

Chapter 541

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CROSS REFERENCES

Mutual or voluntary irrigation associations, 648.080

541.010

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**WATER COMPANIES ORGANIZED
UNDER 1891 ACT**

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

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

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

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

541.030 Ditches, etc., across state lands; grant of right of way. The right of way, to the extent specified in the Act of 1891, pages 52 to 60, Oregon Laws 1891, for the ditches, canals, flumes, distributing ditches, and feed-

ers of any corporation appropriating water under the provisions of the Act of 1891, across all lands belonging to the State of Oregon and not under contract of sale, is granted.

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

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

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

541.070 Ditches, canals and flumes as real estate. All ditches, canals and flumes

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

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

541.090 and 541.100 [Reserved for expansion]

APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER, UNDER 1899 ACT

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

541.120 Ditches, etc., through lands; two or more prohibited; use of existing ditch by others than owner; joint liability. No tract or parcel of improved or occupied land

in this state shall, without the written consent of the owner, be subjected to the burden of two or more ditches, canals, flumes or pipe lines constructed under the Act of 1899, pages 172 to 180, Oregon Laws 1899, for the purpose of conveying water through the property, when the same object can be feasibly and practically attained by uniting and conveying all the water necessary to be conveyed through such property in one ditch, canal, flume or pipe line. Any person having constructed a ditch, canal, flume or pipe line for the purpose provided in the Act of 1899 shall allow any other person to enlarge such ditch, canal, flume or pipe line, so as not to interfere with the operations of the person owning the same, and to use such ditch, canal, flume or pipe line in common with the person owning the same, upon payment to such person of a reasonable proportion of the cost of constructing and maintaining the ditch, canal, flume or pipe line. Such persons shall be jointly liable to any person damaged.

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

541.140 to 541.200 [Reserved for expansion]

APPROPRIATION OF WATER BY THE UNITED STATES

541.210 Right of United States to appropriate waters; notice; time limitation; release from appropriation. (1) Whenever the proper officers of the United States, authorized by law to construct works for the utilization of water within this state, shall file in the office of the State Engineer a written notice that the United States intends to utilize certain specified waters, the waters described in the notice and unappropriated at the date of the filing thereof shall not be subject to further appropriation under the laws of this state, but shall be deemed to have been appropriated by the United States; provided, that within three years from the date of filing such notice the proper officer of the United States shall file final plans of the proposed works in the office of the State

Engineer for his information; and provided further, that within four years from the date of the notice the United States shall authorize the construction of the proposed work.

(2) No adverse claims to the use of the water required in connection with such plans shall be acquired under the laws of this state except for such amount of the waters described in the notice as may be formally released in writing by an authorized officer of the United States, which release shall be filed in the office of the State Engineer.

(3) In case of failure of the United States to file such plans or authorize construction of such works within the respective periods herein provided, the waters specified in the notices filed by the United States shall become subject to appropriation by other persons. Notice of the withdrawal of waters under this section shall be published by the State Engineer in a newspaper published and of general circulation in the stream system affected, for a period not exceeding 30 days. A like notice shall be published upon the release of any waters so withdrawn.

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

541.230 State lands within irrigated area; restrictions on sale; conveyance of lands needed by United States. No lands belonging to the state, within the areas to be irrigated from work constructed or controlled by the United States or its authorized agents, shall be sold except in conformity with the classification of farm units by the United States. The title of such land shall not pass from the state until the applicant

therefor has fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except under the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be conveyed to it without charge.

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

541.250 Cession to United States not rescinded. Nothing in ORS 541.210 to 541.240 shall be construed as rescinding the cession by the state to the United States of lands, as provided in chapter 5, Oregon Laws 1905.

541.260 to 541.300 [Reserved for expansion]

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

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

541.320 Decrees adjudicating rights; filing; statement as to matters adjudicated. Upon the adjudication of the rights to the

use of the water of a stream system, a certified copy of the decree shall be prepared by the clerk of the court, without charge, and filed in the office of the State Engineer. The decree shall declare, as to the water right adjudged to each party, whether riparian or by appropriation, the extent, the priority, amount, purpose, place of use, and, as to water used for irrigation, the specific tracts of land to which it shall be appurtenant, together with such other conditions as may be necessary to define the right and its priority.

541.330 to 541.400 [Reserved for expansion]

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

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