Chapter 542

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SURVEY OF WATER RESOURCES

542.010 Contract by State Engineer with federal agencies for investigations, plans, etc.; expense. In order that the natural resources of Oregon in land, water and power may be utilized to the highest advantage of the people, complete cooperation between the state and federal authorities in controlling, investigating and developing these resources in the interest of the people of the state is essential. Therefore, the State Engineer may, on behalf of this state, enter into a contract or agreement with any federal department or bureau having jurisdiction in such matters for the execution of such surveys and investigations and the preparation of such plans, specifications and estimates or other data by cooperation between the state and the federal department or bureau as will, in the judgment of the State Engineer, approved by the Governor, be best suited to accomplish the purposes of ORS 542.010 to 542.050. However, in no case shall the proportion of expense to be borne by this state exceed the proportion to be borne by the other party to the contract or agreement.

542.020 Purpose of law. The intent of ORS 542.010 to 542.050, as outlined in ORS 542.010, is to have on file ready and available, such detailed surveys and information as will not only permit, but will tend to induce, the beneficial use of water by private persons, irrigation districts, corporations, or possibly by the state or national government.

542.030 Report by engineer; contents; copies for public inspection. As soon as practicable after the completion of the surveys and investigations, the State Engineer shall prepare or have prepared a report setting forth the plans, specifications and estimated cost of construction, maintenance and operation of the projects, together with any other information tending to show their feasibility, and may in his discretion have the report printed in pamphlet form and distributed to those interested. Copies of completed maps, plans, specifications, estimates and reports secured or prepared in connection with any such investigation shall be kept on file in the office of the State Engineer at all times, and open for public inspection during business hours.

542.040 Withholding water from appropriation pending investigation; restrictions on permit to appropriate; repayment of cost of project. (1) The State Engineer, on behalf of the state, shall withdraw and withhold from appropriation any unappropriated water which may be required for any project under investigation or to be investigated under the provisions of ORS 542.010 to 542.050. If the project is found to be feasible, he shall withhold the same from appropriation until the money expended in the investigation of the project is repaid to the cooperating parties in proportion to the amount contributed by each unless funds for construction are provided by one or both of the cooperating parties, in which case the State Engineer shall issue a permit without requiring such repayment. No permit to appropriate water which may be in conflict with any such project under investigation shall be approved by the State Engineer, nor shall any assignment of plans and information or any part thereof be made except upon consideration and order by him after full hearing of all interested parties.

(2) Any moneys returned to the State Engineer under the provisions of this section shall promptly be turned over to the State Treasurer and credited to the General Fund in the State Treasury.

542.050 Construction work; minor portions of project. As the purposes of ORS 542.010 to 542.050 are to secure the most immediate, as well as the most beneficial, ultimate use of the available waters for any certain project, the State Engineer, as occasion may require, may grant permits and arrange the details so that minor portions of the project may be segregated and constructed at any time. However, the segregation and development of such minor parts shall not interfere to any serious extent with the handling or completion of the balance of the project.

542.060 Information as to availability of water for power; duties of State Engineer; gauging stations; surveys and profiles; publication of information; assistants; materials. The State Engineer shall establish gauging stations at suitable points on the various streams of the state to determine the daily and seasonal fluctuations in the flow of the water; shall make surveys and profiles to determine the fall of stream suitable for power development; and shall

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prepare topographic maps of the territory adjacent to the private streams of the state, so that the availability of water for power, irrigation or other beneficial uses may be determined and made known to the public. All such maps and information shall be made a matter of record in the office of the State Engineer, and he shall publish a summary of all such information in the most practical and economical manner for presentation to the public. The State Engineer shall enter into such agreements and contracts as will insure that the surveys and investigations are carried on in the most economical manner, and that the maps and data are made available to the use of the public as quickly as possible. He may employ assistants and purchase materials and supplies necessary in carrying out the provisions of this section.

542.070 Entry on lands. In order to carry out the purpose of ORS 542.060 all persons employed under that section may enter and cross all lands within the state; provided, that in so doing, no unnecessary damage is done to private property.

542.080 Cooperation with federal agencies; contracts. On behalf of this state, the State Engineer may cooperate with the Federal Power Commission, the United States Geological Survey, the United States Reclamation Service, or any other federal agency or commission engaged in similar work, and may enter into contracts or agreements whenever it appears desirable or advantageous to the state.

542.090 Moneys from licenses under Federal Waterpower Act; disposal. Any moneys arising from power licenses under the Federal Waterpower Act, approved June 10, 1920, and paid over to the state, shall be credited by the State Treasurer to the General Fund.

542.100 [Reserved for expansion]

WILLAMETTE RIVER BASIN PROJECT

542.110 Public interest requiring construction of system of works. (1) It hereby is declared that public interest, welfare, convenience and necessity require the construction of a system of works in accordance with the general comprehensive plan for flood control, navigation and other purposes in the Willamette River Basin, as set forth in House Document 544, Seventy-fifth Congress, third session, and the Act of the Seventy-fifth Congress approved June 28, 1938, 52 Stat. 1222, authorizing the construction of certain public works, including the Willamette River Basin Project.

(2) The State Water Resources Board may act for the state in all matters necessary or advisable in the promotion, construction and maintenance of the Willamette River Basin Project. [Amended by 1955 c.707 §57]

542.120 [Repealed by 1955 c.707 §75]

542.130 [Repealed by 1955 c.707 §75]

542.140 [Repealed by 1955 c.707 §75]

542.150 [Repealed by 1955 c.707 §75]

542.160 [Repealed by 1955 c.707 §75]

542.170 to 542.200 [Reserved for expansion]

ROGUE RIVER WATERSHED PROJECT

542.210 Construction of federal dams and structures in Rogue River; limitations. In order to further necessary investigations and studies for the maximum development of the Rogue River basin and watershed and to conserve established and potential uses thereof, and to facilitate full consideration of various projects to accomplish a coordinated and comprehensive development of the basin and watershed, the United States and its authorized agencies may construct in the Rogue River and on its bed dams and such other structures as the government deems necessary, upon compliance with the laws of Oregon. However, no dam or structure hereby authorized shall be placed in the Rogue River between the intersection of the river with the south line of section 10, township 34 south, range 1 west of the Willamette Meridian in Jackson County, and the confluence of that river with the Pacific Ocean, which would interfere with the free passage of fish up or down stream. No dam or other structure shall be constructed by any person in or on the bed of the Rogue River below its intersection with the south line of section 27, township 33 south, range 1 east of the Willamette Meridian, in Jackson County, except as authorized by this section.

542.220 to 542.300 [Reserved for expansion]

542.310 [Amended by 1953 c.622 §5; repealed by 1955 c.707 §75]

542.320 [Amended by 1953 c.622 §5; repealed by 1955 c.707 §75]

542.330 [Amended by 1953 c.622 §5; repealed by 1955 c.707 §75]

542.340 [1953 c.622 §4; repealed by 1955 c.707 §75]

542.350 to 542.400 [Reserved for expansion]

542.410 [1953 c.431 §1; repealed by 1957 c.142 §5]

542.420 [1953 c.431 §2; repealed by 1957 c.142 §5]

542.430 [1953 c.431 §3; repealed by 1957 c.142 §5]

542.440 [1953 c.431 §4; repealed by 1957 c.142 §5]

542.450 [1953 c.431 §5; repealed by 1957 c.142 §5]

542.460 [1953 c.431 §8; repealed by 1957 c.142 §5]

542.470 [1953 c.431 §7; repealed by 1957 c.142 §5]

542.480 [1953 c.431 §9; repealed by 1957 c.142 §5]

542.490 [1953 c.431 §6; repealed by 1957 c.142 §5]

542.500 to 542.600 [Reserved for expansion]

KLAMATH RIVER BASIN COMPACT

542.610 Klamath River Basin Compact ratified; when effective. (1) The Legislative Assembly of the State of Oregon hereby ratifies the Klamath River Basin Compact set forth in ORS 542.620, and the provisions of such compact hereby are declared to be the law of this state upon such compact becoming effective as provided in subsection (2) of this section.

(2) The compact shall become effective when it has been ratified by the legislatures of the States of California and Oregon, and has been consented to by the Congress of the United States as provided in Article XIII of the compact. [1957 c.142 §1]

Note: The Klamath River Basin Compact became effective on September 11, 1957. The compact was ratified by the State of California by chapter 113, California Statutes 1957 (signed by Governor on April 17, 1957, and effective on September 11, 1957). The Congress of the United States consented to the compact by Public Law 222, 85th Congress (signed by President on August 30, 1957).

542.620 Klamath River Basin Compact. The provisions of the Klamath River Basin Compact are as follows:

Article I—Purposes

The major purposes of this compact are, with respect to the water resources of the Klamath River Basin:

A. To facilitate and promote the orderly, integrated and comprehensive development, use, conservation and control thereof for various purposes, including, among others: the use of water for domestic purposes; the development of lands by irrigation and other means; the protection and enhancement of fish, wildlife and recreational resources; the use of water for industrial purposes and hydroelectric power production; and the use and control of water for navigation and flood prevention.

B. To further intergovernmental cooperation and comity with respect to these resources and programs for their use and development and to remove causes of present and future controversies by providing (1) for equitable distribution and use of water among the two states and the Federal Government, (2) for preferential rights to the use of water after the effective date of this compact for the anticipated ultimate requirements for domestic and irrigation purposes in the Upper Klamath River Basin in Oregon and California, and (3) for prescribed relationships between beneficial uses of water as a practicable means of accomplishing such distribution and use.

Article II—Definition of Terms

As used in this compact:

A. "Klamath River Basin" shall mean the drainage area of the Klamath River and all its tributaries within the States of California and Oregon and all closed basins included in the Upper Klamath River Basin.

B. "Upper Klamath River Basin" shall mean the drainage area of the Klamath River and all its tributaries upstream from the boundary between the States of California and Oregon and the closed basins of Butte Valley, Red Rock Valley, Lost River Valley, Swan Lake Valley and Crater Lake, as delineated on the official map of the Upper

Klamath River Basin approved on September 6, 1956, by the commissions negotiating this compact and filed with the Secretaries of State of the two states and the General Services Administration of the United States, which map is incorporated by reference and made a part hereof.

C. "Commission" shall mean the Klamath River Compact Commission as created by Article IX of this compact.

D. "Klamath Project" of the Bureau of Reclamation of the Department of the Interior of the United States shall mean that area as delineated by appropriate legend on the official map incorporated by reference under subdivision B of this Article.

E. "Person" shall mean any individual or any other entity, public or private, including either state, but excluding the United States.

F. "Keno" shall mean a point on the Klamath River at the present needle dam, or any substitute control dam constructed in section 36, township 39 south, range 7 east, Willamette Base and Meridian.

G. "Water" or "waters" shall mean waters appearing on the surface of the ground in streams, lakes or otherwise, regardless of whether such waters at any time were or will become ground water, but shall not include water extracted from underground sources until after such water is used and becomes surface return flow or waste water.

H. "Domestic use" shall mean the use of water for human sustenance, sanitation and comfort; for municipal purposes; for livestock watering; for irrigation of family gardens; and for other like purposes.

I. "Industrial use" shall mean the use of water in manufacturing operations.

J. "Irrigation use" shall mean the use of water for production of agricultural crops, including grain grown for feeding wildfowl.

Article III—Distribution and Use of Water

A. There are hereby recognized vested rights to the use of waters originating in the Upper Klamath River Basin validly established and subsisting as of the effective date of this compact under the laws of the state in which the use or diversion is made, including rights to the use of waters for domestic and irrigation uses within the Klamath Project. There are also hereby recognized rights to the use of all waters reasonably required for domestic and irrigation uses which may hereafter be made within the Klamath Project.

B. Subject to the rights described in subdivision A of this Article and excepting the uses of water set forth in subdivision E of Article XI, rights to the use of unappropriated waters originating within the Upper Klamath River Basin for any beneficial use in the Upper Klamath River Basin, by direct diversion or by storage for later use, may be acquired by any person after the effective date of this compact by appropriation under the laws of the state where the use is to be made, as modified by the following provisions of this subdivision B and subdivision C of this Article, and may not be acquired in any other way:

1. In granting permits to appropriate waters under this subdivision B, as among conflicting applications to appropriate when there is insufficient water to satisfy all such applications, each state shall give preference to applications for a higher use over applications for a lower use in accordance with the following order of uses:

(a) Domestic use,

(b) Irrigation use,

(c) Recreational use, including use for fish and wildlife,

(d) Industrial use,

(e) Generation of hydroelectric power,

(f) Such other uses as are recognized under the laws of the state involved.

These uses are referred to in this compact as uses (a), (b), (c), (d), (e) and (f), respectively. Except as to the superiority of rights to the use of water for use (a) or (b) over the rights to the use of water for use (c), (d), (e) or (f), as governed by subdivision C of this Article, upon a permit being granted and a right becoming vested and perfected by use, priority in right to the use of water shall be governed by priority in time within the entire Upper Klamath River Basin regardless of state boundaries. The date of priority of any right to the use of water appropriated for the purposes above enumerated shall be the date of the filing of the application therefor, but such priority shall be dependent on commencement and completion of construction of the necessary works and application of the water to beneficial use with due diligence and within the times specified under the laws of the state where the use is to be made. Each state shall promptly provide the commission and the appropriate official of the other state with complete information as to such applications and as to all actions taken thereon.

2. Conditions on the use of water under this subdivision B in Oregon shall be:

(a) That there shall be no diversion of waters from the Upper Klamath River Basin, but this limitation shall not apply to out-of-basin diversions of waters originating within the drainage area of Fourmile Lake.

(b) That water diverted from Upper Klamath Lake and the Klamath River and its tributaries upstream from Keno, Oregon, for use in Oregon and not consumed therein and appearing as surface return flow and waste water within the Upper Klamath River Basin shall be returned to the Klamath River or its tributaries above Keno, Oregon.

3. Conditions on the use of water under this subdivision B in California shall be:

(a) That the waters diverted from the Klamath River within the Upper Klamath River Basin for use in California shall not be taken outside the Upper Klamath River Basin.

(b) That substantially all of the return flows and waste water finally resulting from such diversions and use appearing as surface waters in the Upper Klamath River Basin shall be made to drain so as to be eventually returned to the Klamath River upstream from Keno, Oregon.

C. 1. All rights, acquired by appropriation after the effective date of this compact, to use waters originating within the Upper Klamath River Basin for use (a) or (b) in the Upper Klamath River Basin in either state shall be superior to any rights, acquired after the effective date of this compact, to use such waters (i) for any purpose outside the Klamath River Basin by diversion in California or (ii) for use (c), (d), (e) or (f) anywhere in the Klamath River Basin. Such superior rights shall exist regardless of their priority in time and may be exercised with respect to inferior rights without the payment of compensation. But such superior rights to use water for use (b) in California shall be limited to the quantity of water necessary to irrigate 100,000 acres of land, and in Oregon shall be limited to the quantity of water necessary to irrigate 200,000 acres of land.

2. The provisions of paragraph 1 of this subdivision C shall not prohibit the acquisition and exercise after the effective date of this compact of rights to store waters originating within the Upper Klamath River Basin and to make later use of such stored water for any purpose, as long as the storing of waters for such later use, while being effected, does not interfere with the direct diversion or storage of such waters for use (a) or (b) in the Upper Klamath River Basin.

Article IV—Hydroelectric Power

It shall be the objective of each state, in the formulation and the execution and the granting of authority for the formulation and execution of plans for the distribution and use of the water of the Klamath River Basin, to provide for the most efficient use of available power head and its economic integration with the distribution of water for other beneficial uses in order to secure the most economical distribution and use of water and lowest power rates which may be reasonable for irrigation and drainage pumping, including pumping from wells.

Article V—Interstate Diversion and Storage Rights; Measuring Devices

A. Each state hereby grants for the benefit of the other and its designees the right to construct and operate facilities for the measurement, diversion, storage and conveyance of water from the Upper Klamath River Basin in one state for use in the other insofar as the exercise of such right may be necessary to effecuate and comply with the terms of this compact. The location of such facilities shall be subject to approval by the commission.

B. Each state or its designee, exercising within the jurisdiction of the other a right granted under subdivision A of this Article, shall make provision for the establishment, operation and maintenance of permanent gaging stations at such points on streams or reservoir or conveyance facilities as may be required by the commission for the purpose of ascertaining and recording the volume of diversions by the streams or facilities involved. Said stations shall be equipped with suitable devices for determining the flow of water at all times. All information obtained from such stations shall be compiled in accordance with the standards of the United States Geological Survey, shall be filed with the commission, and shall be available to the public.

Article VI—Acquisition of Property for Storage and Diversion; in Lieu Taxes

A. Subject to approval of the commission, either state shall have the right (1) to acquire such property rights in the other state as are necessary for the diversion, stor-

age, conveyance, measurement and use of water in conformity with this compact, by donation or purchase, or (2) to elect to have the other state acquire such property rights for it by purchase or through the exercise of the power of eminent domain. A state making the latter election shall make a written request therefor and the other state shall expeditiously acquire said property rights either by purchase at a price satisfactory to the requesting state, or, if such purchase cannot be made, then through the exercise of its power of eminent domain, and shall convey said property rights to the requesting state or its designee. All costs of such acquisition shall be paid by the requesting state. Neither state shall have any greater power to acquire property rights for the other state through the exercise of the power of eminent domain than it would have under its laws to acquire the same property rights for itself.

B. Should any diversion, storage or conveyance facilities be constructed or acquired in either state for the benefit of the other state, as herein provided, the construction, repair, replacement, maintenance and operation of such facilities shall be subject to the laws of the state in which the facilities are located, except that the proper officials of that state shall permit the storage, release and conveyance of any water to which the other state is entitled under this compact.

C. Either state having property rights other than water rights in the other state acquired as provided in this Article shall pay to each political subdivision of the state in which such property rights are located, each and every year during which such rights are held, a sum of money equivalent to the average annual amount of taxes assessed against those rights during the 10 years preceding the acquisition of such rights in reimbursement for the loss of taxes to such political subdivisions of the state. Payments so made to a political subdivision shall be in lieu of any and all taxes by that subdivision on the property rights for which the payments are made.

Article VII—Pollution Control

A. The states recognize that the growth of population and the economy of the Upper Klamath River Basin can result in pollution of the waters of the Upper Klamath River Basin constituting a menace to the health and welfare of, and occasioning economic loss to, people living or having interests in the Klamath River Basin. The states recognize further that protection of the beneficial uses of the waters of the Klamath River Basin requires cooperative action of the two states in pollution abatement and control.

B. To aid in such pollution abatement and control, the commission shall have the duty and power:

1. To cooperate with the states or agencies thereof or other entities and with the United States for the purpose of promoting effective laws and the adoption of effective regulations for abatement and control of pollution of the waters of the Klamath River Basin, and from time to time to recommend to the governments reasonable minimum standards for the quality of such waters.

2. To disseminate to the public by any and all appropriate means information respecting pollution abatement and control in the waters of the Klamath River Basin and on the harmful and uneconomic results of such pollution.

C. Each state shall have the primary obligation to take appropriate action under its own laws to abate and control interstate pollution, which is defined as the deterioration of the quality of the waters of the Upper Klamath River Basin within the boundaries of such state which materially and adversely affects beneficial uses of waters of the Klamath River Basin in the other state. Upon complaint to the commission by the state water pollution control agency of one state that interstate pollution originating in the other state is not being prevented or abated, the procedure shall be as follows:

1. The commission shall make an investigation and hold a conference on the alleged interstate pollution with the water pollution control agencies of the two states, after which the commission shall recommend appropriate corrective action.

2. If appropriate corrective action is not taken within a reasonable time, the commission shall call a hearing, giving reasonable notice in writing thereof to the water pollution control agencies of the two states and to the person or persons which it is believed are causing the alleged interstate pollution. Such hearing shall be held in accordance with rules and regulations of the commission, which shall conform as nearly as practicable with the laws of the two states governing administrative hearings. At the conclusion of such hearing, the commission shall

make a finding as to whether interstate pollution exists, and if so, shall issue to any person or persons which the commission finds are causing such interstate pollution an order or orders for correction thereof.

3. It shall be the duty of the person against whom any such order is issued to comply therewith. Any court of general jurisdiction of the state where such discharge is occurring or the United States District Court for the district where the discharge is occurring shall have jurisdiction, on petition of the commission for enforcement of such order, to compel action by mandamus, injunction, specific performance, or any other appropriate remedy, or on petition of the person against whom the order is issued to review any order. At the conclusion of such enforcement or review proceedings, the court may enter such decree or judgment affirming, reversing, modifying, or remanding such order as in its judgment is proper in the circumstances on the basis of the rules customarily applicable in proceedings for court enforcement or review of administrative actions.

D. The water pollution control agencies of the two states shall, from time to time, make available to the commission all data relating to the quality of the waters of the Upper Klamath River Basin which they possess as the result of studies, surveys and investigations thereof which they may have made.

Article VIII—Miscellaneous

A. Subject to vested rights as of the effective date of this compact, there shall be no diversion of waters from the basin of Jenny Creek to the extent that such waters are required, as determined by the commission, for use on land within the basin of Jenny Creek.

B. Each state shall exercise whatever administrative, judicial, legislative or police powers it has that are required to provide any necessary re-regulation or other control over the flow of the Klamath River downstream from any hydroelectric power plant for protection of fish, human life or property from damage caused by fluctuations resulting from the operation of such plant.

Article IX—Administration

A. 1. There is hereby created a commission to administer this compact. The commission shall consist of three members. The representative of the State of California shall be the Department of Water Resources. The representative of the State of Oregon shall be the State Engineer of Oregon who shall serve as ex officio representative of the State Water Resources Board of Oregon. The President is requested to appoint a federal representative who shall be designated and shall serve as provided by the laws of the United States.

2. The representative of each state shall be entitled to one vote in the commission. The representative of the United States shall serve as chairman of the commission without vote. The compensation and expenses of each representative shall be fixed and paid by the government which he represents. Any action by the commission shall be effective only if it be agreed to by both voting members.

3. The commission shall meet to establish its formal organization within 60 days after the effective date of this compact, such meeting to be at the call of the Governors of the two states. The commission shall then adopt its initial set of rules and regulations governing the management of its internal affairs providing for, among other things, the calling and holding of meetings, the adoption of a seal, and the authority and duties of the chairman and executive director. The commission shall establish its office within the Upper Klamath River Basin.

4. The commission shall appoint an executive director, who shall also act as secretary, to serve at the pleasure of the commission and at such compensation, under such terms and conditions and performing such duties as it may fix. The executive director shall be the custodian of the records of the commission with authority to affix the commission's official seal, and to attest to and certify such records or copies thereof. The commission, without regard to the provisions of the civil service laws of either state, may appoint and discharge such consulting, clerical and other personnel as may be necessary for the performance of the commission's functions, may define their duties, and may fix and pay their compensation. The commission may require the executive director and any of its employes to post official bonds, and the cost thereof shall be paid by the commission.

5. All records, files and documents of the commission shall be open for public inspection at its office during established office hours.

6. No member, officer or employe of the commission shall be liable for injury or damage resulting from (a) action taken by such member, officer or employe in good faith and without malice under the apparent authority of this compact, even though such action is later judicially determined to be unauthorized, or (b) the negligent or wrongful act or omission of any other person, employed by the commission and serving under such officer, member or employe, unless such member, officer or employe either failed to exercise due care in the selection, appointment or supervision of such other person, or failed to take all available action to suspend or discharge such other person after knowledge or notice that such other person was inefficient or incompetent to perform the work for which he was employed. No suit may be instituted against a member, officer or employe of the commission for damages alleged to have resulted from the negligent or wrongful act or omission of such member, officer or employe or a subordinate thereof occurring during the performance of his official duties unless, within 90 days after occurrence of the incident, a verified claim for damages is presented in writing and filed with such member, officer or employe and with the commission. In the event of a suit for damages against any member, officer or employe of the commission on account of any act or omission in the performance of his or his subordinates' official duties, the commission shall arrange for the defense of such suit and may pay all expenses therefor on behalf of such member, officer or employe. The commission may at its expense insure its members, officers and employes against liability resulting from their acts or omissions in the performance of their official duties. Nothing in this paragraph shall be construed as imposing any liability upon any member, officer or employe of the commission that he would otherwise not have.

7. The commission may incur obligations and pay expenses which are necessary for the performance of its functions. But it shall not pledge the credit of any government except by and with the authority of the legislative body thereof given pursuant to and in keeping with the constitution of such government, nor shall the commission incur any obligations prior to the availability of funds adequate to meet them.

8. The commission may:

(a) Borrow, accept or contract for the services of personnel from any government or agency thereof, from any intergovernmental agency, or from any other entity.

(b) Accept for any of its purposes and functions under this compact any and all donations, gifts, grants of money, equipment, supplies, materials and services from any government or agency thereof or intergovernmental agency or from any other entity.

(c) Acquire, hold and dispose of real and personal property as may be necessary in the performance of its functions.

(d) Make such studies, surveys and investigations as are necessary in carrying out the provisions of this compact.

9. All meetings of the commission for the consideration of and action on any matters coming before the commission, except matters involving the management of internal affairs of the commission and its staff, shall be open to the public. Matters coming within the exception of this paragraph may be considered and acted upon by the commission in executive sessions under such rules and regulations as may be established therefor.

10. In the case of the failure of the two voting members of the commission to agree on any matter relating to the administration of this compact as provided in paragraph 2 of this subdivision A, the representative from each state shall appoint one person and the two appointed persons shall appoint a third person. The three appointees shall sit as an arbitration forum. The terms of appointment and the compensation of the members of the arbitration forum shall be fixed by the commission. Matters on which the two voting members of the commission have failed to agree shall be decided by a majority vote of the members of the arbitration forum. Each state obligates itself to abide by the decision of the arbitration forum, subject, however, to the right of each state to have the decision reviewed by a court of competent jurisdiction.

11. The commission shall have the right of access, through its authorized representatives, to all properties in the Klamath River Basin whenever necessary for the purpose of administration of this compact. The commission may obtain a court order to enforce its right of access.

B. 1. The commission shall submit to the Governor or designated officer of each state a budget of its estimated expenditures for such period and at such times as may be required by the laws of that state for pre-

sentation to the legislature thereof. Each state pledges itself to appropriate and pay over to the commission one-half of the amount required to finance the commission's estimated expenditures as set forth in each of its budgets, and pledges further that concurrently with approval of this compact by its legislature the sum of not less than $12,000 will be appropriated by it to be paid over to the commission at its first meeting for use in financing the commission's functions until the commission can prepare its first budget and receive its first appropriation thereunder from the states.

2. The commission shall keep accurate accounts of all receipts and disbursements, which shall be audited yearly by a certified public accountant, and the report of the audit shall be made a part of its annual report. The accounts of the commission shall be open for public inspection during established office hours.

3. The commission shall make and transmit to the legislature and Governor of each state and to the President of the United States an annual report covering the finances and activities of the commission and embodying such plans, recommendations and findings as may have been adopted by the commission.

C. 1. The commission shall have the power to adopt, and to amend or repeal, such rules and regulations to effectuate the purposes of this compact as in its judgment may be appropriate.

2. Except as to matters involving exclusively the management of the internal affairs of the commission and its staff or involving emergency matters, prior to the adoption, amendment or repeal of any rule or regulation the commission shall hold a hearing at which any interested person shall have the opportunity to present his views on the proposed action in writing, with or without the opportunity to present the same orally. The commission shall give adequate advance notice in a reasonable manner of the time, place and subject of such hearings.

3. Emergency rules and regulations may be adopted without a prior hearing, but in such case they may be effective for not longer than 90 days.

4. The commission shall publish its rules and regulations in convenient form.

Article X—Status of Indian Rights

A. Nothing in this compact shall be deemed:

1. To affect adversely the present rights of any individual Indian, tribe, band or community of Indians to the use of the waters of the Klamath River Basin for irrigation.

2. To deprive any individual Indian, tribe, band or community of Indians of any rights, privileges, or immunities afforded under federal treaty, agreement or statue.

3. To affect the obligations of the United States of America to the Indians, tribes, bands or communities of Indians, and their reservations.

4. To alter, amend or repeal any of the provisions of the Act of August 13, 1954, (68 Stat. 718) as it may be amended.

B. Lands within the Klamath Indian Reservation which are brought under irrigation after the effective date of this compact, whether before or after section 14 of said Act of August 13, 1954, becomes fully operative, shall be taken into account in determining whether the 200,000 acre limitation provided in paragraph 1 of subdivision C of Article III has been reached.

Article XI—Federal Rights

Nothing in this compact shall be deemed:

A. To impair or affect any rights, powers or jurisdiction of the United States, its agencies or those acting by or under its authority, in, over and to the waters of the Klamath River Basin, nor to impair or affect the capacity of the United States, its agencies or those acting by or under its authority in any manner whatsoever, except as otherwise provided by the federal legislation enacted for the implementation of this compact as specified in Article XIII.

B. To subject any property of the United States, its agencies or instrumentalities, to taxation by either state or any subdivision thereof, unless otherwise provided by Act of Congress.

C. To subject any works or property of the United States, its agencies, instrumentalities or those acting by or under its authority, used in connection with the control or use of waters which are the subject of this compact, to the laws of any state to an extent other than the extent to which those laws would apply without regard to this compact, except as otherwise provided by the federal legislation enacted for the implementation of this compact as specified in Article XIII.

D. To affect adversely the existing areas of Crater Lake National Park or Lava Beds National Monument, or to limit the operation

of laws relating to the preservation thereof.

E. To apply to the use of water for the maintenance, on the scale at which such land and water areas are maintained as of the effective date of this compact, of officially designated waterfowl management areas, including water consumed by evaporation and transpiration on water surface areas and water used for irrigation or otherwise in the Upper Klamath River Basin; nor to affect the rights and obligations of the United States under any migratory bird treaty or the Migratory Bird Conservation Act (45 Stat. 1222), as amended to the effective date of this compact.

Article XII—General Provisions

A. Each state and all persons using, claiming or in any manner asserting any right to the use of the waters of the Klamath River Basin under the authority of either state shall be subject to the terms of this compact.

B. Nothing in this compact shall be construed to limit or prevent either state from instituting or maintaining any action or proceeding, legal or equitable, in any court of competent jurisdiction for the protection of any right under this compact or the enforcement of any of its provisions.

C. Should a court of competent jurisdiction hold any part of this compact to be contrary to the Constitution of either state or the United States, all other provisions shall continue in full force and effect, unless it is authoritatively and finally determined judically that the remaining provisions cannot operate for the purposes, or substantially in the manner, intended by the states independently of the portions declared unconstitutional or invalid.

D. Except as to matters requiring the exercise of discretion by the commission, the provisions of this compact shall be self-executing and shall by operation of law be conditions of the various state permits, licenses or other authorizations relating to the waters of the Klamath River Basin issued after the effective date of this compact.

E. The physical and other conditions peculiar to the Klamath River Basin constitute the basis for this compact, and neither of the states hereby, nor the Congress of the United States by its consent, considers that this compact establishes any general principle or precedent with respect to any other interstate stream.

Article XIII—Ratification

A. This compact shall become effective when ratified by the legislature of each signatory state, and when consented to by an Act of Congress of the United States which will, in substance, meet the provisions hereinafter set forth in this Article.

B. The Act of Congress referred to in subdivision A of this Article shall provide that the United States or any agency thereof, and any entity acting under any license or other authority granted under the laws of the United States (referred to in this Article as "the United States"), in connection with developments undertaken after the effective date of this compact pursuant to laws of the United States, shall comply with the following requirements:

1. The United States shall recognize and be bound by the provisions of subdivision A of Article III.

2. The United States shall not, without payment of just compensation, impair any rights to the use of water for use (a) or (b) within the Upper Klamath River Basin by the exercise of any powers or rights to use or control water (i) for any purpose whatsoever outside the Klamath River Basin by diversions in California or (ii) for any purpose whatsoever within the Klamath River Basin other than use (a) or (b). But the exercise of powers and rights by the United States shall be limited under this paragraph 2 only as against rights to the use of water for use (a) or (b) within the Upper Klamath River Basin which are acquired as provided in subdivision B of Article III after the effective date of this compact, but only to the extent that annual depletions in the flow of the Klamath River at Keno resulting from the exercise of such rights to use water for uses (a) and (b) do not exceed 340,000 acre-feet in any one calendar year.

3. The United States shall be subject to the limitation on diversions of waters from the basin of Jenny Creek as provided in subdivision A of Article VIII.

4. The United States shall be governed by all the limitations and provisions of paragraph 2 and subparagraph (a) of paragraph 3 of subdivision B of Article III.

5. The United States, with respect to any irrigation or reclamation development undertaken by the United States in the Upper Klamath River Basin in California, shall provide that substantially all of the return flows and waste water finally resulting from such

diversions and use appearing as surface waters in the Upper Klamath River Basin shall be made to drain so as to be eventually returned to the Klamath River upstream from Keno, unless the Secretary of the Interior shall determine that compliance with this requirement would render it less feasible than under an alternate plan of development, in which event such return flows and waste waters shall be returned to the Klamath River at a point above Copco Lake.

C. Upon enactment of the Act of Congress referred to in subdivision A of this Article and so long as such Act shall be in effect, the United States, when exercising rights to use water pursuant to state law, shall be entitled to all of the same privileges and benefits of this compact as any person exercising similar rights.

D. Such Act of Congress shall not be construed as relieving the United States of any requirement of compliance with state law which may be provided by other federal statutes.

Article XIV—Termination

This compact may be terminated at any time by legislative consent of both states, but despite such termination, all rights then established hereunder or recognized hereby shall continue to be recognized as valid by the states. [1957 c.142 §2]

542.630 State Engineer to represent state in administering the Klamath River Basin Compact. The State Engineer shall be the only representative of this state in administering the Klamath River Basin Compact set forth in ORS 542.620. The State Engineer shall receive no additional compensation for services as such representative, but, subject to any other applicable law regulating mileage and traveling and other expenses for state officers, shall receive his actual and necessary traveling and other expenses incurred in the performance of his official functions as such representative, to be paid in the same manner and out of the same moneys as other similar expenses of the State Engineer are paid. [1957 c.142 §3]

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