
1965 c.570 §135; 1987 c.488 §2]

Note: Section 5, chapter 833, Oregon Laws 1989,
provides:
Sec. 5. No person shall be required to install for
any nonhydroelectric-related gravity-fed diversion of
less than 30 cubic feet per second, a fish screening or
by-pass device as described in ORS 498.248 or 509.615
before July 1, 1991. [1989 c.833 §5]

509.620 Condemning inadequate and
ordering new fishways. Where in the judg-
ment of the commission, any fishway is in-
adequate, as constructed under ORS 509.605
or otherwise, the commission may condemn
the fishway and order a new fishway in-
stalled in accordance with plans and specifica-
tions determined by the commission.

509.625 Power of commission to in-
spect artificial obstructions and have
fishways constructed. (1) The commission
may determine or ascertain obstructions
whether it
would be advisable to construct, or order the
construction pursuant to ORS 509.605 by the
owners thereof, of fishways over the dam or
obstruction. The commission may construct
or order the construction, pursuant to ORS
509.605, of such number of fishways in any
stream inhabited by anadromous or food fish
as is deemed adequate to provide a good and
sufficient passageway for such fish.

(2) Where a fishway has heretofore been
constructed with or without the approval of
the commission and has proved useless or
inadequate for the purposes for which it is
intended, the commission may improve or
rebuild such fishway. However, such con-
struction or reconstruction shall not inter-
ference with the prime purpose of the dam or
obstruction. This subsection shall not be
construed to require the improvement or re-
building of fishways by the commission.
[Amended by 1953 c.707 §53; 1963 c.522 §1; 1965 c.570
§135]

509.630 Power of commission to es-
ablish fishways in natural stream ob-
structions. The commission may determine
or ascertain by inspection of any natural ob-
struction whether it would be advisable to
construct fishways over or around such na-
tural obstruction. If it is deemed advisable the
commission may construct fishways in any
stream inhabited by anadromous or food fish
adequate to provide a good and sufficient
passageway for such fish. [Amended by 1965 c.570
§134]

509.635 Oregon City fishway under
control of commission; removal of ob-
structions. (1) The fishways over the falls in
the Willamette River, near Oregon City, are
under the care and control of the commis-
sion, which may make any extensions, addi-
tions, alterations or repairs to the same that
become necessary.
(2) The commission, or its duly authorized representatives, may remove any artificial obstructions placed in the Willamette River above the falls which would prevent the free passage of fish up the river. [Amended by 1965 c.570 §136]

509.640 When dams to be provided with hatchery facilities. (1) If in its opinion the height of a dam in any of the rivers or streams of this state will make a fish ladder or fishway thereover impracticable, the commission, in lieu of the requirement of a fishway under ORS 509.605 (2) and subject to ORS 509.645, may require that the owner of the dam:

(a) Convey to the state a site of the size and dimensions satisfactory to the commission, at such place as may be selected by the commission.

(b) Erect thereon a hatchery and hatchery residence, according to plans and specifications to be furnished by the commission.

(c) Enter into an agreement with the commission, secured by a good and sufficient bond, to furnish all water and light, without expense, to operate the proposed hatchery.

(2) Except as otherwise provided in ORS 509.645, no owner of the dam shall fail to comply with subsection (1) of this section to the satisfaction of the commission within a reasonable time specified.

(3) This section does not apply to:

(a) Dams constructed prior to February 18, 1921, in streams to a height where the construction of a fish ladder is impracticable, provided an agreement has been entered into and executed with reference to the construction and maintenance of such dam between the commission and the owners thereof.

(b) Dams, for the construction of which permits have been granted by the commission under this section as it existed prior to the 1955 amendment of this section. Such dams are subject to and governed by this section as it existed prior to the 1955 amendment of this section. [Amended by 1955 c.707 §54]

509.645 Filing protest with Water Resources Commission; review and determination by Water Resources Commission as to whether fishway or hatchery facilities in public interest. (1) Any owner or occupant of a dam or artificial obstruction may file a protest with the Water Resources Commission within 10 days after receipt of notification from the director as provided in ORS 509.605 (2), or within 10 days after receiving notice of the requirement by the State Fish and Wildlife Commission under ORS 509.640, on the ground that providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest.

(2) Within a reasonable time after the filing of the protest under subsection (1) of this section, the Water Resources Commission shall hold a public hearing thereon. The Water Resources Commission shall give written notice of the hearing to each owner or occupant of the dam or artificial obstruction, who is known to or can be reasonably ascertained by the Water Resources Commission, and to the State Fish and Wildlife Commission at least 10 days prior to the hearing.

(3) The Water Resources Commission, after the hearing, shall make a determination as to whether providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest. The determination shall be binding upon each owner or occupant of the dam or artificial obstruction and the State Fish and Wildlife Commission. The determination shall approve the requirement of the fishway or the hatchery facilities, as the case may be, approve the requirement subject to conditions specified in the determination or disapprove the requirement. If each owner or occupant of the dam or artificial obstruction complies with the determination, such owner or occupant shall be deemed not in violation of ORS 509.605 or 509.640, as the case may be.

(4) In determining whether providing the dam or artificial obstruction with a fishway or providing the dam with hatchery facilities as required by the State Fish and Wildlife Commission, as the case may be, would impair or be detrimental to the public interest, the Water Resources Commission shall have due regard for:

(a) The state water resources policy formulated under ORS 536.300 to 536.350.

(b) The considerations set forth in ORS 536.310.

(5) In the event protests are filed with the Water Resources Commission under both subsection (1) of this section and ORS 498.268, the Water Resources Commission may consider and determine the protests in a combined proceeding under this section and ORS 498.268. [1955 c.707 §51; 1973 c.722 §124]
GENERAL PROVISIONS

543.010 Definitions for ORS 543.010 to 543.620. As used in ORS 543.010 to 543.620:

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

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

(3) “Net investment” is the actual legitimate cost of a project constructed or acquired under a license as determined by the Water Resources Commission and according to the classification of accounts established by the commission, plus similar cost of permanent additions thereto and betterments thereof, minus the sum of the following items, if any, earned and accumulated during the period of the license from earnings in excess of a fair return on the net investment:

(a) Current credit balance to amortization account.

(b) Current credit balance to depreciation account.

(c) Earnings expended for permanent additions or betterments.

(d) Surplus not appropriated to one of the accounts specified in paragraphs (a), (b) and (c) of this subsection. [Amended by 1986 c.673 §1391]

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

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

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

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

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

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

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

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

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

(2) The commission shall adopt all necessary rules to carry out the policy set forth in ORS 543.015 and to implement the minimum standards set forth in subsection (1) of this section. In the absence of implementing rules, any action of the commission relating to hydroelectric development shall comply with the standards as set forth in this section. In adopting rules under this subsection, the commission shall consult with the Energy Facility Siting Council in order to coordinate rules adopted under this section with rules adopted by the Energy Facility Siting Council under ORS 469.371. [1983 c.568 §3]

(3) Conduct investigations and collect information the commission considers necessary or useful for the purposes of ORS 543.010 to 543.620 and cooperate with the Federal Government and adjoining states concerning all such matters, particularly with reference to waters forming the boundary between this state and another state.

(4) Prescribe the forms of all accounts, records and memoranda to be kept by licensees under ORS 543.010 to 543.620, and make all rules and regulations with respect thereto deemed necessary or expedient. The Water Resources Commission shall employ and promulgate standard regulations for accounting, determination of depreciation, amortization, net investment, rate of return and allocation of earnings, etc., and a certified copy of such accounting data shall be filed with the Water Resources Commission from time to time, as may be required by the commission.

(5) Examine at any time all accounts, books of account and documents and data related to the business of a licensee under ORS 543.010 to 543.620, and require a licensee to submit, whenever required by the commission, reports and statements under oath containing information as to assets, liabilities, capitalization, gross receipts, interest and dividend requirements, interest due and paid, amortization and other reserves, net investment, cost of any project constructed, maintained or operated, in whole or in part, cost of maintenance, operation, renewals, replacements, cost of production, transmission, distribution and sale of electricity, and other data as the commission may require.

(6) Perform all acts, exercise all powers and issue all orders which, in the judgment and discretion of the commission, are necessary to effectuate the purposes of ORS 543.010 to 543.620. [Amended by 1955 c.673 §3; 1955 c.707 §3; 1961 c.224 §13; 1965 c.673 §410]

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

(2) The commission may appoint any person as hearing examiner to conduct and preside over any hearing which the commission is required or permitted by law to hold. A hearing examiner so appointed shall have the same powers with respect to the conduct of the hearing as are granted by law to the commission, including the taking of testimony, the signing and issuance of subpoenas.
HYDROELECTRIC POWER PROJECTS 543.300

The judgment of the commission the project is unfeasible or the public interest requires the denial thereof.

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

543.265 Testing of fish protection measures as condition for hydroelectric project permit or license; scope and cost. The Water Resources Commission shall impose as a condition to any water right permit to appropriate water for hydroelectric purposes granted under ORS 537.211 or any license granted under ORS 543.260 that the person operating the hydroelectric project shall, during the operational lifetime of the project, perform or allow the State Department of Fish and Wildlife to perform, any tests or studies required by the department to evaluate the effectiveness of measures for the protection of fish. The scope and cost of these studies will be negotiated between the State Department of Fish and Wildlife and the operator. [1985 c.674 §6; 1987 c.156 §116]

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

543.270 Preference in granting permit or license; municipal use. In issuing preliminary permits, and in issuing licenses where no preliminary permit is held by an applicant for a license, preference shall be given to the application which appears to the Water Resources Commission to be best adapted to conserve and utilize the water power involved. However, any application for the use of water made by any municipal corporation of this state under any law of the state, before a preliminary permit is issued, or before a license is issued when no preliminary permit upon the proposed project has been issued, shall always have preference. [Amended by 1985 c.673 §131]

543.280 Fee payments by licensee. (1) An applicant for a license shall pay to the state, or secure payment to the state, as required by the Water Resources Commission, the reasonable expense incurred and to be incurred by the commission in examining into the application and the maps, plans, specifications, cost estimates and other matters relating to the project covered by the application, and the investigation from time to time of the acts done and work carried forward under the license until completion of the project.

(2) If no preliminary permit has been issued, an applicant for a license for a project of more than 100 theoretical horsepower shall pay to the state, at the time of filing such application, the minimum sum of $50 and such further sum, not exceeding $200, as shall be determined by the commission, to cover the costs of recording, publishing notices and making investigations necessary to determine whether or not a license should be granted.

(3) If the commission grants a license pursuant to such application, the applicant shall pay to the state, at the time the license is issued, and in addition to the sums specified in subsection (2) of this section, the sum of five cents for each theoretical horsepower as computed by the commission and covered by the license. [Amended by 1957 c.581 §1; 1985 c.673 §132]

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

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

(2) Any further statements and data as may be required by the commission concerning the proposed project, the market to be served, the financial responsibility of the applicant, the plan of financing and any other matters deemed material by the commission. [Amended by 1985 c.673 §133]

543.300 Conditions governing license; fees; waiver of conditions. Any license issued under ORS 543.010 to 543.620 shall take into consideration, and shall be on, the following conditions:

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

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

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

(4) That the licensee will maintain the project, and each part thereof, in good order and repair and in efficient operation, for the development and transmission of electricity to its reasonable capacity; shall make all necessary renewals and replacements as required; and shall maintain and operate the project, and all parts thereof, conformably to the rules of the commission not inconsistent with ORS 543.010 to 543.620.

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

(6) Other and further conditions not inconsistent with ORS 543.010 to 543.620 as the commission may require in the public interest.

(7) In issuing a license for a minor project of not more than 100 horsepower the commission may waive all or any of the conditions and requirements of ORS 543.010 to 543.620 except the period for which a license may be issued and the annual charge as determined by the commission under subsection (5) of this section, as the commission, by order, after full investigation and public hearing, shall find to make impracticable the construction of such projects. During the time that a licensee is not a public utility and does not sell electric energy, and does not sell bonds or other evidences of debt against the licensee's plant, the commission may waive the accounting and amortization requirements of ORS 543.010 to 543.620, even where the project involved exceeds 100 horsepower. [Amended by 1959 c.560 §1; 1961 c.224 §19; 1985 c.673 §154]

543.310 Disposition of moneys collected. Except as provided in ORS 543.725, all moneys collected under the provisions of ORS 543.010 to 543.620 shall forthwith be paid to the State Treasurer and become a part of the General Fund. [Amended by 1985 c.674 §10]

543.320 Effect of amendment or repeal of law. The right to alter, amend or repeal ORS 543.010 to 543.620, or any part thereof, hereby is expressly reserved; but no such alteration, amendment or repeal shall affect any license theretofore issued under the provisions of ORS 543.010 to 543.620, or the rights of any licensee thereunder, unless expressly assented to by the licensee.

TIME FOR CONSTRUCTION; TERMINATION, REVOCATION, TRANSFER OF LICENSE

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

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

Public Assistance Loan and Tax Credit Programs for Fish Screening Projects
MISCELLANEOUS PROVISIONS 541.700

541.805 [1967 c.567 §2; 1971 c.509 §4; 1971 c.754 §1; 1973 c.330 §1; 1973 c.674 §1; 1977 c.417 §2; 1977 c.418 §1; 1979 c.564 §1; 1989 c.837 §40; renumbered 196.870 in 1989]

541.810 [1967 c.567 §1; 1971 c.754 §2; 1973 c.330 §2; 1973 c.674 §2; 1977 c.418 §2; 1979 c.564 §2; renumbered 196.875 in 1989]

541.815 [1967 c.567 §3; 1971 c.754 §3; 1989 c.837 §15; renumbered 196.880 in 1989]

541.820 [1967 c.567 §4; 1969 c.338 §4; 1971 c.754 §4; 1973 c.674 §3; 1977 c.418 §3; 1977 c.564 §6; 1989 c.1039 §1; renumbered 196.885 in 1989]

541.822 [1977 c.120 §2; 1987 c.160 §1; renumbered 196.890 in 1989]

541.828 [1967 c.567 §5; 1969 c.593 §49; 1971 c.754 §5; 1973 c.330 §3; 1973 c.674 §6; 1977 c.417 §1; 1979 c.200 §1; 1979 c.564 §3a; 1981 c.796 §1; 1987 c.70 §1; 1989 c.837 §16; 1989 c.904 §70; renumbered 196.895 in 1989]

541.828 [1979 c.564 §5; 1981 c.796 §2; 1983 c.827 §56; 1985 c.837 §5; renumbered 196.700 in 1989]

541.827 [1973 c.674 §5; 1979 c.564 §6; renumbered 196.705 in 1989]

541.830 [1967 c.567 §6; 1971 c.754 §6; 1973 c.330 §4; 1973 c.674 §7; 1981 c.796 §3; renumbered 196.710 in 1989]

541.835 [1967 c.567 §7; 1971 c.754 §7; renumbered 196.715 in 1989]

541.840 [1967 c.567 §8; 1971 c.754 §8; 1973 c.330 §5; 1973 c.674 §8; 1981 c.796 §4; repealed by 1989 c.837 §8 (196.718 enacted in lieu of 541.640)]

541.845 [1967 c.567 §9; 1971 c.754 §9; 1989 c.837 §17; renumbered 196.720 in 1989]

541.850 [1967 c.567 §10; 1971 c.754 §10; 1973 c.330 §6; 1973 c.674 §9; 1985 c.414 §1; 1989 c.837 §18; renumbered 196.725 in 1989]

541.855 [1967 c.567 §11; 1971 c.754 §11; 1973 c.330 §7; 1973 c.674 §10; 1985 c.414 §2; renumbered 196.730 in 1989]

541.860 [1967 c.567 §12; 1973 c.330 §8; 1973 c.674 §11; 1979 c.284 §166; 1985 c.414 §3; renumbered 196.735 in 1989]


541.865 [1971 c.754 §14; renumbered 196.745 in 1989]

541.870 [1985 c.545 §6; 1987 c.855 §16; 1989 c.837 §22; renumbered 196.750 in 1989]

541.875 [1985 c.545 §3; renumbered 196.755 in 1989]

541.880 [1985 c.545 §4; renumbered 196.760 in 1989]

541.885 [1985 c.545 §5; renumbered 196.765 in 1989]

541.895 [1971 c.754 §12; 1977 c.417 §3; 1989 c.837 §19; renumbered 196.770 in 1989]

WATER DEVELOPMENT PROJECTS

(Definitions)

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

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

(2) “Construction” means the construction, or improvement or rehabilitation, in whole or in part, of a water development project, including planning and engineering work directly related to such construction or improvement or rehabilitation, or any combination of such construction or improvement or rehabilitation.

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

(4) “Federal water development project” means a project that meets the requirements of the Watershed Protection and Flood Prevention Act (68 Stat. 666), as amended, or the Small Reclamation Projects Act of 1956 (70 Stat. 1044), as amended.

(5)(a) “Secondary use” means:

(A) Any water-related recreational use.

(B) Any wildlife or natural resource conservation use.

(C) Municipal and industrial water uses with a water development project as the source.

(D) Water quality enhancement directly related to the development of a new water development project.

(E) Any flood control use.

(F) Any power generation use.

(G) Any water supply system utilized for the purpose of agricultural temperature control.

(H) Any water supply system utilized for the maintenance of livestock.

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

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

(6) “Water development project” means:

(a) An undertaking, in whole or in part, in this state for the purpose of irrigation, including dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments and all other structures, facilities and property necessary or convenient for supplying lands with water for irrigation purposes.

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

(c) An undertaking, in whole or in part, in this state for the purpose of providing water for municipal use for communities with population less than 30,000, including dams, storage reservoirs, wells or well systems, pumping plants, pipelines, canals, ditches, revetments and all other structures and facilities necessary or convenient for supplying water.
(d) An undertaking, in whole or in part, in this state for the purpose of fish protection, including fish screening or by-pass devices, fishways and all other structures and facilities necessary or convenient for providing fish protection.

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

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

(7) "Water developer" means:

(a) Any individual resident of this state;
(b) Any partnership for profit subject to the provisions of ORS chapter 68 or 70, whose principal income is from farming in Oregon;
(c) Any corporation for profit subject to the provisions of ORS chapter 60, whose principal income is from farming in Oregon;
(d) Any nonprofit corporation subject to the provisions of ORS chapter 61, whose principal income is from farming in Oregon;
(e) Any cooperative subject to the provisions of ORS chapter 62, whose principal income is from farming in Oregon;
(f) Any irrigation district organized under the Irrigation District Act, as defined in ORS 545.002;
(g) Any water improvement district organized under ORS chapter 552;
(h) Any water control district organized under ORS chapter 553;
(i) Any irrigation or drainage corporation organized under or subject to ORS chapter 554;
(j) Any drainage district organized under ORS chapter 547 or subject to the Irrigation District Act, as defined in ORS 545.002;
(k) Any corporation, cooperative, company or other association formed prior to 1917 for the purpose of distributing water for irrigation purposes;
(L) Any port district organized under ORS 777.005 to 777.25, 777.850 to 777.910, 777.915 to 777.953 and 777.990;
(m) Any city or county;
(n) Any organization formed for the purpose of distributing water for community water supply; or
(o) Any local soil and water conservation district organized under ORS 568.210 to 568.805. [1977 c.246 §1; 1981 c.166 §1; 1981 c.592 §1; 1985 c.673 §184; 1985 c.677 §65; 1987 c.94 §103; 1987 c.636 §§1, 5; 1989 c.1010 §177]

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

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

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

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

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

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

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

(e) Show that the applicant holds or can acquire all lands, other than public lands,
and interests therein and water rights necessary for the construction, operation and maintenance of the proposed water development project. [1977 c.246 §2; 1981 c.592 §2; 1985 c.673 §113; 1987 c.636 §2]

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

(a) Reject the application;

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

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

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

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

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

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

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

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

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

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

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

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

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

(Loan Contracts)

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

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

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

(a) Shall provide for commencement of repayment by the water developer of moneys used for construction and interest thereon
541.735 Payment of funds by State Treasurer pursuant to loan contract. If the commission approves a loan for a water development project or federal water development project, the State Treasurer shall pay moneys for such project from the Water Development Fund in accordance with the terms of the loan contract, as prescribed by the commission. [1977 c.246 §7; 1985 c.673 §117]

541.740 Liens and other loan security; foreclosure. (1)(a) When a loan is made to a water developer other than a water developer described in ORS 541.700 (7)(a), (b), (c) or (d) for the construction of a water development project under ORS 541.700 to 541.855, the State of Oregon has a lien for the amount of the unpaid balance of the loan. The lien created by this subsection attaches to the real property of the water developer or to the user charges, including interest, owed to or received by the water developer. At the discretion of the commission, the lien may attach to all real property, whether owned by the water developer or other persons, which is served by the water development project or which is served by a water source enhanced or restored by the water development project.

(b) Except for tax liens, the lien created by this section is prior and superior to all other liens or encumbrances upon the affected real property or user charges, without regard to the date on which the other liens or encumbrances attached to the real property or user charges.

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

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

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

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

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

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

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

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

(a) Is consistent with the purposes of ORS 541.700 to 541.855;
(b) Does not impair the ability to pay the administrative expenses of the commission or the obligations of any bonds outstanding; and
(c) Is, under the circumstances, the means most likely to preserve the claim or to recover the greatest part of the amount claimed.

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

(a) May provide for a temporary reduction of loan payment;
(b) May provide for any other solution jointly agreed to by the water developer and the commission;
(c) Shall provide for repayment of the amount of any loan payments reduced under the rules in accordance with terms and conditions agreed upon by the borrower and the commission; and
(d) Shall require the commission to consider the effect of any payment reduction or delay on the solvency of the program as a whole, on estimates of the most probable financial position of the program in the future and on other borrowers in the program.

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

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

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

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

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

Note: Sections 7 and 8, chapter 950, Oregon Laws 1989, provide:

Sec. 7. (1) The Water Resources Department shall review and identify the amount in the loan account of each borrower with respect to:

(a) Reserve accounts;
(b) Borrowed unspent loan proceeds; and
(c) The amount, rounded off, to equal the nearest bond increment.

(2) Upon completion of the review and identification process described in subsection (1) of this section, the Water Resources Department shall make an estimate of the fiscal impact if all or part of such funds were credited to the borrowers account and submit a report of the review to the Legislative Fiscal Office on or before October 1, 1990. [1989 c.950 §7]

Sec. 8. Section 7 of this Act is repealed on January 1, 1991. [1989 c.950 §8]

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

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

541.755 Loan becomes immediately due and payable if other funds used for project construction; use of other funds to repay state loan. Except as provided in ORS 541.750:

(1) If any water development project investigated under ORS 541.700 to 541.855 is constructed with funds other than those loaned under ORS 541.700 to 541.855, the amount expended by the state shall immediately become due and payable, together with interest at the rate provided in ORS 541.730 (2) from the date of notification of the amount due. [1977 c.246 §14]

(2) If any water development project is refinanced or financial assistance is obtained from other sources after the execution of the loan from the state, all such funds shall be first used to repay the state. [1977 c.246 §14]

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

541.765 Loans for certain federal projects authorized; use of funds; amount limitation. In addition to those uses of moneys in the Water Development Fund otherwise provided in ORS 541.700 to 541.855, the commission may authorize loans of such moneys to those persons to whom approval has been granted by the Congress of the United States for the funding and construction of federal water development projects. Any such person shall apply for a loan to the commission, in such form as the commission prescribes, and shall furnish such proof of federal approval for funding and construction as the commission considers appropriate. Money so loaned shall be used only for the acquisition of easements and rights of way for federal water development projects, and shall be limited in amount to the market value of the interests to be acquired, as determined by such appraisers as the commission may appoint. The total amount of moneys loaned for federal water development project purposes shall not exceed $5 million. [1977 c.246 §16; 1985 c.673 §121]

541.770 Federal project loan contract terms; foreclosure. If the commission approves an application for the loan of moneys authorized by ORS 541.765, the commission shall enter into a loan contract with the borrower that provides, among other matters:

(1) That the loan be secured by a first lien in the same manner as provided in ORS 541.740.

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

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

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

(5) That the commission may cause to be instituted appropriate proceedings to foreclose liens for delinquent loan payments, and shall pay the proceeds of any such foreclosure, less expenses in foreclosing, into the Water Development Administration and Bond Sinking Fund. [1977 c.246 §17; 1981 c.166 §5; 1985 c.673 §122]
541.780 Bonds to provide project financing. In order to provide funds for the purposes specified in Article XI-I (1) of the Oregon Constitution, bonds may be issued in accordance with the provisions of ORS 286.031 to 286.061. [1977 c.246 §19; 1981 c.660 §45]

541.785 Disposition and use of bond proceeds. Except for the proceeds of refunding bonds, all moneys obtained from the sale of bonds under ORS 541.780 to 541.815 shall be credited by the State Treasurer to the Water Development Fund. Such moneys shall be used only for the purposes stated in Article XI-I (1), Oregon Constitution, and ORS 541.710, 541.750 to 541.770 and 541.835. If there are insufficient funds in the Water Development Administration and Bond Sinking Fund to make the payments set forth in ORS 541.830, moneys in the Water Development Fund may be transferred to the Water Development Administration and Bond Sinking Fund in the manner provided by law. [1977 c.246 §20; 1981 c.660 §46; 1980 c.930 §4]

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

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

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

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

541.810 Limitation on bond issuance amount. No bonds shall be issued or sold under ORS 541.780 to 541.815 nor indebtedness incurred thereunder, which, singly or in the aggregate with previous debts or liabilities incurred for the construction, operation and maintenance of water development projects and for the acquisition of easements and rights of way for federal water development projects shall exceed any limitation provided in the Oregon Constitution at the date of the issuance and sale of such bonds.

If the maximum aggregate principal sum of bonds authorized to be issued under ORS 541.780 to 541.815, exceeds any limitation provided in the Oregon Constitution, bonds shall be issued under ORS 541.780 to 541.815, in the aggregate principal sum of not to exceed that authorized under the limitation provided in the Oregon Constitution. [1977 c.246 §27]

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

(a) Administrative expenses of the commission and the Water Resources Department in processing, reviewing and determining applications; investigating proposed water development projects and federal water development projects under ORS 541.700 to 541.855 and collecting outstanding loans made under ORS 541.700 to 541.855, if the expense is not paid directly by the applicant, including principle and interest due on bonds outstanding.

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

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

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

(a) Application fees required by ORS 541.710.

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

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

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

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

(f) Moneys received from ad valorem taxes levied pursuant to Article XI-I(1), Oregon Constitution, and all moneys that the Legislative Assembly may provide in lieu of such taxes.
(g) Interest earned on cash balances invested by the State Treasurer.

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

(i) Moneys transferred from the Water Development Fund.

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

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

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

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

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

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

(6) The transfer amount authorized by subsection (5) of this section may be increased by the Emergency Board. [1977 c.246 §28; 1981 c.172 §1; 1985 c.673 §123; 1989 c.587 §3; 1989 c.530 §3]

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

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

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

541.845 Rules. In accordance with the applicable provisions of ORS 183.310 to 183.550, the Water Resources Commission may adopt rules necessary to carry out ORS 541.700 to 541.855. [1977 c.246 §13; 1985 c.673 §126]

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

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

NORTH UMPQUA RIVER DAMS

541.875 Dams and use of water for hydroelectric generation on North Umpqua prohibited; exceptions; conditions; enjoining violation. (1) No person shall construct, maintain, and no officer or agency of this state shall issue any permit for the construction or maintenance of, any dam on that portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua River and South Umpqua River.

(2) Nothing in this section applies to the repair, maintenance or improvement required by a state agency of any dam constructed on the North Umpqua River prior to November 1, 1981. No hydroelectric facility may be constructed, repaired or reconstructed on an existing dam on that portion of the North Umpqua River between Soda Springs Dam and the confluence of the North Umpqua
AN ACT

Relating to taxation, including but not limited to taxes imposed upon or measured by income; creating new provisions; and amending ORS 496.265 and sections 12 and 13a, chapter 720, Oregon Laws 1981.

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

SECTION 1. Section 2 of this Act is added to and made a part of ORS chapter 316.

SECTION 2. (1) There shall be allowed a credit against tax due under this chapter for taxpayers that install fish screening devices, by-pass devices or fishways, when required to do so by ORS 498.248 (1), 498.268 (1), 509.605 (1) or 509.615 (1) and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (11) of this section.

(2) The credit shall be equal to 50 percent of the certified costs of installing a fish screening device, by-pass device or fishway. The total credit allowed shall not exceed $5,000.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the installation of a fish screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

(6)(a) A nonresident shall be allowed the credit in the same manner and subject to the same limitations as a resident. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(b) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the department terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.
(c) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(7) If the taxpayer is an S corporation, as defined in section 1361 of the Internal Revenue Code, that has elected to take the credit on behalf of its shareholders as provided in section 4 of this 1989 Act, the credit shall be computed and afterwards apportioned to each shareholder on the basis of the shareholder's pro rata share of the corporation's certified costs of installing a fish screening device, by-pass device or fishway. In all other respects the allowance of and effect of the tax credit shall apply to the corporation as otherwise provided by law.

(8) To qualify for the credit the taxpayer must be issued a certificate by the State Department of Fish and Wildlife.

(9) To obtain credit under subsection (1) of this section, any person proposing to apply for certification of a fish screening device, by-pass device or fishway, before installing the fish screening device, by-pass device or fishway, shall file a request for preliminary certification with the State Department of Fish and Wildlife. The request shall be in a form prescribed by the State Department of Fish and Wildlife. The following conditions shall apply:

(a) Within 30 days of the receipt of a request for preliminary certification, the State Department of Fish and Wildlife may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the State Department of Fish and Wildlife may request corrections and revisions to the plans and specifications. The State Department of Fish and Wildlife may also require any pertinent information necessary to determine whether the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements.

(b) If the State Department of Fish and Wildlife determines that the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements, it shall issue a preliminary certificate approving the fish screening device, by-pass device or fishway. If the State Department of Fish and Wildlife determines that the fish screening device, by-pass device or fishway does not comply with State Department of Fish and Wildlife requirements, the State Department of Fish and Wildlife shall issue an order denying certification.

(c) If within 90 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the State Department of Fish and Wildlife fails to issue a preliminary certificate of approval and the State Department of Fish and Wildlife fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The capital investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(d) Within 30 days from the date of mailing of the order, any person against whom an order is directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the State Fish and Wildlife Director. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

(10) Any fish screening device, by-pass device or fishway that is installed pursuant to ORS 498.248 (2) or alterations made pursuant to ORS 498.268 (2) to (6) shall not be eligible for the credit provided in subsection (1) of this section.

(11) Upon completion and pursuant to application for final certification, final certification shall be issued by the State Department of Fish and Wildlife if the fish screening device, by-pass device or fishway was constructed and installed in accordance with State Department of Fish and Wildlife requirements. Final certification shall include a statement of the costs of installation as verified by the State Department of Fish and Wildlife. The credit allowed under this section shall be claimed first for the tax year of the taxpayer in which final certification is issued.

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(12) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the State Department of Fish and Wildlife may order the revocation of the certificate issued under this section of any taxpayer, if it finds that:

(a) The certificate was obtained by fraud or misrepresentation; or

(b) The holder of the certificate fails to meet State Department of Fish and Wildlife requirements.

(13) As soon as the order of revocation under this section has become final the State Department of Fish and Wildlife shall notify the Department of Revenue of such order.

(14) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (12) of this section, all prior tax relief provided to the holder of the certificate by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

(15) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (12) of this section, the certificate holder shall be denied any further relief provided under this section and section 4 of this 1989 Act in connection with the fish screening device, by-pass device or fishway, as the case may be, from and after the date that the order of revocation becomes final.

(16) In the event that the fish screening device, by-pass device or fishway is destroyed by flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.

(17) Fish screening devices, by-pass devices or fishways which are financed by funds obtained from the Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the credit under any circumstances.

(18) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions of this section and report to the interim committee created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters.

SECTION 3. Section 4 of this Act is added to and made a part of ORS chapter 317.

SECTION 4. (1) There shall be allowed a credit against tax due under this chapter for taxpayers that install fish screening devices, by-pass devices or fishways, when required to do so by ORS 498.248 (1), 498.268 (1), 509.605 (1) or 509.615 and the diversion is not part of a hydroelectric project required to be licensed under the Federal Energy Regulatory Commission. Except as allowed in subsection (4) of this section, the credit shall be taken in the tax year in which the final certification is issued under subsection (10) of this section.

(2) The credit shall be equal to 50 percent of the certified costs of installing a fish screening device, by-pass device or fishway. The total credit allowed shall not exceed $5,000.

(3) The credit allowed in any one year shall not exceed the tax liability of the taxpayer.

(4) Any tax credit otherwise allowable under this section which is not used by the taxpayer in a particular tax year may be carried forward and offset against the taxpayer's tax liability for the next succeeding tax year. Any credit remaining unused in such next succeeding tax year may be carried forward and used in the second succeeding tax year. Any credit remaining unused in such second succeeding tax year may be carried forward and used in the third succeeding tax year. Any credit remaining unused in such third succeeding tax year may be carried forward and used in the fourth succeeding tax year. Any credit remaining unused in such fourth succeeding tax year may be carried forward and used in the fifth succeeding tax year, but may not be used in any tax year thereafter.

(5) The credit provided by this section shall be in addition to and not in lieu of any depreciation or amortization deduction to which the taxpayer otherwise may be entitled with respect to the installation of a fish screening device, by-pass device or fishway. The taxpayer's adjusted basis for determining gain or loss shall not be further decreased by any tax credits allowed under this section.

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(6) If the taxpayer qualifying for the credit under this section is an S corporation as defined in section 1361 of the Internal Revenue Code, and the taxpayer elects to take the tax credit relief, the election may be made on behalf of the corporation’s shareholders. Each shareholder shall be entitled to take tax credit relief as provided in section 2 of this 1989 Act, based on that shareholder’s pro rata share of the corporation’s certified cost of installation of the fish screening device, by-pass device or fishway.

(7) To qualify for the credit the taxpayer must be issued a certificate by the State Department of Fish and Wildlife.

(8) To obtain credit under subsection (1) of this section, any person proposing to apply for certification of a fish screening device, by-pass device or fishway, before installing the fish screening device, by-pass device or fishway, shall file a request for preliminary certification with the State Department of Fish and Wildlife. The request shall be in a form prescribed by the State Department of Fish and Wildlife and shall include a cost estimate for the installation. The following conditions shall apply:

(a) Within 30 days of the receipt of a request for preliminary certification, the State Department of Fish and Wildlife may require, as a condition precedent to issuance of a preliminary certificate of approval, the submission of plans and specifications. After examination thereof, the State Department of Fish and Wildlife may request corrections and revisions to the plans and specifications. The State Department of Fish and Wildlife may also require any other information necessary to determine whether the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements.

(b) If the State Department of Fish and Wildlife determines that the proposed fish screening device, by-pass device or fishway is in accordance with State Department of Fish and Wildlife requirements, it shall issue a preliminary certificate approving the fish screening device, by-pass device or fishway. If the State Department of Fish and Wildlife determines that the fish screening device, by-pass device or fishway does not comply with State Department of Fish and Wildlife requirements, the State Department of Fish and Wildlife shall issue an order denying certification.

(c) If within 90 days of the receipt of plans, specifications or any subsequently requested revisions or corrections to the plans and specifications or any other information required pursuant to this section, the State Department of Fish and Wildlife fails to issue a preliminary certificate of approval and the State Department of Fish and Wildlife fails to issue an order denying certification, the preliminary certificate shall be considered to have been issued. The capital investment must comply with the plans, specifications and any corrections or revisions thereto, if any, previously submitted.

(d) Within 30 days from the date of mailing of the order, any person against whom an order is directed pursuant to paragraph (b) of this subsection may demand a hearing. The demand shall be in writing, shall state the grounds for hearing and shall be mailed to the State Fish and Wildlife Director. The hearing shall be conducted in accordance with the applicable provisions of ORS 183.310 to 183.550.

(9) Any fish screening device, by-pass device or fishway that is installed pursuant to ORS 498.248 (2) or alterations made pursuant to ORS 498.268 (2) to (6) shall not be eligible for the credit provided in subsection (1) of this section.

(10) Upon completion and pursuant to application for final certification, final certification shall be issued by the State Department of Fish and Wildlife if the fish screening device, by-pass device or fishway was constructed and installed in accordance with State Department of Fish and Wildlife requirements. Final certification shall include a statement of the costs of installation as verified by the State Department of Fish and Wildlife. The credit allowed under this section shall be claimed first for the tax year of the taxpayer in which final certification is issued.

(11) Pursuant to the procedures for a contested case under ORS 183.310 to 183.550, the State Department of Fish and Wildlife may order the revocation of the certificate issued under this section of any taxpayer, if it finds that:

(a) The certificate was obtained by fraud or misrepresentation; or

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(b) The holder of the certificate fails to meet State Department of Fish and Wildlife requirements.

(12) As soon as the order of revocation under this section has become final the State Department of Fish and Wildlife shall notify the Department of Revenue of such order.

(13) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, all prior tax relief provided to the holder of the certificate by virtue of the certificate shall be forfeited and the Department of Revenue shall proceed to collect those taxes not paid by the certificate holder as a result of the tax relief provided to the holder.

(14) If the certificate of a fish screening device, by-pass device or fishway is ordered revoked pursuant to subsection (11) of this section, the certificate holder shall be denied any further relief provided under this section and section 2 of this 1989 Act in connection with the fish screening device, by-pass device or fishway, as the case may be, from and after the date that the order of revocation becomes final.

(15) In the event that the fish screening device, by-pass device or fishway is destroyed by flood, natural disaster or act of God before all of the credit has been used, the taxpayer may nevertheless claim the credit as if no destruction had taken place.

(16) Fish screening devices, by-pass devices or fishways which are financed by funds obtained from the Water Development Fund, pursuant to ORS 541.700 to 541.855, shall not be eligible for the credit under any circumstances.

(17) The State Department of Fish and Wildlife shall adopt rules for carrying out the provisions of this section and report to the interim committee created under ORS 171.605 to 171.640 to make studies of and inquiries into state revenue matters.

SECTION 5. Sections 2 and 4 of this Act apply to installations that occur in tax years that begin on or after January 1, 1990.

SECTION 6. Section 12, chapter 720, Oregon Laws 1981, is amended to read:

Sec. 12. (1) For the assessment year beginning January 1, 1983, the State Department of Fish and Wildlife shall not approve for designation as riparian land under sections 3 to 13, chapter 720, Oregon Laws 1981, more than 100 miles of private streambank in any county.

(2)(a) For the assessment years beginning on and after January 1, 1984, and prior to January 1, 1998 [1990], the department may approve for designation as riparian land not more than 100 miles of private streambank in any county.

(b) The land approved for designation as riparian land under this subsection each year shall be in addition to, and not restricted by, the approval of designation of land as riparian during the previous year. However, the department may, in addition, approve for designation as riparian land each year an amount of land equal to the amount of land withdrawn from, or disqualified for, designation as riparian land during the previous year, and, an amount of land equal to the difference between the amount of land approved for designation as riparian land during the previous years and the maximum established under paragraph (a) of this subsection.

(3) If the department receives applications for designation of land as riparian in excess of the maximum established under subsection (2) of this section, preference shall be afforded according to the date the application was filed with the county assessor. Applications which are not approved because the maximum has been reached shall be held for consideration for approval for the next assessment year.

SECTION 7. Section 13a, chapter 720, Oregon Laws 1981, is amended to read:

Sec. 13a. Sections 1 to 13, chapter 720, Oregon Laws 1981, are repealed on December 31, 1997 [1989].

SECTION 8. ORS 496.265 is amended to read:

496.265. Notwithstanding any provisions of ORS 316.084, 317.087, 318.080 and 496.260 to the contrary, the State Department of Fish and Wildlife shall not preliminarily certify under ORS 496.265 (2), in any one calendar year, as eligible for tax credit under ORS 316.084, 317.087 and 318.080, fish habitat improvement project costs in excess of $100,000. The department shall not grant Enrolled House Bill 3494
preliminary certification for a fish habitat improvement project unless application under ORS 496.260 (1) is filed with the department on or before January 1, 1998 (1990).

Passed by House June 28, 1989

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Chief Clerk of House

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Speaker of House

Passed by Senate July 1, 1989

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President of Senate

Received by Governor:

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M. 1989

Approved:

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M. 1989

Filed by Office of Secretary of State:

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M. 1989

Secretary of State