Chapter 537

1957 REPLACEMENT PART

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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) (a) 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.

(b) If for agricultural purposes, it shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be.

(c) 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.

(d) 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.

(e) 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.

(f) 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 water resources board; 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 Water Resources Board for consideration. The board shall hold a public hearing on the application on proper notice to the applicant and to anyone objecting thereto. If, after the hearing, the board 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 Water Resources Board shall have due regard for:

(a) 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 and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

(b) The maximum economic development of the waters involved.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

(d) The amount of waters available for appropriation for beneficial use.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(f) All vested and inchoate rights to the waters of this state or to the use thereof, and the means necessary to protect such rights.

(g) The state water resources policy formulated under ORS 536.300 to 536.350. [Amended by 1955 c.707 §36]

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 Water Resources Board 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

water resources board 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. [Amended by 1955 c.707 §37]

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 benefical 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 muncipalities 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 cancelation 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 cancelation 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 cancelation.

(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 hearing, file with the State Engineer affidavits in favor of cancelation 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 cancelation 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 cancelation 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 cancelation; 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 subpenas and compel the attendance of witnesses, which subpenas shall be served in the same manner as subpenas 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 subpena 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 subpena issued from that court or a refusal to testify therein. After the hearing, the State Engineer shall render his decision as to cancelation of the permit. His order in respect to cancelation 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 Cancelation of permit; priorities of other permits. If the decision of the State Engineer requires the cancelation 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 cancelation 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 cancelation 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 cancelation of permits.

537.460 to 537.500 [Reserved for expansion]

APPROPRIATION OF UNDERGROUND WATERS (GROUND WATER ACT OF 1955)

537.505 Short title. ORS 537.505 to 537.795 shall be known as the "Ground Water Act of 1955." [1955 c.708 §1]

537.510 [Repealed by 1955 c.708 §38]

537.515 Definitions. As used in ORS 537.505 to 537.795, unless the context requires otherwise:

(1) "Constructing" a well includes boring, digging, drilling or excavating and installing casing, pump, and other works for withdrawal of water and measurement of depth to the water table.

(2) "Ground water" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands or flows, percolates or otherwise moves.

(3) "Ground water reservoir" means a distinct body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(4) "Pollution" of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(5) "Public agency" means the United States or any agency thereof, the State of Oregon or any agency thereof or any county, city, district organized for public purposes or other public corporation or political subdivision of this state.

(6) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn, provided, that this definition shall not include a natural spring. [1955 c.708 §3]

537.520 [Repealed by 1955 c.708 §38]

537.525 Legislative policy declaration. The Legislative Assembly recognizes, declares and finds that the right to reasonable control of all water within this state from

all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health it is necessary that:

(1) Provision be made for the final determination of relative rights to appropriate ground water everywhere within this state and of other matters with regard thereto through a system of registration, permits and adjudication.

(2) Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.

(3) Beneficial use without waste, within the capacity of available sources, be the basis, measure and extent of the right to appropriate ground water.

(4) All claims to rights to appropriate ground water be made a matter of public record.

(5) Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies thereof for agricultural, commercial, industrial, recreational and other beneficial uses.

(6) The location, extent, capacity, quality and other characteristics of particular sources of ground water be determined.

(7) Reasonably stable ground water levels be determined and maintained.

(8) Depletion of ground water supplies below economic levels, impairment of natural quality of ground water by pollution and wasteful practices in connection with ground water be prevented or controlled within practicable limits.

(9) Whenever wasteful use of ground water, impairment of or interference with existing rights to appropriate surface water, declining ground water levels, interference among wells, overdrawing of ground water supplies or pollution of ground water exists or impends, controlled use of the ground water concerned be authorized and imposed under voluntary joint action by the State Engineer and the ground water users concerned whenever possible, but by the State Engineer under the police power of the state when such voluntary joint action is not taken or is ineffective.

(10) Location, construction, depth, capacity, yield and other characteristics of and matters in connection with wells be controlled in accordance with the purposes set forth in this section. [1955 c.708 §2]

537.530 [Repealed by 1955 c.708 §38]

537.535 Use of ground water, including well construction and operation, subject to requirements of ORS 537.505 to 537.795. No person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and any applicable order, rule or regulation promulgated by the State Engineer under ORS 537.505 to 537.795. [1955 c.708 §4; 1957 c.341 §5]

537.540 [Repealed by 1955 c.708 §38]

537.545 Exempt uses. No registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 is required for the use of ground water for stockwatering purposes, for watering any lawn or noncommercial garden not exceeding one-half acre in area, for single or group domestic purposes in an amount not exceeding 15,000 gallons a day or for any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day. The use of ground water for any such purpose, to the extent that it is beneficial, constitutes a right to appropriate ground water equal to that established by a ground water right certificate issued under ORS 537.700. The State Engineer, however, may require any person or public agency using ground water for any such purpose to furnish information with regard to such ground water and the use thereof. [1955 c.708 §5]

537.550 [Repealed by 1955 c.708 §38]

537.560 [Repealed by 1955 c.708 §38]

537.570 [Repealed by 1955 c.708 §38]

537.575 Permits granted, approved or pending under former law. Any permit granted or application for a permit approved under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590 and 537.600 prior to and still valid and in effect on August 3, 1955, is considered to be a permit issued under ORS 537.625. Any application for a permit under ORS 537.510, 537.520, 537.530, 537.540, 537.550, 537.560, 537.570, 537.580, 537.590

and 537.600 prior to, pending and not yet approved on August 3, 1955, shall be governed as an application for a permit under ORS 537.615 to 537.625. [1955 c.708 §6 (1)]

537.580 [Repealed by 1955 c.708 §38]

537.585 Beneficial use of ground water prior to August 3, 1955, recognized as right to appropriate water when registered. Except as otherwise provided in ORS 537.545 or 537.575 or 537.595 and subject to determination under ORS 537.670 to 537.695, actual and lawful application of ground water to beneficial use prior to August 3, 1955, by or under the authority of any person or public agency or by or under the authority of a predecessor in interest of such person or public agency, when registered under ORS 537.605 and 537.610, is recognized as a right to appropriate ground water to the extent of the maximum beneficial use thereof at any time within two years prior to August 3, 1955. [1955 c.708 §6 (2)]

537.590 [Repealed by 1955 c.708 §38]

537.595 Construction or alteration of well commenced prior to August 3, 1955, recognized as right to appropriate water when registered. Except as otherwise provided in ORS 537.545 or 537.575 or 537.585 and subject to determination under ORS 537.670 to 537.695, when any person or public agency on August 3, 1955, is lawfully engaged in good faith in such construction, alteration or extension of a well for the application of ground water to beneficial use, the right to appropriate such ground water, upon completion of such construction, alteration or extension and application of the ground water to beneficial use within a reasonable time fixed by the State Engineer, when registered under ORS 537.605 and 537.610, is recognized to the extent of the beneficial use of the ground water. [1955 c.708 §6 (3)]

537.600 [Repealed by 1955 c.708 §38]

537.605 Registration of right to appropriate ground water claimed under ORS 537.585 or 537.595; registration statement. (1) Any person or public agency claiming any right to appropriate ground water under ORS 537.585 or 537.595, except for any purpose exempt under ORS 537.545, is entitled to receive from the State Engineer within three years after August 3, 1955, a certificate of registration as evidence of a right to appropriate ground water as provided in ORS 537.585 or 537.595. Failure of such person or public agency to file a registration statement within such period creates a presumption that any such claim has been abandoned.

(2) Upon receipt of a request for registration by any person or public agency referred to in subsection (1) of this section within the period specified, the State Engineer shall provide such person or public agency with a separate registration statement for each well, which shall be completed and returned to the State Engineer.

(3) Each registration statement shall be in a form prescribed by the State Engineer, shall be under oath and shall contain:

(a) The name and postoffice address of the registrant.

(b) The nature of the use by the registrant of the ground water upon which the claim of the registrant is based.

(c) The dates when the ground water was or will be first applied to beneficial use and the dates when construction of the well was begun and completed.

(d) The amount of ground water claimed.

(e) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision, the dates of reclamation of each such legal subdivision and the date when the ground water was or will be completely applied.

(f) The depth to the water table.

(g) The location of the well with reference to government survey corners or monuments or corners of recorded plats.

(h) The depth, diameter and type of the well, and the kind and amount of the casing.

(i) The capacity of the well and well pump in gallons per minute, and the horsepower of the well pump motor.

(j) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the State Engineer may prescribe.

(k) The amount of ground water pumped or otherwise taken from the well each year.

(L) A copy of the log of the completed well, if such log is available.

(m) If the ground water supply is supplemental to an existing water supply, iden-

tification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the registrant.

(n) Such other information as the State Engineer deems necessary.

(4) Each registration statement shall be accompanied by such maps and drawings and other data as the State Engineer deems necessary.

(5) The State Engineer may require that any registration statement be supplemented after any well is fully completed by a statement containing such additional information as the State Engineer deems necessary. [1955 c.708 §7; 1957 c.341 §6]

537.610 Recording registration statement; issuing certificate of registration; effect of certificate. (1) The State Engineer shall accept all registration statements referred to in ORS 537.605 completed and returned to him in proper form, indorse thereon the date of the return and record each statement in a book kept by him for that purpose. Upon such recording the State Engineer shall issue to the registrant a certificate as evidence that the registration is completed.

(2) Upon issuance to him of the certificate of registration the registrant is prima facie entitled to a right to appropriate the ground water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement and the certificate of registration.

(3) No certificate of registration issued under this section shall be construed as a final determination of any matter stated therein. The right of the registrant to appropriate ground water under a certificate of registration is subject to determination under ORS 537.670 to 537.695, and is not final or conclusive until so determined and a ground water right certificate issued. A right to appropriate ground water under a certificate of registration has a tentative priority from the date when the construction of the well was begun. [1955 c.708 §8]

537.615 Application for permit to acquire new right or enlarge an existing right to appropriate ground water. (1) Any person or public agency intending to acquire a wholly new right to appropriate ground water or to enlarge upon any existing right to appropriate ground water, except for any purpose exempt under ORS 537.545, shall apply to the State Engineer for and be issued a permit before commencing the construction of any well or other means of developing and securing the ground water, performing any work in connection with such construction or in any manner utilizing the ground water.

(2) The application for a permit shall be in a form prescribed by the State Engineer and shall contain:

(a) The name and postoffice address of the applicant.

(b) The nature of the use by the applicant of the ground water for which the application is made.

(c) The dates of the beginning and completion of the work.

(d) The date when the ground water will be completely applied to the proposed beneficial use.

(e) The amount of ground water claimed.

(f) If the ground water is to be used for irrigation purposes, a description of the lands to be irrigated, giving the number of acres to be irrigated in each 40-acre legal subdivision.

(g) The depth to the water table, if known.

(h) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(i) The proposed depth, diameter and type of each well, and the kind and amount of the casing.

(j) The estimated capacity of each well and each well pump in gallons per minute, and the horsepower of each well pump motor.

(k) If the ground water is artesian or other ground water not requiring pumping, the rate of flow in gallons in such manner as the State Engineer may prescribe.

(L) If the ground water supply is supplemental to an existing water supply, identification of any application for a permit, permit, certificate or adjudicated right to appropriate water made or held by the applicant.

(m) Such other information as the State Engineer deems necessary.

(3) Each application for a permit shall be accompanied by such maps and drawings and other data as the State Engineer deems necessary. [1955 c.708 §9]

537.620 Acceptance, recordation and approval of applications. (1) The State Engineer shall accept all applications for permits referred to in ORS 537.615 submit-

ted to him in proper form, indorse thereon the date of receipt and record each application in a book kept by him for that purpose.

(2) If, upon examination by the State Engineer, the application is found to be defective, the application shall be returned to the applicant to remedy the defect. The date of and the reasons for the return shall be indorsed on the application and the indorsement shall be made a record in the office of the State Engineer. No application shall lose its priority of filing on account of any such defect, providing an acceptable application is filed in the office of the State Engineer within 30 days from the date of the return of the application to the applicant, or such further time, not exceeding one year, as may be allowed by the State Engineer.

(3) When an application discloses the probability of wasteful use or undue interference with existing wells or that any proposed use or well will impair or substantially interfere with existing rights to appropriate surface water by others, the State Engineer may impose conditions or limitations in the permit to prevent the same or reject the same after hearing, or, in his discretion, initiate a proceeding for the determination of a critical ground water area under ORS 537.730 to 537.740.

(4) An application may be approved for less ground water than applied for or may be approved upon terms, conditions and limitations necessary for the protection of the public welfare, safety and health. In any event the application shall not be approved for more ground water than is applied for or than can be applied to a beneficial use. No application shall be approved when the same will deprive those having prior rights of appropriation for a beneficial use of the amount of water to which they are lawfully entitled. [1955 c.708 §10]

537.622 Protest against issuance of permit; hearing. (1) Any owner of or claimant to a right to appropriate surface or ground water may file, jointly or severally, with the State Engineer at any time prior to the issuance of a permit to appropriate ground water under ORS 537.625, a protest against the issuance of the permit.

(2) Whenever, in the opinion of the State Engineer, a hearing is necessary to determine whether the proposed use or well described in an application under ORS 537.615 will conflict with existing rights to appropriate surface or ground water, 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. [1957 c.341 §2]

537.625 Application with approval indorsed thereon constitutes permit; effect of approval or rejection. (1) The approval or rejection of an application for a permit referred to in ORS 537.615 shall be indorsed thereon and a record of such indorsement shall be made in the office of the State Engineer. The indorsed application shall be returned immediately to the applicant. If the application is approved, the indorsed application constitutes a permit to appropriate the ground water, and the applicant, upon receipt thereof, may commence the construction of any well involved and take all steps necessary to apply the ground water to beneficial use. If the application is rejected, the applicant shall take no steps toward the construction of any well involved or the utilization of the ground water so long as the rejection continues in effect.

(2) A right to appropriate ground water under a permit has a priority from the date when the application was filed with the State Engineer. [1955 c.708 §11]

537.630 Construction work under permit; certificate of completion; ground water right certificate. (1) Actual construction work under a permit to appropriate ground water issued under ORS 537.625 shall begin within one year from the date of approval of the application, and the construction of any proposed well or other means of developing or securing the ground water shall thereafter be prosecuted with reasonable diligence and be completed within a reasonable time fixed in the permit, not to exceed two years from the date of approval of the application. The State Engineer, for good cause shown, may order and allow an extension of time, including an extension beyond the two-year period, for the completion of the well or other means of developing or securing the ground water or for complete application of water to beneficial use.

(2) Within 30 days after completion of any well or other means of developing or securing the ground water the permit holder shall file a certificate of such completion with the State Engineer, disclosing the depth

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to the water table; the depth, diameter and type of each well, and the kind and amount of the casing; the capacity of the well pump in gallons per minute and the drawdown thereof; and such other information as the State Engineer deems necessary.

(3) Upon receipt of proof satisfactory to the State Engineer that an appropriation has been perfected in accordance with the provisions of ORS 537.505 to 537.795, he shall issue a ground water right certificate of the same character as that described in ORS 537.700. The certificate shall be recorded and transmitted to the applicant as provided in said section.

(4) The procedure for cancelation of a permit shall be as provided in ORS 537.260. [1955 c.708 §12]

537.635 Assignment of certificate of registration or permit. Any certificate of registration issued under ORS 537.610 or permit issued under ORS 537.625 may be assigned, subject to the conditions of the certificate of registration or permit, but no such assignment shall be binding, except upon the parties thereto, unless filed for record in the office of the State Engineer. [1955 c.708 §13]

537.640 to 537.660 [Reserved for expansion]

537.665 Investigation of ground water reservoirs; defining characteristics and assigning names and numbers. The State Engineer or his authorized assistant shall proceed as rapidly as possible to identify and define tentatively the location, extent, depth and other characteristics of each ground water reservoir in this state, and shall assign to each a distinctive name or number or both as a means of identification. The State Engineer or his authorized assistant may make such investigation and gather such data and information as may be essential to a proper understanding of the characteristics of each ground water reservoir and the relative rights to appropriate ground water therefrom. Before any final determination of boundaries and depth of any ground water reservoir, the State Engineer shall proceed to make a final determination of the rights to appropriate the ground water of the ground water reservoir under ORS 537.670 to 537.695. [1955 c.708 §14]

537.670 Determination of rights to appropriate ground water of a ground water reservoir. (1) The State Engineer upon his own motion or, in his discretion, upon receipt of a petition therefor by any one or more appropriators of ground water from such ground water reservoir, may proceed to make a final determination of the rights to appropriate the ground water of any ground water reservoir in this state.

(2) The State Engineer shall prepare a notice of his intent to begin a determination referred to in subsection (1) of this section. The notice shall set forth a place and time when the State Engineer or his authorized assistant shall begin the taking of testimony as to the rights of the various claimants to appropriate the ground water of the ground water reservoir and as to the boundaries and depth thereof. A copy of the notice shall be delivered to each person or public agency known to the State Engineer from an examination of the records in his office to be a claimant to a right to appropriate ground water of the ground water reservoir or any surface water within the area in which the ground water reservoir is located. The notice shall also be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in each county in which the ground water reservoir or any part thereof is located. If the ground water reservoir is located in whole or in part within the limits of any city, the notice shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and copies of the notice shall be delivered to the mayor or chairman of the governing body of the city. Copies of the notice shall be delivered and the last publication date of published notices shall be at least 30 days prior to the taking of any testimony.

(3) The State Engineer shall inclose with each copy of the notice referred to in subsection (2) of this section delivered to each person or public agency known to be a claimant to a right to appropriate ground water of the ground water reservoir a blank form on which such claimant shall present in writing all the particulars necessary for determination of his right as may be prescribed by the State Engineer. The State Engineer may require each claimant to certify to his statements under oath, and the

State Engineer or his authorized assistant may administer such oaths. [1955 c.708 §15]

537.675 Determination of rights in several reservoirs or of a critical ground water area in same proceeding. (1) Whenever the State Engineer has reason to believe that two or more ground water reservoirs overlie one another wholly or in part, he may proceed to a final determination of the rights to appropriate the ground water of each of such ground water reservoirs in the same proceeding under ORS 537.670 to 537.695.

(2) The State Engineer may include in a determination proceeding under ORS 537.670 to 537.695 a determination of a critical ground water area under ORS 537.730 to 537.740. [1955 c.708 §16]

537.680 Taking testimony; inspecting evidence; contesting claim. Testimony shall be taken, evidence shall be open to inspection and claims shall be subject to contest in a proceeding to determine rights to appropriate the ground water of any ground water reservoir initiated under ORS 537.670 as nearly as possible in the same manner as provided in ORS 539.070, 539.090, 539.100 and 539.110 for the determination of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §17]

537.685 Findings of fact and order of determination. As soon as practicable after compilation of the evidence obtained in proceedings under ORS 537.665 to 537.680, the State Engineer shall make and cause to be entered of record in his office findings of fact and an order of determination, determining and establishing the several rights to appropriate the ground water of the ground water reservoir. The findings of fact and order of determination shall also include:

(1) The boundaries and depth of each ground water reservoir.

(2) The lowest permissible water level in each ground water reservoir.

(3) The location, extent, quality and other pertinent characteristics of the ground water supply.

(4) The serviceable methods of withdrawal of the ground water from each ground water reservoir.

(5) Rules for controlling the use of the ground water from each ground water reservoir.

(6) Such general or special rules or restrictions with respect to the construction, operation and protection of wells and the withdrawal of ground water thereby as in the judgment of the State Engineer the public welfare, health and safety may require.

(7) The name and postoffice address of each claimant.

(8) The nature of the use of the ground water allowed for each well, together with the maximum permissible use of the ground water, the place of use of the ground water and the date of priority of each use.

(9) If the ground water is used or is to be used for irrigation purposes, a description of the lands irrigated or to be irrigated, giving the number of acres irrigated or to be irrigated in each 40-acre legal subdivision.

(10) The location of each well with reference to government survey corners or monuments or corners of recorded plats.

(11) The depth, diameter and type of each well, the kind and amount of the casing, the capacity of each well in gallons per minute and such other information concerning each well as in the opinion of the State Engineer may be pertinent. [1955 c.708 §18]

537.690 Filing evidence, findings and determinations; court proceedings. The evidence relied upon by the State Engineer in the entry of his findings of fact and order of determination under ORS 537.685, together with a copy of such findings and order, shall be certified to by the State Engineer and filed with the clerk of the circuit court wherein the determination is to be heard, which shall be the circuit court of any county in which the ground water reservoir or any part thereof is located. A certified copy of the findings of fact and the order of determination shall also be filed with the county clerk of every other county in which the ground water reservoir or any part thereof is located. Thereafter, proceedings shall be had as nearly as possible in the same manner as provided in subsections (2), (3) and (4) of ORS 539.130, 539.150, 539.160, 539.170, 539.180, 539.190 and 539.210 for the final adjudication of the relative rights of the various claimants to the waters of any surface stream. [1955 c.708 §19]

537.695 Conclusive adjudication. The determination of the State Engineer under ORS 537.685, as confirmed or modified by the circuit court or Supreme Court, shall be

a conclusive adjudication as to all claimants of rights to appropriate the ground water of each ground water reservoir included within the order of determination. [1955 c.708 §20]

537.700 Issuing ground water right certificate. Upon the final determination under ORS 537.670 to 537.695 of the rights to appropriate the ground water of any ground water reservoir, the State Engineer shall issue to each person or public agency represented in the determination proceedings and who is determined to have such a right a ground water right certificate, setting forth the name and postoffice address of the owner of the right; the priority of the date, extent and purpose of the right; and, if the ground water is for irrigation purposes, a description of the legal subdivisions of land to which the ground water is appurtenant. The State Engineer shall transmit the certificate by certified mail to the county clerk of the county in which the right is located. The county clerk, upon receipt of the recording fee of $1 collected as provided in ORS 537.786, shall record the certificate in a book especially prepared and kept for that purpose, and shall thereupon immediately transmit the certificate to the owner of the right. [1955 c.708 §21; 1957 c.341 §7]

537.705 Ground water appurtenant; change in use, place of use or point of appropriation. All ground water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any ground water for any purpose may be made without compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530. However, the owner of any ground water right may, upon compliance with a procedure as nearly as possible like that set forth in ORS 540.520 and 540.530, change the use and place of use, the point of appropriation or the use theretofore made of the ground water in all cases without losing priority of the right theretofore established. [1955 c.708 §22]

537.710 [Renumbered 537.800]

537.715 [1955 c.708 §23; repealed by 1957 c.341 §12]

537.720 Violation of terms of law or permit or certificate; action by State Engineer. Whenever, after notice to and opportunity to be heard by such holder, the State Engineer finds that the holder of any permit or certificate of registration issued under ORS 537.505 to 537.795 is wilfully violating any provision of such permit or certificate of registration or any provision of ORS 537.505 to 537.795, the State Engineer may cancel or suspend such permit or certificate of registration or impose conditions on the future use thereof to prevent such violation. [1955 c.708 §24]

537.725 [Reserved for expansion]

537.730 Initiation of proceeding for determination of critical ground water area; hearing. (1) In addition to initiation under subsection (3) of ORS 537.620 of a proceeding for the determination of a critical ground water area, the State Engineer upon his own motion or, in his discretion, upon receipt of a petition therefor by any ground water claimant or appropriator within the area in question, may also initiate such a proceeding whenever he has reason to believe that:

(a) Ground water levels in the area in question are declining or have declined excessively; or

(b) The wells of two or more ground water claimants or appropriators within the area in question interfere substantially with one another; or

(c) The available ground water supply in the area in question is being or is about to be overdrawn; or

(d) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety.

(2) The State Engineer or his authorized assistant shall hold a public hearing on the question of the determination of a critical ground water area. Written notice of the hearing shall be given to each well driller licensed under ORS 537.770 whose address as shown on his license is within any county in which any part of the area in question is located, and to each person or public agency known to the State Engineer from an examination of the records in his office to be a claimant or appropriator of ground water in the area in question. Notice of the hearing shall also be published in at least one issue each week for at least two consecutive weeks in at least one newspaper of general circulation in the area in question. If the area in question is

located in whole or in part within the limits of any city, notice of the hearing shall be published in at least one issue each week for at least two consecutive weeks in a newspaper of general circulation published in the city, if any, and written notice of the hearing shall be given to the mayor or chairman of the governing body of the city. Written notices shall be given and the last publication date of published notices shall be at least 30 days prior to the hearing.

(3) Oral and documentary evidence may be taken at the public hearing. A full record shall be kept of all evidence taken at the hearing, and the procedure shall be such as to secure a full, fair and orderly proceeding and to permit all relevant evidence to be received. [1955 c.708 §26; 1957 c.341 §8]

537.735 Order declaring critical ground water area; contents of order. (1) If, at the conclusion of the public hearing held under ORS 537.730, the State Engineer finds that any of the circumstances set forth in subsection (3) of ORS 537.620 if the proceeding is initiated thereunder, or in subsection (1) of ORS 537.730 if the proceeding is initiated thereunder, are true, and further finds that the public welfare, health and safety require that any one or more corrective controls be adopted, he shall by order declare the area in question to be a critical ground water area.

(2) The order of the State Engineer shall define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.

(3) The order of the State Engineer may include any one or more of the following corrective control provisions:

(a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the State Engineer shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area.

(b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year, and, in so far as may be reasonably done, the State Engineer shall apportion such permissible total withdrawal among the appropriators holding valid rights to the ground water in the critical area in accordance with the relative dates of priority of such rights.

(c) A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for domestic and livestock purposes first, and thereafter other beneficial purposes, including agricultural, industrial, municipal other than domestic, and recreational purposes, in such order as the State Engineer deems advisable under the circumstances.

(d) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.

(e) Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.

(f) A provision requiring the abatement, in whole or in part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.

(g) A provision requiring and specifying a system of rotation of use of ground water in the critical area.

(h) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795. [1955 c.708 §27]

537.740 Filing findings of fact and order; copy to parties; changing order. (1) The State Engineer shall file in his office his findings of fact based upon the evidence and his order based upon such findings made as provided in ORS 537.735. The State Engineer shall deliver copies of such findings and order to all parties in the proceeding for the determination of a critical ground water area. The State Engineer shall file a copy of the order with the recorder of conveyances, or if none, the county clerk, of each county within which any part of the critical ground water area lies, and such recorder of conveyances or county clerk shall record the order in the deed records of the county.

(2) The State Engineer may suspend, modify or cancel any order made as provided in ORS 537.735 upon such notice and in such manner as he deems proper. A certified copy of each suspension, modification or cancelation shall be filed and recorded as provided for orders in subsection (1) of this section. [1955 c.708 §28]

537.745 Voluntary agreements among ground water users from same reservoir. (1) In the administration of ORS 537.505 to 537.795, the State Engineer may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir. When the State Engineer finds that any such agreement, executed in writing and filed with the State Engineer, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, he shall approve the agreement, and thereafter such agreement, until terminated as provided in this subsection, shall control in lieu of a formal order, rule or regulation of the State Engineer under ORS 537.505 to 537.795. Any agreement approved by the State Engineer may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the State Engineer when he finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the State Engineer may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the State Engineer shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section. [1955 c.708 §31]

537.750 to 537.760 [Reserved for expansion]

537.765 Log of new or altered wells; furnishing samples to State Engineer. (1) The business or activity of constructing new wells or altering existing wells is declared to be a business or activity affecting the public welfare, health and safety. In order to enable the state to protect the welfare, health and safety of its citizens, any person or public agency constructing or altering a well owned by such person or public agency, whether the work is performed by such person or public agency or by another person or public agency employed for the purpose, or any well driller licensed under ORS 537.770 employed for such purpose, shall keep a log of each well constructed or altered after August 3, 1955, and shall furnish a certified copy of such log to the State Engineer within 30 days after the completion of the construction or alteration.

(2) Each log required under subsection (1) of this section shall be in a form prescribed by the State Engineer and shall show:

(a) The name and postoffice address of the owner of the well and the person or public agency performing or causing the performance of the work of constructing or altering the well.

(b) The location of the well with reference to government survey corners or monuments or corners of recorded plats.

(c) The dates of commencement and completion of the work of constructing or altering the well.

(d) The depth, diameter and type of the well.

(e) The kind and amount of the casing and where placed in the well, including the number and location of perforations or screens.

(f) The flow in cubic feet per second or gallons per minute of a flowing well, and the shut-in pressure in pounds per square inch.

(g) The static water level with reference to the land surface, and the drawdown with respect to the amount of water pumped per minute, when a pump test is made.

(h) The kind and nature of the material in each stratum penetrated, with at least one entry for each change of formation, and the thickness of aquifers.

(i) The temperature of the ground water encountered and other characteristics of such ground water in such detail as may be required by the State Engineer.

(3) If required by the State Engineer, the person, public agency or well driller re-

ferred to in subsection (1) of this section shall furnish to the State Engineer samples of the ground water and of each change of formation in containers furnished and transportation expense paid by the State Engineer. [1955 c.708 §29]

537.770 Well driller's license. (1) No person shall enter into a contract for compensation directly with another person or public agency to construct or alter or cause to be constructed or altered a well for such other person or public agency or shall perform or cause to be performed any well construction or alteration operation under any such contract entered into by him unless he possesses a well driller's license issued by the State Engineer.

(2) Upon receipt of an application therefor, the State Engineer shall issue a well driller's license, in a form prescribed by the State Engineer, upon payment of a license fee of $10. The license shall expire on June 30 next following the date of its issuance. A license may be renewed annually thereafter upon application therefor and payment of a renewal fee of $5 for each renewal. The State Engineer shall pay all license and renewal fees into the General Fund in the State Treasury. The State Engineer may revoke or suspend any well driller's license when it appears to his satisfaction, after notice to and opportunity to be heard by the licensee, that the licensee has failed to comply with the provisions of the license, any provision of ORS 537.505 to 537.795 applicable to such licensee or any order, rule or regulation promulgated under ORS 537.505 to 537.795 applicable to such licensee. [1955 c.708 §30; 1957 c.341 §9]

537.775 Wasteful or defective wells. Whenever the State Engineer finds that any well, including any well exempt under ORS 537.545, is by the nature of its construction, operation or otherwise causing wasteful use of ground water, is unduly interfering with other wells or is polluting ground water or surface water supplies contrary to ORS 537.505 to 537.795, the State Engineer may order discontinuance of or impose conditions upon the use of such well to such extent as may be necessary to remedy the defect. [1955 c.708 §25]

537.777 Regulation by State Engineer of controlling works of wells and distribution of ground water. Whenever the State Engineer finds that any person or public agency is using or attempting to use any ground water or is operating or permitting the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and any applicable order, rule or regulation promulgated by the State Engineer under ORS 537.505 to 537.795, or that it is necessary in order to secure the equal and fair distribution of ground water in accordance with the rights of the various ground water users, the State Engineer shall regulate or cause to be regulated the controlling works of wells and shall distribute ground water in such a manner as to secure such compliance or such equal and fair distribution. Such regulation of controlling works and distribution of ground water shall be as nearly as possible in the same manner as provided in ORS 540.010 to 540.130. [1957 c.341 §4]

537.780 Powers of State Engineer. In the administration of ORS 537.505 to 537.795, the State Engineer may:

(1) Require that all flowing wells be capped or equipped with valves so that the flow of ground water may be completely stopped when the ground water is not actually being applied to a beneficial use.

(2) Prescribe and enforce general standards for the construction and maintenance of wells and their casings, fittings, valves and pumps, and special standards for the construction and maintenance of particular wells and their casings, fittings, valves and pumps.

(3) Prescribe and enforce uniform standards for the scientific measurement of water levels and of ground water flowing or withdrawn from wells.

(4) Enter upon any lands for the purpose of inspecting wells, including wells exempt under ORS 537.545, casings, fittings, valves, pipes, pumps and measuring devices.

(5) Prosecute actions and suits to enjoin violations of ORS 537.505 to 537.795, and appear and become a party to any action, suit or proceeding in any court or before any administrative body when it appears to his satisfaction that the determination of such action, suit or proceeding might be in conflict with the public policy expressed in ORS 537.525.

(6) Call upon and receive advice and assistance from the Sanitary Authority of the State of Oregon or any other public agency or any person, and enter into cooper-

ative agreements with any such public agency or person.

(7) Promulgate and enforce such rules and regulations as he deems necessary to facilitate and assist in carrying out his functions under ORS 537.505 to 537.795, including rules and regulations governing the form and content of registration statements, certificates of registration, applications for permits, permits, certificates of completion, ground water right certificates, notices, proofs, maps, drawings, logs and licenses, and procedure in hearings held by him or an authorized assistant. [1955 c.708 §32]

537.785 Fees. In the administration of ORS 537.505 to 537.795, the following fees shall be collected by the State Engineer in advance, and paid by him into the General Fund of the State Treasury:

(1) For examining a registration statement or an application for a permit, $10.

(2) For filing and recording a registration statement or a permit:

(a) For irrigation purposes, $5 for the first 30 acres, or fraction thereof, to be irrigated; 15 cents for each acre in excess of 30 acres up to and including 100 acres; five cents for each acre in excess of 100 up to and including 1,000 acres; and one cent for each acre in excess of 1,000 acres.

(b) For storage, a minimum fee of $5 for the first 100 acre-feet; one cent for each acre-foot in excess of 100 up to and including 1,000 acre-feet; one-half cent for each acre-foot in excess of 1,000 up to and including 20,000 acre-feet; and one-tenth cent per acre-foot for all in excess of 20,000 acre-feet.

(c) For any other purpose, $10 for the first second-foot or fraction thereof, and $2 for each additional second-foot.

(3) For any service similar to any of those referred to in ORS 536.050, the fee set forth in ORS 536.050 for such service. [1955 c.708 §33]

537.786 Additional fees. (1) At the time of submission of proof of appropriation under ORS 537.630, or at the time of taking testimony for determination of rights to appropriate ground water under ORS 537.680, the State Engineer shall collect from each permit holder or claimant a fee of $1 for recording the ground water right certificate, when issued, in the office of the county clerk as provided in ORS 537.700, together with an additional fee from each claimant, as follows:

(a) For irrigation use, 75 cents for each acre of irrigated lands up to and including 100 acres; 50 cents for each acre in excess of 100 acres up to and including 500 acres; 35 cents for each acre in excess of 500 acres up to and including 1,000 acres; and 25 cents for each acre in excess of 1,000 acres. The minimum irrigation use fee for any permit holder or claimant shall be $15.

(b) For mining or any other use, $10 for the first second-foot or fraction thereof, and $2 for each additional second-foot or fraction thereof.

(2) Where the proof shows that the ground water right was initiated by making application for a permit to the State Engineer under ORS 537.615, or that a registration statement was completed and returned to the State Engineer under ORS 537.605, the permit holder or claimant in such cases shall be given credit in the payment of fees under subsection (1) of this section for the money paid as fees under ORS 537.785.

(3) Except for those fees due or to be paid to the county clerk, all the fees collected by the State Engineer under subsection (1) of this section shall be paid by him into the General Fund of the State Treasury. [1957 c.341 §3]

537.790 Appeal from order, rule or regulation. Any person who deems himself aggrieved by any order, rule or regulation of the State Engineer under ORS 537.505 to 537.795 may appeal from the same to the circuit court of the county in which the property affected by such order, rule or regulation, or any part of such property, is situated. The appeal may be carried from the circuit court to the Supreme Court, and shall be governed by the practice in suits in equity. No order of the State Engineer shall be disturbed when there is substantial evidence to support it. No rule or regulation of the State Engineer shall be disturbed unless it is affirmatively made to appear that the same substantially and unjustly discriminates against the complainant to his prejudice and in favor of others similarly situated. [1955 c.708 §34]

537.795 ORS 537.505 to 537.795 supplementary. ORS 537.505 to 537.795 are intended to be supplementary and in addition to and are not intended to repeal ORS 263.010 to 263.130 or any law relating to the surface waters of this state. [1955 c.708 §35]

WASTE, SPRING AND SEEPAGE WATERS

537.800 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. [Formerly 537.710]

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 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) Violation of ORS 537.535 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.

(4) Justice courts and district courts shall have concurrent jurisdiction with the circuit courts in the trial of all violations under this section. [Subsection (3) enacted as 1955 c.708 §36]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 2, 1957.

Sam R. Haley
Legislative Counsel