

Chapter 541

1961 REPLACEMENT PART

(1963 reprint)

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WATER COMPANIES ORGANIZED UNDER 1891 ACT

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

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

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

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

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

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

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

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

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

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

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

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

541.090 and 541.100 [Reserved for expansion]

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

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

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

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

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

541.140 to 541.200 [Reserved for expansion]

APPROPRIATION OF WATER BY THE UNITED STATES

541.210 [Repealed by 1953 c.328 §2]

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

behalf of the State of Oregon, in the name of the state, for the determination of all rights for the use of the water, and shall diligently prosecute the same to a final adjudication.

541.230 State lands within irrigated area; restrictions on sale; conveyance of lands needed by United States. No lands belonging to the state, within the areas to be irrigated from work constructed or controlled by the United States or its authorized agents, shall be sold except in conformity with the classification of farm units by the United States. The title of such land shall not pass from the state until the applicant therefor has fully complied with the provisions of the laws of the United States and the regulations thereunder concerning the acquisition of the right to use water from such works, and shall produce the evidence thereof duly issued. After the withdrawal of lands by the United States for any irrigation project, no application for the purchase of state lands within the limits of such withdrawal shall be accepted, except under the conditions prescribed in this section. Any state lands needed by the United States for irrigation works shall be conveyed to it without charge.

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

541.250 Cession to United States not rescinded. Nothing in ORS 541.220 to 541.240 shall be construed as rescinding the cession by the state to the United States of lands, as provided in chapter 5, Oregon Laws 1905.

541.260 to 541.300 [Reserved for expansion]

SUITS FOR DETERMINATION OF WATER RIGHTS UNDER 1905 ACT

541.310 Suits for determination of rights; parties; survey of stream; disbursements. In any suit wherein the state is a party, for determination of a right to the use of the waters of any stream system, all who claim the right to use the waters shall be made parties. When any such suit has been

filed the court shall call upon the State Engineer to make or furnish a complete hydrographic survey of the stream system as provided in ORS 541.220, in order to obtain all data necessary to the determination of the rights involved. The disbursements made in litigating the rights involved in the suit shall be taxed by the court as in other equity suits.

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

541.330 to 541.400 [Reserved for expansion]

USE OF WATER TO OPERATE WATER-RAISING MACHINERY

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

541.420 to 541.440 [Reserved for expansion]

SPLASH DAMS

541.450 Definitions for ORS 541.450 to 541.460. As used in ORS 541.450 to 541.460 and 541.990:

(1) "Splash dam" means a dam constructed and used in the floating and driving of logs and other lumber products whereby water behind the dam is released for the purpose of causing or aiding the floating of logs or other lumber products on a navigable or nonnavigable river in the waters thereof below the location of the dam.

(2) "Splash dam" does not mean any device used on the waters of this state for the

assembly or storage of logs or other lumber products, or for any other purpose incidental thereto.

[1957 c.163 §1]

541.455 Splash dams unlawful. After January 1, 1958, it shall be unlawful to operate a splash dam on any of the navigable or nonnavigable waters of this state. No officer or agency of this state shall issue any permit for the construction or maintenance of any dam to be used for splash dam purposes.

[1957 c.163 §2]

541.460 Abatement proceedings by Attorney General. The Attorney General, upon being informed that any violation of ORS 541.450 to 541.460 or subsection (1) of 541.990 has occurred, is hereby empowered to proceed immediately in the circuit court of the county in which said splash dam is located, to petition the court for the removal of said splash dam by abatement proceedings; and all costs in connection therewith incurred by the Attorney General shall be assessed against the offending person, firm or corporation.

[1957 c.163 §3]

541.470 to 541.500 [Reserved for expansion]

RELEASE OF WATER FROM IMPOUNDMENT OR DIVERSION STRUCTURE

541.510 State Engineer may require posting of signs when public safety endangered by release of water from impoundment or diversion structure. (1) Whenever it appears to the satisfaction of the State Engineer upon his own determination or upon evidence submitted to him by any person that the release of water from an impoundment or diversion structure constructed before or after May 26, 1959, endangers or may endanger the public safety, the State Engineer shall send a written notice to the owner or operator of the structure.

(2) The notice provided for in subsection (1) of this section shall state:

(a) That the release of water from the impoundment or diversion structure endangers or may endanger the public safety.

(b) That the owner or operator of the structure shall within a time to be set by the State Engineer post notices downstream from the structure at places of public access to the stream to be designated by the State Engineer warning the public that the stream level below the structure is subject to fluctuation.

[1959 c.824 §1; 1961 c.379 §9a.]

541.515 Notice by State Engineer when hazard to property or human life created by release of water from impoundment or diversion structure. (1) Whenever it appears to the satisfaction of the State Engineer, upon his own determination or upon evidence submitted to him by any person that the present or proposed release of stored water from an impoundment or diversion structure, including any water power project, constructed before or after May 1, 1961, results in rapid increase in the stream level below the structure which creates or will create a hazard to human life or property, the State Engineer shall cause written notice of such determination to be mailed to the owner or operator of the structure.

(2) The notice provided for in subsection (1) of this section shall state:

(a) That the present or proposed release of stored water from the impoundment or diversion structure creates or may create an unreasonable hazard to human life or property.

(b) The manner in which such unreasonable hazard to human life or property is or may be created.

(c) The action which is required, in the opinion of the State Engineer, to minimize such unreasonable hazard to human life or property.

(d) That the owner or operator of the impoundment or diversion structure, within 15 days after the mailing of the notice, may request in writing that the State Engineer hold a hearing on such unreasonable hazard or action required to minimize such unreasonable hazard, and that upon failure to request a hearing the State Engineer shall make an order stating the terms, limitations and conditions of the action required to minimize such unreasonable hazard.

[1961 c.379 §1]

541.520 Procedure when owner or operator of structure fails to request hearing; order regulating release of water. If, within 15 days after the mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure fails to request in writing that the State Engineer hold a hearing, the State Engineer shall make and file in his office an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize unreasonable hazard to human life or property as set forth in the notice. The order shall become effective upon filing a

copy in the office of the State Engineer. The State Engineer shall cause a copy of the order to be mailed to the owner or operator of the structure. The order is not subject to appeal.

[1961 c.379 §2]

541.525 Hearing required upon request of owner or operator of structure; notice and conduct of hearing. (1) If, within 15 days after mailing of the notice provided for in ORS 541.515, the owner or operator of the impoundment or diversion structure requests in writing that the State Engineer hold a hearing, the State Engineer shall hold a hearing on the hazard to human life or property which is or will be created by the rapid increase in the stream level below the structure resulting from the release of water from the structure and the terms, limitations and conditions relating to such release of water necessary to minimize such unreasonable hazard.

(2) At least 10 days prior to the hearing the State Engineer shall send a written notice thereof to the owner or operator of the structure, and shall cause a copy of the notice to be published in a newspaper of general circulation in each county in which the structure is located and in which unreasonable hazard to human life or property is or may be created. Subject to any applicable provision of ORS chapter 183, the hearing shall be held in the manner provided in ORS 537.430.

[1961 c.379 §3]

541.530 Order of State Engineer regulating release of water from structure; jurisdiction to hear appeal. (1) After the hearing provided for in ORS 541.525 the State Engineer, if he determines that the release of stored water from the impoundment or diversion structure results or will result in rapid increase in the stream level below the structure, which increase creates or will create an unreasonable hazard to human life or property, shall make and file in his office an order stating the terms, limitations and conditions relating to the release of water from the structure necessary to minimize the unreasonable hazard. In determining what constitutes unreasonable hazard and what terms, limitations and conditions are necessary to minimize it, the State Engineer shall consider and give weight to the likelihood of harm to the public, recreation benefits, power benefits, agriculture benefits, purpose of the structure, water flows, extent, nature and time of use by the public and all other material factors. The order shall become effective upon filing a copy in the office of the State Engineer. The State

Engineer shall cause a copy of the order to be mailed to the owner or operator of the structure.

(2) The order is subject to appeal as provided in ORS 183.480 and 183.500, except that the circuit court of the county in which the structure, or any part thereof, is located has jurisdiction of the appeal.

[1961 c.379 §4]

541.535 Installation of automatic stream level recording devices. An order of the State Engineer made as provided in ORS 541.520 or 541.530 may require the owner or operator of an impoundment or diversion structure to install one or more automatic stream level recording devices satisfactory to the State Engineer at one or more locations satisfactory to the State Engineer. The cost of each such device and the installation and maintenance thereof shall be paid by the owner or operator of the structure.

[1961 c.379 §5]

541.540 Procedure in emergency when release of water from structure essential. When condition beyond the control of the owner or operator of an impoundment or diversion structure, to which an order of the State Engineer, made as provided in ORS 541.520 or 541.530 relates, threaten the safety of the structure, and the release of water from the structure contrary to the terms, limitations and conditions stated in the order is or may be necessary to remove such threat:

(1) The terms, limitations and conditions of the order shall not apply to such release of water.

(2) The owner, operator or person in immediate charge of the structure shall immediately notify the State Engineer, or his office, of the situation.

(3) The owner, operator or person in immediate charge of the structure shall immediately notify, to the best of his ability, those persons whose life or property may be threatened by such release of water.

[1961 c.379 §6]

541.545 Compliance with orders of State Engineer; enforcement. (1) No person shall fail to comply with an order of the State Engineer made as provided in ORS 541.520 or 541.530.

(2) The State Engineer may enforce any order made as provided in ORS 541.520 or 541.530, and may prosecute proceedings to enjoin violations of subsection (1) of this section.

[1961 c.379 §§7, 8]

541.550 to 541.980 [Reserved for expansion]

PENALTIES

541.990 Penalties. (1) Any person, or any officer of any firm or corporation who shall be found guilty of constructing any splash dam for the floating of logs or other lumber products on any stream or other body of water in the State of Oregon after August 20, 1957, shall be fined not more than \$1,000, or shall be imprisoned not more than one

year in the county jail in the county in which such conviction is entered, or by both fine and imprisonment.

(2) Violation of ORS 541.510 is a misdemeanor.

(3) Violation of subsection (1) of ORS 541.545 is a misdemeanor.

[1957 c.163 §4; subsection (2) enacted as 1959 c.624 §2; subsection (3) enacted as 1961 c.379 §9]

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 1, 1961.

Sam R. Haley
Legislative Counsel

