

**537.338 Rules for state agency request for in-stream water right.** The Water Resources Commission by rule shall establish standards, criteria and procedures by which a state agency included under ORS 537.336 may request an in-stream water right to be issued under ORS 537.336. [1987 c.859 §5]

**537.340** [Formerly 537.290; renumbered 537.395 in 1987]

**537.341 Certificate for in-stream water right.** Subject to the provisions of ORS 537.343, the Water Resources Commission shall issue a certificate for an in-stream water right. The in-stream water right shall date from the filing of the application with the commission. The certificate shall be in the name of the Water Resources Department as trustee for the people of the State of Oregon and shall be issued by the commission according to the procedures established under ORS 537.338. The commission shall forward a copy of each certificate issued under this section to the state agency requesting the in-stream water right. A certificate for an in-stream water right supplied by stored water shall refer to the reservoir described in the request filed under ORS 537.336. [1987 c.859 §6; 1995 c.673 §2]

**537.343 Proposed final order; conditions.** (1) A proposed final order issued under ORS 537.170 (6) for an in-stream water right certificate may include any condition the Water Resources Director considers necessary, but which is consistent with the intent of ORS 537.332 to 537.360. The proposed final order may:

(a) Approve the in-stream water right for the quantity of water requested;

(b) Approve the requested in-stream water right for a lesser quantity of water; or

(c) Reject the requested in-stream water right.

(2) If the director reduces or rejects the in-stream water right as requested, or conditions the in-stream water right, the director shall include a statement of findings that sets forth the basis for the reduction, rejection or conditions. The director shall be the final authority in determining the level of in-stream flow necessary to protect the public use.

(3) After the director issues a final order approving an in-stream water right, the Water Resources Department shall issue a certificate for an in-stream water right according to the provisions of ORS 537.341. [1987 c.859 §7; 1995 c.416 §20]

**537.345** [Formerly 537.300; renumbered 537.400 in 1987]

**537.346 Conversion of minimum perennial streamflows to in-stream water rights; special provisions for Willamette Basin.** (1) All minimum perennial streamflows established on any waters of this state before June 25, 1988, shall be converted to in-stream water rights after the Water Resources Commission reviews the streamflows and the Water Resources Department issues a certificate for an in-stream water right in accordance with ORS 537.343 with the same priority date as the minimum perennial streamflow.

(2) The priority date for that portion of an in-stream water right that uses the stored water component of a minimum perennial streamflow in the Willamette Basin shall be the date the commission or its predecessor adopted the minimum perennial streamflow containing the stored water component.

(3) Notwithstanding the priority date established under subsection (2) of this section, until the state enters into a contract that meets the criteria set forth in subsection (4) of this section with the owner of the storage facility to release the stored water for the purpose of satisfying the in-stream water right, for that portion of an in-stream water right in the Willamette Basin converted from the stored water component of a minimum perennial streamflow, the department:

(a) May not require the release of the stored water; and

(b) Shall not regulate the use of water to provide water for the portion of the in-stream water right using stored water.

(4) A contract for the release of stored water to satisfy an in-stream water right shall:

(a) Include as parties to the contract the State of Oregon and the owner of the storage facility;

(b) Specifically allow the state to obtain the release of stored water to satisfy an in-stream water right; and

(c) Identify a method to determine the specific quantity of water released from storage to satisfy the stored water component of the in-stream water right.

(5) If the federal government does not release water to satisfy a stored water component of an in-stream water right pursuant to a contract that satisfies the criteria set forth in subsection (4) of this section, the department may not regulate the use of water by other water right holders to satisfy the stored water component of an in-stream water right or take any other action that impairs the rights of any person under a valid contract for the use of the stored wa-