

Chapter 537

Appropriation of Water Generally

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DEFINITIONS

537.010 Definition of "Water Rights Act." As used in this chapter, "Water Rights Act" means and embraces ORS 536.050 to 536.070, 537.120 to 537.250, 537.280 to 537.300, 538.240, 538.410, 538.420, 539.010 to 539.220, 540.010 to 540.130, 540.210 to 540.230, 540.310 to 540.430, 540.510 to 540.530, and 540.710 to 540.750.

537.020 to 537.100 [Reserved for expansion]

APPROPRIATION UNDER 1909 ACT

537.110 Public ownership of waters. All water within the state from all sources of water supply belongs to the public.

537.120 Right of appropriation; vested rights protected. Subject to existing rights, and except as otherwise provided in ORS chapter 538, all waters within the state may be appropriated for beneficial use, as provided in the Water Rights Act and not otherwise; but nothing contained in the Water Rights Act shall be so construed as to take away or impair the vested right of any person to any water or to the use of any water.

537.130 Permit to appropriate water required. (1) Any person intending to acquire the right to the beneficial use of any waters shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with the construction, or proposed appropriation, make an application to the State Engineer for a permit to make such appropriation.

(2) No person shall use, store or divert any waters until after the issuance of a permit to appropriate such waters.

537.140 Application for permit; contents; maps and drawings. (1) Each application for a permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed ditch, canal or other work, the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use.

(a) If for agricultural purposes, it shall

give the legal subdivisions of the land and the acreage to be irrigated, as near as may be.

(b) If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied.

(c) If for construction of a reservoir, it shall give the height of dam, the capacity of the reservoir, and the uses to be made of the impounded waters.

(d) If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirements of the city.

(e) If for mining purposes, it shall give the nature of the mines to be served, and the methods of supplying and utilizing the water.

(2) All applications shall be accompanied by such maps and drawings, in duplicate, and such other data concerning the proposed project and the applicant's ability and intention to construct such project, as may be prescribed by the State Engineer. The accompanying data shall be considered a part of the application.

537.150 Filing of application; curing defects; recording. (1) Upon receipt of an application the State Engineer shall indorse thereon the date of its receipt and keep a record of the same. If, upon examination, the application is found to be defective, or to lack satisfactory proof of the applicant's ability to finance and construct the proposed project or of his intention in good faith to construct it with due diligence, the application shall be returned for correction or completion or for the supplying of such proof. The date of, and reasons for, the return shall be indorsed thereon and made a record in the engineer's office.

(2) No application shall lose its priority of filing on account of such defects, provided acceptable data, proofs, maps and drawings are filed in the office of the State Engineer within 30 days from date of return to the applicant, or such further time, not exceeding one year, as may be given by the engineer. All applications which comply with the provisions of law shall be recorded in a suitable book kept for that purpose.

537.160 Approval for beneficial use; agreement authorizing use of ditch for waste or seepage water; proof of ability to construct project required. (1) Subject to the

provisions of subsections (2) and (3) of this section, and of ORS 537.170 to 537.190, the State Engineer shall approve all applications made in proper form which contemplate the application of water to a beneficial use, unless the proposed use conflicts with existing rights.

(2) No application for a permit to appropriate waste or seepage water, which is to be carried through an existing ditch or canal not owned wholly by the applicant, shall be approved until the applicant has filed with the engineer an agreement between the applicant and the owner of the ditch or canal, authorizing its use by the applicant to carry the water.

(3) The State Engineer shall reject every application for a permit to appropriate water in excess of a flow of 10 cubic feet per second, concerning which the applicant has failed, after 30 days' notice and demand from the engineer, to furnish proof satisfactory to him of the applicant's ability to construct the proposed project, and of his intention in good faith to construct it with due diligence.

537.170 Proposed use adversely affecting public interest; reference to reclamation commission; hearing; policy. (1) If, in the judgment of the State Engineer, the proposed use may prejudicially affect the public interest, he shall refer the application to the State Reclamation Commission for consideration. The commission shall hold a public hearing on the application on proper notice to the applicant and to any one objecting thereto. If, after the hearing, the commission determines that the proposed use of the water sought to be appropriated would impair or be detrimental to the public interest, it shall enter an order rejecting the application or require its modification to conform to the public interest, to the end that the highest public benefit may result from the use to which the water is applied.

(2) In determining whether the proposed use would impair or be detrimental to the public interest, the State Reclamation Commission shall have due regard for conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing or any other beneficial use to which the water may be applied for which it may have a special value to the public, and also, the maximum economic development of the waters involved.

537.180 Hearing by engineer on proposed use. Whenever, in the opinion of the State Engineer, a hearing is necessary to determine whether the proposed use described in an application will conflict with existing rights or be prejudicial to the public interest, he or his authorized assistant may hold a hearing on 10 days' written notice to the applicant and protestants, such hearing to be in the manner provided by ORS 537.430.

537.190 Terms and conditions of approval; municipal water supplies. (1) An application may be approved for less water than applied for, or may be approved upon terms, limitations and conditions necessary for the protection of the public interest, if there exists substantial reason therefor. In any event it shall not be approved for more water than can be applied to a beneficial use.

(2) Applications for municipal water supplies may be approved to the exclusion of all subsequent appropriations, if the exigencies of the case demand, upon consideration and order by the State Engineer.

537.200 Appeal; review. An appeal may be taken from any order made by the State Engineer, pursuant to the provisions of ORS 537.150 to 537.190, rejecting or allowing any application in whole or in part, by any person appearing before the State Engineer or State Reclamation Commission as applicant or objector in respect to the application. The appeal shall be taken to the circuit court of the county in which the waters involved or some part thereof are situated. It must be taken within 30 days from the date of mailing a copy of the order of the engineer or reclamation commission to the applicant or objector. The appeal shall otherwise be governed by the practice in suits in equity. An appeal may be taken from the final order or decree of the circuit court to the Supreme Court.

537.210 Indorsement of approval or rejection; return to applicant; procedure by latter. The approval or rejection of an application shall be indorsed thereon and a record made of it in the State Engineer's office. The indorsed application shall be returned immediately to the applicant by mail. If approved, he may, on receipt thereof, proceed with the construction of the necessary works and take all steps required to apply the water to a beneficial use and to perfect the proposed appropriation. If the application is refused, the applicant shall take no steps toward construction of the proposed work or the diversion and

use of water so long as the refusal continues in force.

537.220 Assignment of permit. Any permit or license to appropriate water may be assigned, subject to the conditions of the permit, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the State Engineer.

537.230 Time for beginning and completing work; extension. (1) Except as provided in ORS 537.240, actual construction work, except under applications by municipal corporations for municipal uses or purposes, shall begin within one year from the date of approval of the application. The construction of any proposed irrigation or other work shall thereafter be prosecuted with reasonable diligence and be completed within a reasonable time, as fixed in the permit, not to exceed five years from the date of approval.

(2) Except as provided in ORS 537.240, the State Engineer shall, for good cause shown, order and allow an extension of time, including an extension beyond the above five-year limitation, within which irrigation or other works shall be completed or the right perfected, under any permit. In determining the extension, he shall give due weight to the considerations described and set out in subsection (5) of ORS 539.010.

537.240 Federal permit; time for obtaining; cancelation; time for beginning and completing work. (1) In any case where a permit from the Federal Power Commission is or shall be required in connection with the development of the applicant's proposed project, the applicant shall make application for the necessary federal permit or license within six months, or, if the applicant is a municipal corporation, within 10 years, from the date of filing application for appropriation of water in the State Engineer's office.

(2) Upon failure of the applicant to file with the State Engineer, within 30 days after the expiration of the period above prescribed, satisfactory proof that application for the federal permit or license has been duly made, the application to appropriate water shall forthwith be terminated and become void.

(3) Where the application for the necessary permit or license from the Federal Power Commission is finally rejected or disallowed, or if after being granted, the permit or license is revoked or forfeited because of failure to begin or carry on the construction work when and as required by the permit or license, then

the State Engineer shall, upon the filing in his office of satisfactory proof of such fact, revoke and cancel any permit theretofore issued by him for appropriation of water for use in the project for which the federal permit or license was required.

(4) In case of any permit issued for the appropriation of water for the utilization of which a permit or license from the Federal Power Commission is necessary, the time to be allowed for the beginning and completion of construction under the permit from the State Engineer shall be made to conform to the time fixed for such beginning and completion in the permit or license, and in any extension thereof, issued for the project by the Federal Power Commission.

537.250 Water right certificate; issuance; recordation; duration of rights; date of accrual. (1) Upon it appearing to the satisfaction of the State Engineer that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, he shall issue to the applicant a certificate of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the applicant as provided in that section.

(2) Rights to the use of water acquired under the provisions of the Water Rights Act, as set forth in any such certificate, shall continue in the owner thereof so long as the water shall be applied to a beneficial use under and in accordance with the terms of the certificate, subject only to loss by nonuse as specified and provided in ORS 540.610.

(3) The right acquired by an appropriation shall date from the filing of the application in the office of the State Engineer.

537.260 Cancelation of permit for failure of proof of completion of work; issuance of limited certificate; contest of issuance of certificate. (1) Whenever the time within which any appropriation under a permit should have been perfected has expired and the owner of the permit fails or refuses within three months thereafter to submit to the State Engineer proof of completion of the appropriation as required by ORS 537.230 and 537.250, the State Engineer may, after 60 days' notice by registered mail, order the cancelation of the permit. The cancelation shall have the same force and effect as cancelation of a permit in the proceedings provided for in ORS 537.410 to 537.450.

(2) The State Engineer may determine the extent to which an appropriation has been perfected under any permit at the time of submission of final proof provided for in ORS 537.250, and shall limit the certificate provided for in that section to a description of such appropriation as has been actually perfected to the extent that the water applied for has been actually applied to the beneficial use contemplated in the permit.

(3) Any person owning an application, permit or water right certificate subsequent in priority may jointly or severally contest before the State Engineer the issuance of the water right certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate. The contest shall be brought upon application made, and hearing shall be had in the same manner and after notice as provided in ORS 537.420 and 537.430 for proceedings for cancelation of permits. The State Engineer, in his final order, may cancel the permit or determine the extent to which the appropriation claimed thereunder has been perfected, and issue a water right certificate accordingly, or if a certificate has been issued, in the case of a contest within three months after its issuance, he may cancel the water right certificate, or affirm its issuance, and if the water right certificate in such case is canceled, the permit upon which it is based shall also be canceled. Any such order of cancelation shall be subject to appeal as provided in ORS 537.430.

537.270 Conclusiveness of certificate. A water right certificate issued in accordance with the provisions of ORS 537.250 which, after the expiration of three months from the date it is issued, has not been contested and canceled in the manner provided in ORS 537.260, and a water right certificate, when issued under ORS 539.140, shall be conclusive evidence of the priority and extent of the appropriation therein described in any proceeding in any court or tribunal of the state, except in those cases where the rights of appropriation thereby described have been abandoned subsequent to issuance of the certificate.

537.280 Valuation of water rights. In any valuation for rate-making purposes, or in any proceeding for the acquisition of rights to the use of water and the property

used in connection therewith, under any license or statute of the United States or under the laws of Oregon, no value shall be recognized or allowed for such rights in excess of the actual cost to the owner of perfecting them in accordance with the provisions of the Water Rights Act.

537.290 Public recapture of water power rights and properties; no recapture of other rights.

(1) Any certificate issued for power purposes to a person other than the United States, or the State of Oregon or any municipality thereof, shall provide that after the expiration of 50 years from the granting of the certificate or at the expiration of any federal power license, and after not less than two years' notice in writing to the holder of the certificate, the State of Oregon, or any municipality thereof, may take over the dams, plants and other structures, and all appurtenances thereto, which have been constructed for the purpose of devoting to beneficial use the water rights specified in the certificate. The taking over shall be upon condition that before taking possession the state or municipality shall pay not to exceed the fair value of the property taken, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the certificate, not taken over, as may be caused by the severance therefrom of the property taken.

(2) The fair value of the property taken and the severance damages, if any, shall be determined by agreement between the holder of the certificate and the state or municipality, or, in case they can not agree, by proceedings in equity instituted by the state or municipality in the circuit court of the county in which the largest portion of the property is located.

(3) The right of the state or any municipality to take over, maintain and operate any property which has devoted to beneficial use water rights specified in the certificate, by condemnation proceedings upon payment of just compensation, is expressly reserved.

(4) The provision for the recapture of any rights other than for power purposes, as provided in this section, contained in any certificate issued before June 14, 1939, shall be of no force and effect and may be canceled from the records wherever recorded and a new certificate issued with the recapture clause eliminated.

(5) The owner of any certificate issued before June 14, 1939, for such rights may,

upon surrendering the certificate, receive a new certificate therefor issued under and subject to the provisions of this section.

537.300 Reservoir permits. All applications for reservoir permits shall be subject to the provisions of ORS 537.130 to 537.240, except that an enumeration of any lands proposed to be irrigated under the Water Rights Act shall not be required in the primary permit. But the party proposing to apply to a beneficial use the water stored in any such reservoir shall file an application for permit, to be known as the secondary permit, in compliance with the provisions of ORS 537.130 to 537.240. The application shall refer to the reservoir for a supply of water and shall show by documentary evidence that an agreement has been entered into with the owners of the reservoir for a permanent and sufficient interest in the reservoir to impound enough water for the purposes set forth in the application. When beneficial use has been completed and perfected under the secondary permit, the State Engineer shall take the proof of the water user under the permit. The final certificate of appropriation shall refer to both the ditch described in the secondary permit and the reservoir described in the primary permit.

537.310 Railway purposes, appropriation or condemnation of water rights for; certificates. (1) Any corporation organized for the construction, maintenance or operation of any railway may acquire, hold and appropriate to its use for railway purposes any waters within the state. The appropriation may be accomplished by the procedure provided by ORS 537.130 to 537.250. Such corporation may acquire by purchase, gift or devise, or by condemnation as hereinafter provided, any water rights owned by any person and the rights of other persons affected by change of place or character of use of such water rights. Upon acquisition thereof by the corporation the right shall be severed from the land of the grantor and simultaneously transferred and become appurtenant to the operating property of the railway corporation, without losing priority of right theretofore established.

(2) Any such corporation may condemn and appropriate for railway operating purposes the rights of any private appropriator of waters within the state. The right of condemnation shall be exercised in the same manner as other property is condemned and

appropriated for railway purposes; provided, that no water right so condemned shall exceed two cubic feet per second.

(3) Upon satisfactory proof of the acquisition of water rights by any such corporation through purchase, gift, devise or condemnation, the State Engineer shall issue to the corporation a certificate of the same character as that described in ORS 539.140, which shall be recorded and transmitted to the corporation, as provided in that section. All certificates of water rights issued before May 29, 1925, by the Board of Control or the State Engineer to any such corporation shall be sufficient in law to convey to the corporation the water rights described in the certificates, and such certificates shall be received in evidence in all courts in this state.

537.320 Entry on land for survey purposes, preliminary to appropriation and diversion of waters. Any person may enter upon any land for the purpose of locating a point of diversion of the water intended to be appropriated, and upon any land lying between such point and the lower terminus of his proposed ditch, canal or flume, for the purpose of examining the same and of locating and surveying the line of such ditch, canal or flume, together with the lines of necessary distributing ditches and feeders, and to locate and determine the site for reservoirs for storing water.

537.330 to 537.400 [Reserved for expansion]

CANCELATION OF PERMIT FOR APPROPRIATION

537.410 Failure to commence or complete work, or to properly apply water, as grounds for cancelation of permit; irrigation districts and municipalities excepted. (1) Whenever the owner of a permit to appropriate the public waters of Oregon fails to commence actual construction work within the time required by law, or having commenced construction work as required by law, fails or neglects to prosecute work thereon with reasonable diligence, or fails to complete the construction work within the time required by law, or as fixed in the permit, or within such further time as may be allowed therefor as provided in ORS 537.230, or having completed construction work, fails or neglects to apply the water to beneficial use within the time fixed in the permit, the

State Engineer may cancel the permit on the records in his office as provided in ORS 537.410 to 537.450.

(2) However, permits issued by the State Engineer to irrigation districts for reclamation purposes under the irrigation district laws of the state, or to municipal corporations for municipal uses or purposes, are not subject to cancellation under the provisions of ORS 537.410 to 537.450.

537.420 Notice of hearing; affidavits; service. (1) Whenever it appears to the State Engineer that there are permits in his office, the owners or holders of which have failed or neglected to comply with the laws of the state and the requirements of the permits as to commencing or prosecuting work with due diligence, or completion of the work of construction, or the application of the water for a beneficial use, and the State Engineer has reason to believe that any such permit is subject to cancellation as provided in ORS 537.410 to 537.450, he may, not less than 30 nor more than 60 days prior to the hearing provided for in ORS 537.430, notify by registered mail each person having any claim or interest in the permit sought to be canceled, who appears from the records in the office of the State Engineer to have such claim or interest. The notice shall require the holder of the permit to appear before the State Engineer or his authorized assistant at the time and place designated in the notice, to show cause why the permit described in the notice should not be canceled for the reasons therein specified, and shall contain a brief statement of the grounds for cancellation.

(2) Service of the notice shall be complete upon depositing it within the time required in a postoffice within the state as registered mail, plainly addressed to each permit holder named in the notice at his last-known postoffice address, so far as the same can be ascertained, or as such postoffice address is set forth in the permit sought to be canceled, or in any assignment of the same on record in the office of the State Engineer.

(3) The State Engineer shall also within the same period of time notify, by registered mail, each holder or owner of a permit having subsequent priority to the permit sought to be canceled, which notice shall designate the time and place of the hearing upon the permit sought to be canceled. Any such holder or owner of a permit having subsequent priority may, at least 10 days before the time designated in the notice for the hear-

ing, file with the State Engineer affidavits in favor of cancellation with proof of service of a copy of each of the affidavits upon the holder of the permit sought to be canceled, or his attorney. Prior to the time fixed for the hearing, the holder of any permit sought to be canceled may file with the State Engineer affidavits against cancellation of the permit, which affidavits shall be served upon any holder or owner of a permit having subsequent priority who has served and filed affidavits upon him in favor of cancellation of the permit. The affidavits may be served either personally or by registered mail. Service shall be deemed complete when the affidavit has been deposited in a postoffice within the state as registered mail.

537.430 Hearing on cancellation; decision; appeal. At the hearing the State Engineer or his authorized assistant may take evidence as may be essential to the clear understanding of all matters involved, and may adjourn the hearing from time to time on reasonable notice to all the parties interested, to personally inspect, or have inspected, the premises described in the application or permit. The engineer or assistant may administer oaths, issue subpoenas and compel the attendance of witnesses, which subpoenas shall be served in the same manner as subpoenas issued out of the circuit courts; may compel witnesses to testify and give evidence, and may order the taking of depositions and issue commissions therefor. The evidence in the proceedings shall be confined to the subjects enumerated in the notice of hearing. The evidence may be taken by an appointed reporter. Witnesses shall receive fees as in civil cases, to be paid by the party calling them. In case of neglect or refusal on the part of any person to comply with any order or subpoena issued by the State Engineer or his authorized assistant, or the refusal of any witness to testify to any matter regarding which he may lawfully be interrogated, the circuit court of the county in which the hearing is held, or any judge thereof, on application of the State Engineer or his authorized assistant, shall issue attachment proceedings for contempt, as in the case of disobedience of a subpoena issued from that court or a refusal to testify therein. After the hearing, the State Engineer shall render his decision as to cancellation of the permit. His order in respect to cancellation shall be subject to appeal, as provided in ORS 536.060, to the circuit court of the

county in which are situated the waters described in the permit or any portion of such waters.

537.440 Cancellation of permit; priorities of other permits. If the decision of the State Engineer requires the cancellation of a permit, then he shall at once cancel, or have canceled, the permit. Thereafter the permit shall be of no further force or effect, and shall not be recognized or admitted as evidence of any right or interest in or to the waters covered by it in any proceeding in the courts or before other tribunals of the state. Permits having subsequent priority shall upon such cancellation have priority in the order of the filing of the applications upon which subsequent permits are based, as if the canceled permit, or the application upon which it was based, had never existed.

537.450 Rules for proof as to work and use of water under permits; noncompliance as evidence in cancellation proceedings. The State Engineer may by rule provide that the owners of permits shall submit or furnish proofs of commencement of work, prosecution of work with due diligence, completion of work, and of the application of water to a beneficial use under the permits. Failure to comply with his rules in respect to such proofs shall be considered prima facie evidence of failure to commence work, prosecute work with due diligence, complete work, or apply water to the beneficial use contemplated by the permit, as the case may be, in the proceedings provided in ORS 537.410 to 537.440 for the cancellation of permits.

537.460 to 537.500 [Reserved for expansion]

APPROPRIATION OF UNDERGROUND WATERS

537.510 Appropriation of waters east of Cascades; existing rights not to be impaired. Subject to existing rights, all underground waters of Oregon in counties lying east of the summit of the Cascade Mountains may be appropriated for beneficial use, as provided in ORS 537.510 to 537.600, and not otherwise. Nothing contained in those sections shall be construed so as to take away or impair the vested right of any person to use the water from any existing well or source of underground supply where the water is economically and beneficially used.

537.520 Waters declared public and subject to appropriation; uses; application for permit. (1) The waters in counties lying east of the summit of the Cascade Mountains found in underground streams, channels, artesian basins, reservoirs or lakes, the boundaries of which may reasonably be ascertained, are declared to be public waters and to belong to the public and to be excluded from use, except by appropriation, for any purpose other than for domestic and culinary use, for stock or for the watering of lawns and gardens not exceeding one-half acre in area.

(2) Any person intending to acquire the right to the beneficial use of any of these waters, after May 28, 1927, before commencing the construction of any well, pit, gallery, tunnel, pumping plant or other means of developing and securing such waters, or performing any work in connection with such construction, or in any manner utilizing the waters for such purpose, shall apply to the State Engineer for a permit to make such appropriation.

537.530 Application or permit for domestic use not required; limitation as to area. Nothing in ORS 537.510 to 537.600 shall be construed as requiring an application or permit for the developing for beneficial uses of underground waters for domestic and culinary purposes, for stock, or for the watering of lawns and gardens for profit, and not exceeding one-half acre in area.

537.540 Form and contents of application. Every application for a permit to appropriate underground water under ORS 537.510 to 537.600 shall be in a form prescribed by the State Engineer, and shall set forth in definite terms the name and address of the appropriator, the location and manner of development, the use to be made of the water and the amount of water necessary for such use, and if for irrigation, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision, the time of beginning and completion of work and other information found by the State Engineer to be necessary to properly classify and determine the feasibility of the appropriation.

537.550 Acceptance, recordation and approval of applications; fees; assignment of permits. Applications under ORS 537.510 to

537.600 for underground waters shall be accepted, recorded and approved by the State Engineer under the same procedure adopted for applications for diversions of surface waters, as provided in ORS 537.150 to 537.210, 537.230 to 537.250, 537.280 and 537.290. The same fees shall be charged and collected by the State Engineer for applications and permits under ORS 537.510 to 537.600 as are provided by ORS 536.050. Permits may be assigned in the same manner as is provided by ORS 537.220.

537.560 Annual report by applicant or holder of permit. The owner of an approved application or permit to use water under ORS 537.510 to 537.600 shall annually, after the date of such application, furnish the State Engineer with a detailed report of the work done, a log of wells drilled, characteristics of the underground supply, elevation of water, amount and time of use of water, and manner of utilization.

537.570 Limitation on permit; injury to existing rights; determination by State Engineer. No permit shall be granted for development of underground or artesian waters beyond the capacity of the underground beds or formation in the given basin, district or locality to yield such water with a reasonable or feasible pumping lift in case of pumping water developments, or with a reasonable or feasible reduction of pressure in the case of artesian developments. The State Engineer may decide whether the granting of any such permit will injure or damage any vested or existing rights under prior permits, and may, in addition to the records of his office, require further evidence, proof and testimony prior to granting or denying any such permit.

537.580 Beneficial use as condition of permit; fixing amount per acre; waste prohibited; devices to close or conserve flow of artesian wells. Permits to use water from an underground source shall be contingent upon its use in an economical and beneficial manner. The State Engineer may fix the maximum amount which may be used per acre of land each season or the amount which may be used for other purposes. The water shall not be wasted. Artesian wells shall be provided with suitable means for closing and conserving the flow when not actually needed or put to beneficial use.

537.590 Cancellation of permit for failure or neglect to perform work or use water. Whenever the owner of a permit to appropriate the underground waters of Oregon in counties lying east of the summit of the Cascade Mountains fails to commence actual development within the time required by law, or fails or neglects to prosecute such work with reasonable diligence, or fails to complete such work within the time required by law, or as fixed in the permit or any extension thereof, or, having completed development work, fails or neglects to apply water to a beneficial use, the State Engineer may cancel the permit, in the records of his office, as provided in ORS 537.410 to 537.440, and it shall be thereupon voided.

537.600 Investigation of underground water supply; use of fees. The State Engineer may make such investigations as may be necessary to determine the amount, depth, volume and flow of all underground waters within the state, in counties lying east of the summit of the Cascade Mountains. In making such examination he shall cooperate with the Federal Government, with any county or municipal corporation, or with any person, upon such terms as may seem appropriate to him. All fees paid upon applications for permits for underground and subterranean waters shall be placed in a special fund for the purpose of making examinations as herein provided, to be expended under the direction of the State Engineer.

537.610 to 537.700 [Reserved for expansion]

WASTE, SPRING AND SEEPAGE WATERS

537.710 Waste, spring and seepage waters; laws governing. All ditches now or hereafter constructed, for the purpose of utilizing waste, spring, or seepage waters, shall be governed by the same laws relating to priority of right as those ditches constructed for the purpose of utilizing the waters of running streams; provided, that the person upon whose lands the seepage or spring waters first arise, shall have the right to the use of such waters.

537.720 to 537.800 [Reserved for expansion]

**DIVERSION AND USE OF WATERS
OUT OF STATE**

537.810 Out-of-state use, diversion or appropriation of waters without legislative consent prohibited; terms of consent. No waters located within this state shall be diverted, impounded or in any manner appropriated for diversion or use beyond the boundaries of the state except upon the express consent of the Legislative Assembly. In the event the Legislative Assembly shall give its consent to any such request it may attach thereto such terms, conditions, exceptions, reservations, restrictions and provisions as it may care to make in the protection of the interests of the state and of its inhabitants.

537.820 Application of provisions to waters forming common boundary between states. ORS 537.810 to 537.860 shall also apply to the waters located within the boundaries of this state of any river, stream, lake or other body of water serving as part of the common boundary of this state and any other state and over which this state has concurrent jurisdiction, except that said sections shall not apply to the diversion, impoundment or appropriation of waters for the development of hydroelectric energy, flood control, irrigation or other uses in waters forming a boundary of the state in cases where such waters are not to be diverted from the drainage basin wherein such waters are located.

537.830 Filing upon or condemnation of waters without legislative permission prohibited. No person, or agency of any state or of the United States, shall attempt to file upon or to condemn any waters within the boundaries of this state for any purpose mentioned in ORS 537.810 to 537.860 without first obtaining legislative permission as provided by those sections.

537.840 Legislative consent; filing of certified copy; appropriation rights and procedure. Upon receiving legislative permission to appropriate waters under ORS 537.810 to 537.860, the permittee, upon filing in the office of the State Engineer a certified copy of the Act, certified to by the Secretary of State, may proceed to obtain an appropriation of waters in the manner provided by the laws of this state for the appropriation of waters for beneficial use, subject to all existing rights and valid prior

appropriations and subject to the terms, conditions, exceptions, reservations, restrictions and provisions of such legislative consent.

537.850 Suits to protect state interests; right of redress to private persons. In the event of any violation or attempt to violate any of the provisions of ORS 537.810 to 537.860, the Governor shall cause to be instituted such suits and actions as may be necessary to protect and defend the sovereign rights and interests of the state in the premises. Persons are given right of redress against such violator at private suit or action under any appropriate remedy at law or in equity.

537.860 Vested rights protected. ORS 537.810 to 537.850 shall not affect any valid prior appropriation or water right existing on May 12, 1951.

537.870 Out-of-state municipalities; acquisition of land and water rights in Oregon. Subject to the limitations imposed by ORS 537.810 to 537.860, any municipal corporation of any state adjoining Oregon may acquire title to any land or water right within Oregon, by purchase or condemnation, which lies within any watershed from which the municipal corporation obtains or desires to obtain its water supply.

537.880 to 537.980 [Reserved for expansion]

PENALTIES

537.990 Penalties. (1) Violation of subsection (2) of ORS 537.130 or of any provision of ORS 537.510 to 537.600 is punishable, upon conviction, by a fine of not less than \$10 nor more than \$250, or by imprisonment in the county jail for not more than six months, or both.

(2) Any person who wilfully diverts or uses water to the detriment of others without compliance with law shall be punished as provided in subsection (1) of this section. The possession or use of water, except when a right of use is acquired in accordance with law, shall be prima facie evidence of the guilt of the person using it.

(3) Justice courts and district courts shall have concurrent jurisdiction with the circuit courts in the trial of all violations under this section.

