Chapter 552

1955 REPLACEMENT PART

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GENERAL PROVISIONS

Note: 1955 c.707 §70 transferred all the duties, powers and functions of the State Irrigation Board under ORS chapter 552 to the State Engineer, effective January 1, 1956. The Legislative Counsel pursuant to 1955 c.707 §70 has editorially adjusted the sections in this chapter to reflect the transfer. Until January 1, 1956, ORS chapter 552, as compiled in the 1953 edition, will remain in effect.

552.005 [Repealed by 1955 c.707 §75]

Note: The repeal of ORS 552.005 and 552.010 takes effect on January 1, 1956. Until January 1, 1956, those sections, as compiled in the 1953 edition, will remain in effect.

552.010 [Repealed by 1955 c.707 §75]

Note: See note for ORS 552.005.

552.015 [Amended by 1955 c.707 §71; renumbered 552.025]

552.020 Power of State Engineer to unite irrigation, drainage and reclamation districts; composition. (1) The State Engineer may unite into water conservation districts, in the manner and for the purposes provided in this chapter, irrigation districts and drainage districts organized to promote irrigation, reclamation or drainage. Such united districts shall be known and are referred to in this chapter as water conservation districts.

(2) Every water conservation district formed as provided in this chapter shall be composed of not less than three units, all of which units shall be irrigation districts or drainage districts, or both, organized under the laws of this state to promote irrigation, reclamation or drainage.

552.025 Record of acts and transactions; reception in evidence. The State Engineer shall keep a record of all his acts and transactions under this chapter, which record shall be kept and preserved on file in his office and open to inspection by the public during business hours. The records and all documents, instruments or other papers filed as provided in this chapter, or copies thereof certified to by the State Engineer, shall be received in evidence without further proof in any court of this state or before any board or tribunal authorized to hear or determine a matter wherein the same is properly admissible. [Formerly 552.015]

Note: The 1955 amendment to ORS 552.015, renumbered as 552.025, takes effect on January 1, 1956. Until January 1, 1956, ORS 552.015, as compiled in the 1953 edition, will remain in effect.

552.030 to 552.100 [Reserved for expansion]

ORGANIZATION OF DISTRICT

552.105 Petition for organization; contents; signatures. (1) Whenever three or more districts, all of which are irrigation districts or drainage districts, or both, can use a common system of works, or improve a common source of water supply, the legally elected boards of directors of such districts may present a petition to the State Engineer requesting the creation of a water conservation district. The petition shall designate by name the units or districts joined in such petition, and the water to be stored, used or acquired and the stream to be improved, and shall outline generally the character and location of the proposed works or the improvement to be made to the stream, and shall pray that the units be united in pursuance of the provisions of this chapter so as to create a water conservation district.

(2) The petition shall be signed by the presiding official and the secretary of the governing board of each of the units, under seal of the units.

552.110 Form of petition; check and undertaking; disposition of funds. (1) The petition may be contained in separate instruments presented by each unit or district or may be contained in one or more instruments presented by any or all of the units or districts. The petition must be accompanied by a certified copy of a resolution of the governing board of each of the petitioning units authorizing the presiding officer and secretary to execute the same. It must also be accompanied by a certified check in an amount in dollars equal to one-tenth the number of acres to be irrigated in the proposed water conservation district, and also a good and sufficient undertaking or agreement, to be approved by the State Engineer, conditioned that the signers will pay all the costs and expenses in connection with the investigation provided for in ORS 552.140 in case the organization is not finally effected. However, the amount of the undertaking, together with the amount of cash deposited, shall not in the aggregate exceed an amount in dollars equal to one-fourth of the total number of irrigable acres in the proposed water conservation district.

(2) The amount to be paid in at the time

of filing the petition, together with the amount of the undertaking, shall be considered as a legal charge against the water conservation district if and when the organization is completed. Any funds paid in at the time of filing the petition or which may be collected by reason of the undertaking shall be deposited by the State Engineer with the State Treasurer, who shall segregate the payments into a separate account or fund to the credit of the water conservation district. All expenses of the State Engineer under this chapter shall be paid by vouchers drawn against this account.

(3) If the district for any reason is not organized, any money remaining in the fund shall be returned to the petitioners. If the district is organized, any balance remaining in the fund shall be paid to the district. [Amended by 1955 c.707 §72]

Note: The 1955 amendment to ORS 552.110 takes effect on January 1, 1956. Until January 1, 1956, ORS 552.110, as compiled in the 1953 edition, will remain in effect.

552.115 Order for hearing. Upon presentation to him of a petition praying for the formation of a water conservation district, the State Engineer shall make an order fixing a time and place at which he shall hear the petition, which place shall be within the county in which the lands of the proposed water conservation district are located, or, if the lands are situated in more than one county, then in any one of such counties. The time shall be not less than 30 days after the first publication of the notice provided for in ORS 552.120.

552.120 Notice of hearing; form. (1) When any petition for the formation of a water conservation district is presented to the State Engineer, he shall give notice stating the time and the place of the hearing fixed by him, by publication in a newspaper in each county in which any of the lands of the proposed district are situated at least once a week for four successive weeks before the date of the hearing. The notice shall be issued by the State Engineer and shall refer to the petition and be directed to the petitioners therein; to each of the units petitioning to form the water conservation district; to all persons holding record title to any lands included within the boundaries of the proposed district; to all persons having or claiming any right, title or interest in and to the waters proposed to be stored, acquired or used, as set out in the petition; and to all other persons who may be interested in or affected by the project contemplated in the petition; and shall be substantially in the following form:

Before the State Engineer of Oregon:

To the petitioners in the following petition and to each of the districts petitioning to form the water conservation district; to all persons holding record title to any lands included within the conservation district proposed in the petition and to all other persons having or claiming any right, title or interest in or to the water proposed to be stored, acquired or used, as set out in the petition, or in the waters of the stream to be improved; to all other persons who may be interested in or affected by the project described in the petition; and to all persons in any way interested in or affected by the formation of the water conservation district;

You are notified that the following petition was filed with the State Engineer and will be heard by him on the ——— day of ———, 19—, at the hour of—— o'clock —m. at ———, at which time and place the State Engineer will hear and receive evidence in support of the petition and any objections which may be presented thereto.

Following is a copy of the petition for the formation of the water conservation district.

———

———

State Engineer

Dated at Salem, Oregon, this —— day of ——, 19—.

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(2) When the petition for the formation of a water conservation district is contained in more than one instrument, only one copy of the petition need be published, but the names of the petitioning districts must appear in such publication. [Amended by 1955 c.707 §73]

Note: The 1955 amendment to ORS 552 120 takes effect on January 1, 1956. Until January 1, 1956, ORS 552 120, as compiled in the 1953 edition, will remain in effect.

552.125 Hearing; order; conclusiveness; appeal; name of district. (1) At the time and place fixed in the notice the State Engineer shall hear the petition and determine whether or not it complies with the requirements set forth in this chapter and whether or not the notice has been duly published, and shall hear all competent and relevant testimony offered in support of or

in opposition to the petition. The State Engineer may adjourn such hearing from time to time, not exceeding four weeks in all.

(2) On the final hearing the State Engineer shall make and enter an order determining whether the petition and notice thereof have been duly published as provided for in ORS 552.120. The order as so made and entered shall be conclusive evidence of the facts found by the State Engineer; subject, however, to an appeal to the circuit court of the county in which the petition was heard within 30 days from the entry of such order. The State Engineer in the order shall designate the constituent districts included and the name of the water conservation district, which shall be the name by which the district shall be known if organized.

552.130 [Repealed by 1955 c.707 §75]

Note: The repeal of ORS 552.130 takes effect on January 1, 1956. Until January 1, 1956, ORS 552.130, as compiled in the 1953 edition, will remain in effect.

552.135 Objections to petition; effect. If there is presented at such hearing, or at any time before the final order, a written objection signed by the owners of more than one-half of the lands in any petitioning irrigation district or drainage district or a majority in number of the holders of record title in any such petitioning district according to the county assessment roll for the year last preceding, the signing of any petition by the officers of such constituent district or unit shall be deemed to be nullified, and such district or unit shall not be included within the proposed water conservation district.

552.140 Examination and report; cost estimates; filing copy of report and estimate. (1) The State Engineer shall, before making a final order creating a water conservation district, proceed to make or cause to be made such examinations, surveys, and estimates of costs for the acquisition, appropriation, diversion, storage, conservation and distribution of water, and improvement of any stream, or works in connection therewith, as may be necessary to enable the State Engineer to ascertain and estimate the requirements and works necessary for the purpose of the water conservation district, as prayed for in the petition, and the cost thereof, and shall make a report thereon as provided in this section.

(2) In such connection the State Engineer may use and adopt any previous estimates, surveys, reports and other data he may have acquired or which may be available, or he may contract with any federal agency to prepare or furnish such estimates, surveys, reports and estimates of costs, and may employ all necessary engineers and other assistants for the accomplishment of these purposes. The cost thereof shall be a part of the cost of the organization of the water conservation district as provided for in ORS 552.110, and shall be a charge against the water conservation district if created.

(3) Upon completion of the examination and study of the proposed project by the State Engineer, he shall prepare a report thereof, in which report shall be set forth the character and nature of the proposed works, and a description of the rights to water, to lands and other property necessary to be acquired to carry the project to completion, accompanied by an estimate of the cost of the project. A copy of such report and estimate shall be kept on file in the office of the State Engineer and be open to inspection during business hours by all interested persons.

552.145 Apportionment of water; application to store and appropriate waters. (1) The State Engineer, before making the final order creating a water conservation district, shall by order entered in his minutes apportion to each constituent district or unit of the water conservation district the portion to which it is entitled of all the water storage capacity in the proposed reservoir, and of the waters stored or to be stored or conserved or to be diverted by such project for irrigation of the lands of the water conservation district. In making such apportionment the State Engineer must take into consideration the present water rights and the additional water necessary to perfect the irrigation of the lands of each unit.

(2) In the order the State Engineer shall set forth the time within which each of the districts to which water is apportioned shall make application to him for a permit to store and appropriate such waters including waters conserved or salvaged.

552.150 Effect of failure to apply; governing law; application by United States. (1) In case any district to which water is apportioned fails to make application for a

permit within the time set forth in the order or is not included in the water conservation district when organized, then the water shall be apportioned by order of the State Engineer to such other units within the water conservation district as may desire it. All applications for a permit to store and appropriate water, and the issuance of permits and perfection of the same shall be in accordance with the existing laws of Oregon governing appropriation, use and distribution of water, and nothing in this chapter shall be construed as affecting any contract as to the use or storage of water.

(2) If the United States makes such application to the State Engineer and obtains such a permit for the proposed use of water, it will not be necessary for any district to make application therefor and the State Engineer shall not require the same.

552.155 Apportionment of expenses. The State Engineer shall likewise in such order determine, define and apportion to each constituent district or unit the proportion of all costs and expenses of the project to be paid by it, including the costs and expenses of the State Engineer in connection therewith, same to be based upon and in proportion to the allotment of water storage capacity, water conserved, and water apportioned to each unit plus the benefit of irrigation or drainage or flood control to such unit. To each of such allotments 15 percent above the actual estimate shall be added for contingencies.

552.160 Service of order of apportionment. A certified copy of the order of apportionment shall be served on each of the constituent districts or units by delivering the same to some officer thereof.

552.165 Vested water rights protected. Nothing contained in ORS 552.145 to 552.155 shall be deemed to confer on the State Engineer or upon any water conservation district formed under the provisions of this chapter the right to impair or deprive any person or district of any vested right in or to any water without due process of law.

552.170 District or unit benefited to greater degree; estimate and charge of proportion of cost of construction. When any of the proposed works of a water conservation district will serve the purpose of drainage, irrigation or flood control within a constituent district to a greater degree than any of the other constituent districts, the State Engineer shall estimate the proportion of the cost of the construction which may be properly charged to the constituent district particularly benefited by such drainage, irrigation or reclamation, and carry such amount into the total sum to be paid by such constituent district.

552.175 Election; order; notice; form; conduct of election; favorable vote required. (1) After making the order of apportionment provided for in ORS 552.145 to 552.165, the State Engineer shall make an order directing the governing board of each constituent district to call an election, to be held not less than 120 days after the making of the order of apportionment.

(2) The order for the election shall contain the name of the proposed water conservation district, shall describe the territory embraced within the proposed district by naming the constituent units or districts proposed to be joined, and shall contain a description of the apportionment of benefits and estimates of cost for each constituent district.

(3) Upon receiving and filing the copy of the order of the State Engineer, the governing board of each constituent district shall call an election to be held in the manner provided by ORS 545.192 and 545.194 for an election within an irrigation district. Each constituent district or unit shall give notice of the election, which notice shall contain the name of the proposed water conservation district and a description of the territory embraced within the proposed district by naming the constituent districts proposed to be joined therein. The notice shall also state that there will be submitted to the voters of each of such districts the question as to whether or not a water conservation district shall be organized under the provisions of this chapter, and shall require ballots to be cast which shall contain the words "Water Conservation District—Yes" and "Water Conservation District—No," and whenever applicable shall require that the ballots also contain the words "Contract with the United States —Yes" and "Contract with the United States—No." The notice shall also state the estimated amount of the cost for the particular district or unit so as to advise the voters of the maximum amount which the

constituent district should be authorized to pay. The notice shall also set forth the date upon which the election will be held and the time of the opening and closing of the polls, and shall specify the voting places.

(4) The election shall be conducted, the votes canvassed and the result declared as nearly as practicable in accordance with the laws governing the conducting and holding of an election within an irrigation district.

(5) A majority vote in each constituent district shall be required to carry the election in each district in favor of the propositions submitted at the election.

552.180 Certifying result of election; order establishing district; service of certified copies; entry upon district records. (1) Immediately after the result of such election has been determined and declared, the board of directors of each constituent district shall have its secretary certify to the State Engineer the result of such election and whether or not the constituent district has voted in favor of or against the organization of the conservation district and in favor of or against a contract with the United States.

(2) Within 10 days after the State Engineer receives the certificates from all the petitioning districts, the State Engineer shall enter an order that a water conservation district is established comprising those districts which have voted in favor of the organization of the conservation district and in favor of a contract with the United States; provided, that such districts casting a favorable vote represent 85 percent or more of the irrigable area within the project and that at least three of the petitioning districts are in favor of a water conservation district.

(3) A certified copy of the order of the State Engineer shall be served upon the secretary of each of the constituent districts by registered mail and a certified copy thereof shall be recorded by the State Engineer in the office of the county clerk of each of the counties in which any of the lands included in the water conservation district are situated.

(4) Each constituent district shall enter upon its records the certified copy of the order of the State Engineer.

552.185 Division of district. The State Engineer shall divide the conservation district into not less than seven subdivisions. He shall make each subdivision as nearly equal in acreage as practicable; provided, however, that each constituent district shall be allowed not less than one subdivision, and no lands of one constituent district shall be joined into a subdivision with the lands of another constituent district. At the time of making the order the State Engineer shall define the boundaries of each subdivision created by him.

552.190 to 552.200 [Reserved for expansion]

BOARD OF DIRECTORS; POWERS AND DUTIES

552.205 Election; nominating petitions; notice; qualifications. (1) Every water conservation district organized under the provisions of this chapter shall be governed by a board of directors consisting of one director from each subdivision. Within 30 days from the entry of the order by the State Engineer declaring the organization of a water conservation district and prescribing the boundaries of subdivisions thereof, the directors of each constituent district shall call an election for the purpose of electing the requisite number of directors for the water conservation district. Nominating petitions for directors to be elected shall be filed with the secretary of each constituent district for the director or directors to be elected from that district. Notice of the election shall be given, nominations for directors made, and the election conducted and the result determined and declared in the manner provided by law for the election of directors of an irrigation district.

(2) Each director from each subdivision shall be a resident and freeholder in the subdivision he represents. A director or any other official of any constituent district shall be eligible to hold the office of director of a water conservation district.

552.210 Terms; election of successors; filling vacancies. (1) Each director shall be elected for a term of three years, except at the time of the organization of the district. The terms of the directors first elected shall expire two in one year, two in two years and three in three years, respectively, from the first Tuesday in January next succeeding their election. Their respective terms shall be decided by lot. Thereafter an election shall be held in each water conservation district on the second Tuesday of November in

each year to elect a successor for any director whose term expires the following January.

(2) Any vacancy occurring in the office of director of any water conservation district shall be filled for the unexpired term by appointment by the board of directors of the constituent district from which such director was elected.

552.215 Meetings; records. (1) The board of directors shall hold a regular monthly meeting in its office. The time of the meeting shall be fixed by resolution by the board in its first meeting. The board shall hold such special meetings as may be required for the transaction of business; provided that all special meetings shall be called by a majority of the directors and the order therefor must be entered of record and two days' notice thereof given by the secretary to each member not joining in the order. The order must specify the business to be transacted and none other than that specified may be transacted at a special meeting unless all members are present. All meetings of the board of directors must be public.

(2) The board of directors shall keep a record of all its acts and transactions, which record shall be kept and preserved on file in its office and open to public inspection during business hours. Such records and all documents, instruments or papers filed as provided in this chapter, or copies thereof certified by the secretary of the board of directors, shall be received in evidence the same as provided in ORS 552.025.

552.220 Compensation and mileage; oath and bond; chairman; secretary-treasurer; bond of latter. (1) The directors each shall receive $10 per day and mileage at the rate of 10 cents per mile and actual and necessary expenses incurred while engaged in official business under order of the board. The board shall fix the compensation to be paid all other officers and employes of the district.

(2) Within 10 days after his election each director shall subscribe to an oath of office and file the same in the office of the district. Each director shall provide a good and sufficient surety bond by an authorized surety company in the sum of $1,000, the premium on which shall be paid by the district. The bonds shall be recorded in the office of the county clerk of the county in which the office of the board is located and filed with the secretary of the board.

(3) The board shall elect a chairman at the first meeting each year and shall appoint a secretary-treasurer who shall give a good and sufficient bond in an amount to be fixed by the board, but in no event less than $20,000. The bond shall be executed by an authorized surety company and shall be approved by the board of directors and the premium thereon paid by the water conservation district.

552.225 Powers and duties generally. The board of directors:

(1) Shall manage and conduct the business affairs of the water conservation district.

(2) Shall adopt a seal.

(3) Shall make and execute all necessary contracts, which contracts, and other documents executed by the board, shall be signed by the president and secretary under seal.

(4) Shall employ and appoint such agents, officers and employes as it may require, and prescribe their duties and fix their compensation.

(5) May enter upon any lands to make surveys, locate works or for any other necessary and lawful purpose.

(6) May construct, maintain, improve and operate the necessary dams, reservoirs and works for the conservation, storage and distribution of water and any drainage or flood control works connected therewith.

(7) May acquire by purchase, exchange, lease or contract all lands, water, water rights or any use thereof or interest therein and any property or rights by it deemed necessary for the construction, maintenance, improvement and operation of the works or the carrying out of the project of the water conservation district, including the property and rights of private owners and stock of corporations.

(8) May enter into and do any act necessary or proper for the performance of any agreement with the United States of America, or any county, district, public corporation, or municipality of any kind for any purpose appertaining to, or beneficial to, the project of the water conservation district.

(9) May acquire the right to store water in any reservoir, to divert by any diversion dam or to carry water through any canal, ditch or conduit not owned or controlled by such water conservation district.

(10) May, subject to existing laws of

Oregon, grant to the owner or lessee of a right to the use of any water, permission to store such water in any reservoir of the water conservation district, or to divert by any diversion dam or to carry such water through any canal, ditch or conduit of the water conservation district.

(11) May take conveyances, leases, contracts or other assurances for all property acquired by it under the provisions of this chapter in the name of the water conservation district for the use and purposes expressed in this chapter.

(12) May institute and maintain all actions and proceedings and suits at law or in equity necessary or proper in order to fully carry out the provisions of this chapter or to enforce, maintain, protect or preserve any rights, privileges and immunities created by this chapter or acquired in pursuance thereof.

(13) May, in all actions, suits or proceedings, sue, appear and defend in person or by attorneys and in the name of the water conservation district.

(14) May perform all acts necessary to fully carry out the provisions of this chapter.

552.230 Directors and officers not to be interested in contracts. No director or officer of a water conservation district shall in any manner be interested directly or indirectly in any contract awarded or to be awarded by the board or in the profits to be derived therefrom.

552.235 Liabilities in excess of express authority prohibited; exception as to certain contract obligations. The board of directors or other officers of a water conservation district shall have no power to incur any debt or liability whatever in excess of the express provisions of this chapter. Any debt or liability in excess of such provisions shall be void. However, nothing in this section shall be construed as limiting the right of the board to enter into any contract for the use or lease of any lands, water, water rights or other property or rights as in this chapter provided, and by such lease or contract to bind the district for the payment of the rentals or consideration specified in such lease or contract.

552.240 Examinations, surveys, plans, specifications and estimates; report. (1) The board of directors of a water conservation district shall as soon as it is organized call upon the State Engineer for all examinations, surveys, plans and estimates of costs which have been made or acquired by the State Engineer, and shall proceed to make any necessary additional examinations, surveys, plans, specifications or estimates of costs for the acquiring, appropriation, storage, conservation and distribution of water and the improvement of streams.

(2) Upon completion of the examination and study of the proposed project by the board, it shall prepare a report which shall set forth in detail the character and nature of the proposed works in order to carry the project to completion, and shall be accompanied by an estimate of the cost of the project. A copy of the report, plans and estimates shall be kept on file in the office of the board and open for inspection by all interested persons.

552.245 Entry on land; acquisition of land and property rights; priority of condemnation right. (1) The board and its agents and employes shall have the right:

(a) To enter upon any land to make surveys, and may locate the necessary irrigation or conservation or drainage works and the line for any canal and the necessary branches for the same on any lands which may be deemed best for such location.

(b) To acquire, either by lease, purchase, exchange, condemnation or other legal means, all lands and water rights, rights of way, water, easements and other property and rights, including canals and works and the whole of irrigation systems or projects constructed or being constructed by private owners, necessary for the construction, use, supply, maintenance, repair and improvement of any canals and works proposed to be constructed by the board.

(c) To so acquire lands and all necessary appurtenances, for reservoirs, and the right to store water in constructed reservoirs, for the storage of needful waters, or for improving the beds, banks or channels of streams, or for any other purpose reasonably necessary for the purposes of the district.

(2) The property, the right to condemn which hereby is given, shall include property already devoted to public use which is less necessary than the use for which it is required by the water conservation district, whether used for irrigation or any other purpose, and any other properties owned by the state or any of its departments or its commissions.

552.250 Condemnation proceedings; bond to landowner. In the acquisition of property or rights by condemnation, the board shall proceed in the name of the district under the provisions of the laws of the state. However, prior to any officer or agent of the district entering upon any land sought to be condemned, there shall be furnished to the landowner an undertaking, either by surety bond, personal bond, cash or other security, in an amount sufficient to indemnify the landowner for the value of the land sought to be condemned, together with all costs and attorney's fees to which the owner may be entitled. This undertaking shall be conditioned that the district seeking to condemn the land shall cause to be paid to the owner of said land all damages, costs and attorney's fees that he may suffer by reason of the entry, or which may be awarded to him by a jury upon a trial of the cause.

552.255 Immediate possession in condemnation proceeding. At any time after the board of directors of a water conservation district has commenced proceedings to acquire title to any land necessary for rights of way or for construction, alteration, repair or reservoir purposes, and has given the undertaking required by ORS 552.250, the water conservation district board, its agents, contractors or employes may enter into possession of such lands and begin such work as may be necessary to the development of the district.

552.260 Use of water for irrigation of district lands is a public use. The use of all water required for the irrigation of the lands of any district formed under the provisions of this chapter, together with all water rights, rights to appropriate water, rights of way for canals and ditches, sites for reservoirs, and all other property required in fully carrying out the provisions of this chapter, is declared to be a public use more necessary and more beneficial than any other use for irrigation.

552.265 Condemnation of property of constituent district. Notwithstanding any other provision of this chapter, a water conservation district shall not have the right to condemn or acquire by eminent domain any property of any constituent district.

552.270 Legal title to property; conveyances to United States. (1) The legal title to all property acquired under the provisions of this chapter immediately and by operation of law shall vest in such water conservation district and shall be held by it in trust for and hereby is dedicated and set apart to the uses and purposes set forth in this chapter. The board may hold, use, acquire, manage, occupy, possess and dispose of the property as provided in this chapter. The title acquired by a water conservation district under the provisions of this chapter shall be the fee simple or such lesser estate as may have been acquired.

(2) Any property acquired by a water conservation district may be conveyed to the United States of America in so far as the same may be needed by the United States for the construction, operation and maintenance of works for the benefit of the district under any contract that may be entered into with the United States pursuant to this chapter.

552.275 Sale of property, including excess water or storage capacity. (1) Whenever the board of directors of a water conservation district deems it in the best interests of the district to sell any property owned by the district and not required for district purposes, including excess storage or storage capacity, surplus water or water rights, a resolution stating in substance the following shall be adopted:

(a) A general description of the property to be sold.

(b) The amount of such excess capacity and of surplus water owned by the district, and the amount proposed to be sold.

(c) That such sale can be made without impairing the security of any contract with the United States.

(2) Within 10 days after the passage of such resolution the board shall file with the State Engineer a petition of the district setting forth the resolution adopted by the board and praying that the State Engineer investigate and determine the amount of excess capacity and surplus water which the district may sell. As soon thereafter as practicable the State Engineer shall file his report thereon in writing with the secretary of the board of directors. The board may thereupon sell upon such terms as it deems for the best interests of the district the excess capacity and surplus water to an amount not exceeding the amount found available for sale by the State Engineer, and may from time to time sell such further

amounts as may be determined in the same manner.

552.280 Distribution of stored water; sale; disposition of proceeds. The board shall distribute to each of the constituent districts of the water conservation district the proportion of stored water or conserved water to which it is entitled at its point of diversion from the stream. All waters stored for the benefit of any constituent district which is not needed for such constituent district shall be sold by the board of directors of the conservation district. The proceeds resulting from such sale shall be distributed to the constituent districts in accordance with their respective interests therein. However, such sales of water shall not be made in conflict with the laws of the state.

552.285 Modification, change or alteration of distributing system or works of constituent districts; control over distribution of water. The board of directors of a water conservation district shall not have the power to modify, change or alter the distributing system or works of any of the constituent districts or units, nor shall it have any jurisdiction or control over the distribution of water to the landowners within the boundaries of any of the constituent districts or units.

552.290 to 552.400 [Reserved for expansion]

CONTRACTS WITH UNITED STATES

552.405 Election for formation of district as authorizing contract with United States. Whenever at any election held pursuant to the provisions of ORS 552.175 the majority vote cast in any constituent district of a proposed water conservation district is in favor of the organization of the proposed water conservation district and also in favor of a contract with the United States, then the election so held in any constituent district shall be effective to authorize a contract with the United States in the total amount of money voted by all of the constituent districts, and any contract entered into pursuant to this chapter shall be binding upon each constituent district. All the lands of each constituent district or unit which form the water conservation district shall be liable to be assessed for any amount owing by the constituent district to the United States until its full amount of indebtedness is paid.

552.410 Scope of authority of board. (1) When a contract has been authorized by an election under ORS 552.175 or 552.415, the conservation board may enter into any obligation or contract with the United States for the construction, operation and maintenance of the necessary works for the conservation, storage, delivery and distribution of water under the provisions of the federal reclamation laws, and the rules and regulations established thereunder, and may contract for the refusal of water service to any lands which are in default in the payment of any assessment levied to carry out any contract between the water conservation district and the United States, or for the assumption, as principal or guarantor, of indebtedness to the United States on account of lands of the constituent districts or units; or the board may contract with the United States for a water supply or drainage works under any Act of Congress providing for or permitting such contract.

(2) The board may accept on behalf of the water conservation district appointment of the district as fiscal agent of the United States or authorization of the district by the United States to make collections of money for or on behalf of the United States in connection with any federal reclamation project, whereupon the district may so act and assume the duties and liabilities incident to such action. The board may do all things required by the federal statutes enacted in connection therewith, and all things required by the rules and regulations established by any department of the Federal Government in regard thereto.

552.415 Special election on question of making contract. (1) Upon order of the directors of any water conservation district an election shall be held to determine whether the right to enter into an obligation or contract with the United States shall be authorized. Notice of such election shall be given by posting notices in three public places in each election precinct in each constituent district for at least 15 days prior to the election and also by publication of such notice in some newspaper published in each county where any lands of the water conservation district are located, once a week for at least four successive weeks prior to the election. Such notices must specify the time of the holding of the election and the maximum amount of money payable to the

United States for construction purposes, or in the assumption of liability for district lands for such purposes, exclusive of penalties and interest.

(2) The election shall be held and the result determined and declared in all respects as nearly as practicable in conformity with the provisions of the irrigation district laws; provided that no informalities in conducting such election shall invalidate the same if the election was otherwise fairly conducted.

(3) The ballot shall contain the words "Contract with the United States—Yes" and "Contract with the United States—No," or other words equivalent thereto. If the majority of the votes cast are "Contract with the United States—Yes," the water conservation board, acting in pursuance of the election, may negotiate and execute a contract with the United States. If the majority of the votes cast are "Contract with the United States—No," the result shall be so declared and entered of record; and whenever thereafter the board in its judgment deems it for the best interests of the district that the question of contract with the United States in that amount, or any amount, be submitted to the electors, it shall so declare of record in its minutes and may thereupon submit such question to the electors in the same manner with like effect as at the previous election.

(4) A water conservation district may without a vote of its electorate enter into a contract with the United States which does not create or increase a construction charge indebtedness and which, in the judgment of the district board of directors, is for the best interests of the district.

552.420 Change of district boundaries. When a contract has been made between a water conservation district and the United States, no change shall be made in the boundaries of the district, and the board of directors shall make no order changing the boundaries of the district, unless the Secretary of the Interior assents thereto in writing and files such assent with the board of directors.

552.425 Application of irrigation district laws. All irrigation district laws giving the United States a preferred lien upon the lands where a contract has been made with the United States, and all other irrigation district laws applying to contracts between irrigation districts and the United States, shall be binding upon the lands of the constituent districts under any contract made between a water conservation district and the United States under this chapter.

552.430 to 552.500 [Reserved for expansion]

ASSESSMENTS; PAYMENT OF CLAIMS

552.505 Computation of annual funds required; apportionment; requisition; payment. (1) At a regular monthly meeting held not later than June of each year the water conservation district board shall estimate, determine and compute the whole amount of money necessary to be raised by the district for the ensuing year for all purposes, including contract obligations with the United States or any agency thereof, and shall fix and apportion the amount so computed to be paid by each constituent district, which apportionment shall be in the same proportion to each constituent district as the proportion fixed and determined by the State Engineer for the original cost of the project.

(2) The board of directors of the water conservation district shall thereupon by resolution entered in its minutes make requisition upon each constituent district for its proportionate amount of money. A copy of the resolution shall be served upon the secretary of the constituent district.

(3) Upon receiving the resolution the board of directors of each constituent district shall include the amount apportioned to it in its succeeding budget, and the district shall levy, assess, collect and pay over to the secretary-treasurer of the water conservation district the amount so requisitioned. Each constituent district shall pay to the water conservation district one-half of the amount for which requisition was made upon it on or before January 1 next following the date of such requisition, and the other one-half on or before July 1 next following the first payment.

552.510 Requisition deemed lawful charge; failure to make estimate and requisition. (1) Any requisition made by a water conservation district upon a constituent district in accordance with ORS 552.505 shall be a lawful charge against such constituent district. The funds to pay such requisition shall be assessed, levied and collected by the constituent district in the same manner as

such district is required by law to assess, levy and collect its own funds.

(2) In case of the neglect or refusal of the board of directors of any water conservation district to cause an estimate and requisition to be made upon a constituent district, such estimate, levy and requisition shall be made and equalized in the manner provided for in ORS 545.454.

552.515 Audit and payment of claims. All claims against a water conservation district shall be audited and paid in the manner provided by law for the payment of claims by an irrigation district organized under the laws of this state.

552.520 to 552.600 [Reserved for expansion]

DETERMINATION OF VALIDITY OF PROCEEDINGS; APPEAL

552.605 Action to determine regularity of proceedings. Every water conservation district organized under this chapter shall, prior to entering into any contract with the United States, by petition commence a proceeding in the circuit court of the county in which the office of the water conservation district is located, for the purpose of having a judicial examination and judgment of the court as to the regularity and legality of the proceedings in connection with the organization of the district, and the proceedings of the board and district providing for and authorizing a contract with the United States, or any agency thereof, and as to the validity of such a contract, whether or not it has been executed. All the proceedings of a water conservation district may be judicially examined or determined by the court in one special proceeding, or any part thereof may be separately examined and determined upon by the court.

552.610 Nature, practice and procedure; trial and judgment. (1) The proceedings shall be in the nature of a proceeding in rem. The practice and procedure shall follow the practice and procedure of suits in equity so far as the same are consistent with the determination sought to be obtained, except as otherwise provided in this chapter.

(2) Jurisdiction of the conservation district and of all the freeholders and legal voters therein shall be obtained by the publication of notice directed to the district and to all freeholders and legal voters within it, without naming them individually. Such notice shall be served on all parties in interest by publication at least once a week for three successive weeks in some newspaper of general circulation published in the county where the proceeding is pending. Jurisdiction shall be complete within 10 days after full publication of the notice.

(3) Any person interested may at any time before the expiration of the 10 days appear and contest the validity of such proceeding, or of any of the acts or things therein enumerated.

(4) The proceedings shall be speedily tried and judgment rendered declaring the matter so contested to be either valid or invalid. Any order, judgment or decree in such proceeding may be made and rendered by the judge in vacation, and for that purpose the court shall be deemed at all times to be in session, and the act of the judge in making the same shall be the act of the court.

552.615 Appeal from judgment in special proceedings; disregard of errors; costs. (1) Either party may appeal to the Supreme Court at any time within 30 days after the rendition of the final judgment or decree. The appeal must be heard and determined within three months from the time of taking it.

(2) The court, in inquiring into the regularity, legality or correctness of any of said proceedings, shall disregard any error, irregularity or omission which does not affect the substantial rights of the parties to the special proceedings, and may approve the proceedings in part and disapprove and declare illegal or invalid other or subsequent proceedings in part, and may approve the proceedings in part and disapprove the remainder thereof. The cost of the special proceedings may be allowed and apportioned between the parties in the discretion of the court.

552.620 Vested rights not affected; right of appeal. (1) Nothing in this chapter shall be so construed as to affect or impair the vested right of any person to the use of water or rights in the use of water.

(2) Any person aggrieved by any act either of the State Engineer under this chapter or of a water conservation district may appeal to the circuit court, and from the cir-

cuit court to the Supreme Court. [Amended by 1955 c.707 §74]

Note: The 1955 amendment to ORS 552.620 takes effect on January 1, 1956. Until January 1, 1956, ORS 552.620, as compiled in the 1953 edition, will remain in effect.

552.625 to 552.985 [Reserved for expansion]

PENALTIES

552.990 Penalties. Violation of ORS 552.230 by an officer or director of a water conservation district is punishable, upon conviction, by a fine of not more than $1,000 or by imprisonment in the county jail for not more than one year, or both, and the conviction shall work a forfeiture of office.

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 October 15, 1955.

Sam R. Haley
Legislative Counsel