Chapter 540

1963 REPLACEMENT PART
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Distribution of Water; Watermasters; Change in Use, Transfer or Abandonment of Water Rights

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WATER DISTRICTS; WATERMASTERS; DISTRIBUTION OF WATER GENERALLY

540.010 Water districts; creation; purposes. The State Engineer shall divide the state into water districts, which shall be so constituted as to secure the best protection to the claimants for water and the most economical supervision on the part of the state. Water districts shall not be created until necessary.

540.020 Watermasters; appointment; removal; State Engineer vested with powers of watermaster. The State Engineer may appoint one watermaster for each water district. The watermaster shall hold office until his successor is appointed and has qualified, but may be removed at any time by the State Engineer, who shall fill all vacancies which occur in the office. The State Engineer, or any duly authorized assistant, shall have the powers and authority of a watermaster in the distribution of water in any water district.

540.030 State Engineer; general duties regarding water distribution. The State Engineer shall:

(1) Have general control over the watermasters.

(2) Execute the laws relative to the distribution of water and perform other functions as may be assigned to him.

(3) Have authority to make reasonable regulations to secure the equal and fair distribution of water in accordance with the rights of the various users. Such regulations shall not be inconsistent with the laws of the state. The regulations made pursuant to this subsection shall apply to all water rights that have been established:

(a) By court decree;

(b) Under an order of the State Engineer in proceedings for the determination of relative rights to the use of water; or

(c) Through permits to appropriate water or certificates of water right issued by the State Engineer.

[Amended by 1953 c.395 §3]

540.040 Watermasters' duties and powers; regulation and control of supply of water; notice; prevention of waste. Each watermaster:

(1) Shall divide the water of the natural streams, wells or other sources of supply of the surface or ground water of his district among the ditches, pumps and reservoirs taking water therefrom, according to the rights of each, in whole or in part; and shall shut and fasten, or cause to be shut and fastened, the controlling works of ditches, pumps or pipelines.

(2) Shall regulate or cause to be regulated the controlling works of wells or reservoirs, in time of scarcity of water, as may be necessary by reason of the rights existing from the streams or wells of his district.

(3) May regulate the distribution of water among the various users of water from any stream or ground water supply where the rights have been determined by decree of court, or established under an order of the State Engineer in proceedings for the determination of the relative rights to the use of water, or established through permits to appropriate water or certificates of water right issued by the State Engineer in accordance with the priority of such use, and such authority extends to the distribution of water among the various users under any partnership ditch or well or from any reservoir where rights have been so determined.

(4) Shall, whenever in the pursuance of his duties he regulates a headgate to a ditch or the controlling works of wells or reservoirs, attach to the headgate or controlling works a written notice properly dated and signed, setting forth the facts that the headgate or controlling works have been properly regulated and are wholly under his control, which notice shall be legal notice to all the parties interested in the division and distribution of the water of that ditch, well or reservoir.

(5) Shall, as near as may be, divide, regulate and control the use of the water of all streams and wells within his district by such closing or partial closing of the controlling works thereof as will prevent the waste of water, or its use in excess of the volume to which the owner of the right is lawfully entitled.

(6) Shall perform such other official duties as may be required by the State Engineer.

[Amended by 1953 c.395 §3; 1957 c.341 §10; 1963 c.410 §1]

540.050 District attorneys to represent State Engineer and watermasters. The district attorney shall appear for, or on behalf of, the State Engineer or any watermaster in any case which may arise in the pursuance of the official duties of any such officer within the jurisdiction of the district attorney.

540.060 Arrest by watermaster; complaint against offender. The watermaster, or his assistants, within his district shall have power to arrest any person violating any of the provisions of the Water Rights Act (as defined in ORS 537.010) or ORS 537.505 to 537.795 and turn him over to the sheriff or other competent police officer within the county. Immediately upon delivering any person so arrested into the custody of the sheriff, the watermaster making the arrest shall, in writing and upon oath, make complaint before the proper justice of the peace against the person arrested.
[Amended by 1957 c.341 §11]

540.070 [Repealed by 1957 c.546 §8]

540.071 Compensation and expenses of watermaster; civil service status; office. (1) Each watermaster shall be compensated for his services and shall be allowed his actual and necessary traveling expenses incurred while away from his office on official business. Such compensation and traveling expenses shall be paid as provided in this section.

(2) (a) Any watermaster may be employed by the State Engineer on a per diem, monthly or yearly basis. The compensation and expenses of such watermasters shall be fixed and paid by the State Engineer. Such watermasters, their employment and compensation are subject to any applicable provision of the State Civil Service Law, except that on July 1, 1961, watermasters who have been employed by a water district or county and who are being transferred to the state service without a substantial change in their duties may be given regular civil service status if they have worked for more than six months and may be given trial service status if they have worked less than six months if the State Engineer certifies in writing to the Civil Service Commission that such employes are qualified to perform their assigned duties.

(b) The county court or board of county commissioners of each county in which the water district of the watermaster is located shall furnish the watermaster a suitable office and equipment.

(c) When a watermaster district as established by the State Engineer includes all or parts of two or more counties, the office of the watermaster for such district shall be in the county which the State Engineer selects and the county court or board of county commissioners of that county shall, upon request of the State Engineer, provide a suitable office with necessary equipment.

(3) If no provision is made under subsection (2) of this section for the employment of a watermaster and the payment of his compensation and traveling expenses, a watermaster may be employed and his compensation and expenses paid as provided in ORS 540.090 to 540.130 by the water users of a water district among whom distribution or division of water is made.
[1957 c.546 §2; 1961 c.636 §1; 1963 c.410 §2]

540.080 Employment of assistant watermasters; compensation and expenses; termination of service. (1) The watermaster with the approval of the State Engineer may employ suitable assistants to aid him in the discharge of his duties. The assistants shall take the same oath as the watermaster and shall obey his instructions. His compensation and his actual and necessary traveling expenses shall be paid by the county court or board of county commissioners upon certificates of the State Engineer by an order made at a regular term when sitting for the transaction of county business. If no provision for such payment is made, such compensation and expenses shall be paid by the water users concerned, as provided in ORS 540.090 to 540.130.

(2) The term of service of an assistant watermaster may be terminated at any time by the State Engineer or the watermaster.
[Amended by 1957 c.546 §3; 1961 c.636 §2]

540.090 Payment of watermaster by water users demanding his services. When arrangements are not made for employment or expenses of a watermaster as provided in subsection (2) of ORS 540.071, the watermaster shall begin his work upon written demand being made upon him by one or more water users. In such event the water users demanding his services shall pay therefor at the rate of not more than $15 per day, and his actual and necessary traveling expenses in the performance of the work demanded. The State Engineer may, under any condition, call upon the watermaster for work on matters pertaining to his district whenever the necessity therefor may, in the judgment of the State Engineer, arise.
[Amended by 1957 c.546 §4; 1961 c.636 §3]

540.100 Division of water among claimants; payment. (1) Whenever any water

users are unable to agree relative to the distribution or division of water, a majority of them may apply to the watermaster of the district in which such distribution or division is in dispute, by written notice, setting forth the facts, and asking the watermaster to make a just division or distribution of water among the parties entitled to the use thereof.

(2) If no provision has been made for payment of the necessary assistant watermaster or his expenses as provided by ORS 540.080, he shall be paid by the water users among whom the distribution or division is made, at the rate of not more than $15 for each day actually engaged in such work, and the expenses of the distribution. The expense of the watermaster or any assistant watermaster shall be paid by the water users in proportion to the area of land for which each water user is entitled to the use of water, so that each one shall pay the same rate per acre.
[Amended by 1957 c.546 §5; 1961 c.636 §4]

540.110 Lien on land and crops; notice; foreclosure; attorney's fee. (1) The watermaster or assistant watermaster performing the services provided for in ORS 540.100 shall have a lien upon the lands of the water users entitled to the use of water, and upon the crops produced upon such lands during the irrigation season for which the determination is made. If any water user fails to pay his proportionate part of the wages and expenses of the watermaster or assistant watermaster after his work has been completed the lien may be made effective by filing a notice in writing of intention to claim a lien for such wages and expenses with the county clerk of the county in which the lands of the water user are situated. The notice shall be verified and subscribed by the watermaster or assistant watermaster; shall specify the particular items of wages and expenses for which the lien is claimed; shall describe the lands of each water user upon which the lien is claimed; and shall state the name of the owner or reputed owner of the lands.

(2) The lien shall be filed within 60 days from the completion of the distribution or division, and suit to foreclose the lien shall be brought in the circuit court of the county wherein the lands or any part thereof are situated, within six months from the date of filing the notice of lien.

(3) In the event suit is necessary to foreclose the lien, reasonable attorney's fees shall be allowed the plaintiff in addition to the costs and disbursements prescribed by law, and the lien shall be foreclosed in the manner provided by law for the foreclosure of liens against real property.

540.120 Payment by one water user as giving lien on lands of others; notice; foreclosure. (1) One or more of the water users concerned in a distribution or division under ORS 540.100 may pay the wages and expenses, as against any other user failing to contribute his share or proportion of the wages and expenses, and shall be entitled to a lien upon the lands of the delinquent user entitled to use of water, for his just share or proportion.

(2) The lien shall be made effective by filing a similar notice to that prescribed in the case of the watermaster or assistant watermaster, within 60 days from the date of payment of the wages and expenses, with the county clerk, and the same may be enforced and foreclosed, and the same procedure, including the allowance of reasonable attorney's fees, shall be followed as in the case of a lien claimed and foreclosed by the watermaster or assistant watermaster, as set forth in ORS 540.110. But the lien shall not be deemed an exclusive remedy.

540.130 Advance payment. If no provision has been made for payment of the watermaster or his expenses as provided in subsection (2) of ORS 540.071, before proceeding to make any distribution or division the State Engineer may require, of the water users requesting the distribution or division, payment in advance of the estimated compensation and expenses involved in the work. The water users shall present to the watermaster an estimate of the number of days the services of the watermaster will be required. For each day so estimated the water users shall pay not exceeding $15 as compensation and a reasonable amount not exceeding eight cents per mile as traveling expenses, to be applied on account of services and expenses in making the distribution or division. The State Engineer shall keep a true and full account of all moneys paid to him in advance under this section. Upon the expiration of the period for which his services are required, the State Engineer shall refund to the water users any unexpended balance of moneys so paid to him in advance.
[Amended by 1957 c.546 §6; 1961 c.636 §5]

540.135 Disposition of funds collected under ORS 540.090 to 540.130 and 540.220. Any moneys collected under the provisions of

ORS 540.090 to 540.130 and 540.220 shall be paid to the State Engineer and deposited by him in a revolving fund to be dispersed for the purpose for which it was collected.
[1961 c.636 §9]

540.140 Insufficiency of water for all users; preference of domestic over agricultural use, and agricultural over manufacturing use. When the waters of any natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall, subject to such limitations as may be prescribed by law, have the preference over those claiming such water for any other purpose, and those using the water for agricultural purposes shall have the preference over those using the same for manufacturing purposes.

540.150 Rotation in use; notice to watermaster. To bring about a more economical use of the available water supply, water users owning lands to which are attached water rights may rotate in the use of the supply to which they may be collectively entitled. Whenever two or more water users notify the watermaster that they desire to use the water by rotation, and present a written agreement as to the manner of rotation, the watermaster shall distribute the water in accordance with the written agreement.

DISTRIBUTION OF WATER FROM IRRIGATION DITCHES AND RESERVOIRS

540.210 Distribution among users from ditch or reservoir; when and how made. (1) Whenever any water users from any ditch or reservoir, either among themselves or with the owner thereof, are unable to agree relative to the distribution or division of water through or from the ditch or reservoir, either the owner or any such water user may apply to the watermaster of the district in which the ditch or reservoir is located, by written notice, setting forth such facts, and asking the watermaster to take charge of the ditch or reservoir for the purpose of making a just division or distribution of water from it to the parties entitled to the use thereof.

(2) The watermaster shall then take exclusive charge of the ditch or reservoir, for the purpose of dividing or distributing the water therefrom in accordance with the respective and relative rights of the various users of water from the ditch or reservoir, and shall continue the work until the necessity therefor shall cease to exist.

(3) The distribution and division of water shall be made according to the relative and respective rights of the various users from the ditch or reservoir, as determined by the State Engineer, by decree of the circuit court, or by written contract between all of the users filed with the watermaster.

(4) The circuit court having jurisdiction may request the watermaster of the district to take charge of any such ditch or reservoir, and to enforce any decree respecting such ditch or reservoir made under the jurisdiction of the court.

540.220 Payment of watermaster and assistant. (1) In the cases provided for in ORS 540.210, the watermaster may appoint an assistant to take charge of the ditch or reservoir. The assistant shall devote all or so much of his time as may, in the judgment of the watermaster, be necessary. He shall be paid by the water users from the ditch or reservoir at the rate of not more than $15 for each day actually engaged in such work, and the expense of such distribution. The State Engineer may require of the water users payment in advance of the estimated compensation and expenses involved in the distribution or division of the water.

(2) In the case of partnership ditches or mutual irrigation corporations organized for the benefit of the members or stockholders, the expense of the watermaster or assistant, including the wages of the assistant, if one be appointed, shall be paid by the water users in proportion to the area of land for which each water user is entitled to the use of water from the ditch or reservoir, so that each shall pay the same rate per acre.

(3) In the case of ditches and reservoirs constructed and operated for sale or rental of water, the wages and expense shall be paid by the owner of the ditch or reservoir, unless otherwise provided in written contracts with water users therefrom.
[Amended by 1957 c.546 §7; 1961 c.636 §6]

540.230 Distribution of waste or seepage water; payment. Whenever a watermaster is called upon, in accordance with the provisions of ORS 540.210, to distribute the waters of any ditch containing or carrying waste or seepage water, the holder of the right to the use of such waste or seepage water shall

pay the total cost of the installation of measuring devices for the measurement of the waste or seepage water and the total expense of measuring and distributing it.

540.240 Lien for wages and expense; property subject to lien; monthly payment. In the case of a partnership ditch or reservoir, or a ditch or reservoir owned in common or by a mutual irrigation company incorporated under the laws of this state, the wages of the watermaster or assistant watermaster and expenses of the distribution provided for by ORS 540.210 to 540.240, and the necessary and proper expense of installation and maintenance of measuring devices and headgates to provide for the just distribution of water among the several users in accordance with their respective and relative rights, shall be a lien upon the ditch or reservoir, upon each tract of land entitled to the use of water for irrigation from the ditch or reservoir, and upon the crops produced upon such lands during the irrigation season for which the distribution is made. In the case of a ditch or reservoir owned or operated by a person engaged in the business of selling or renting water therefrom, the wages and expense shall be a lien upon the ditch or reservoir. The wages and expense shall be paid monthly by the water users, or by the mutual irrigation company, or by such person.

540.250 Lien, notice of intent to claim; foreclosure; attorney's fee. (1) If not paid, then the lien may be made effective by the watermaster or assistant by filing a notice in writing of intention to claim a lien for such wages and expense with the county clerk of the county in which the ditch or reservoir and lands are situated. The notice shall be verified and subscribed by the watermaster or assistant; shall specify the particular items of wages and expense for which the lien is claimed; shall describe the lands of each water user upon which the lien is claimed; and shall set forth the name of the ditch or reservoir and the name of the owner or reputed owner of the lands and ditch or reservoir against which the lien is claimed.

(2) The lien shall be filed within 60 days from the completion of such distribution. Suit to foreclose the lien shall be brought in the circuit court of the county wherein the lands, ditch or reservoir, or any part thereof, are situated, within six months from the date of filing the notice.

(3) If suit is necessary to foreclose the lien, then a reasonable attorney's fee shall be allowed the plaintiff in addition to the costs and disbursements prescribed by law. The lien shall be foreclosed in the manner provided by law for the foreclosure of liens against real property.

540.260 Payment by one user; lien against other users; enforcement; remedy not exclusive. (1) One or more of the water users from any partnership or mutual irrigation company ditch may pay the wages and expense and, as against any other user failing to contribute his share or proportion of the wages and expense, shall be entitled to a lien upon the lands of the delinquent user entitled to the use of water from the ditch and reservoir and upon the share or interest of the owner in the ditch or reservoir, for such just share or proportion.

(2) The lien shall be made effective by filing a similar notice to that prescribed in the case of the watermaster or assistant, within 60 days from the date of payment of the wages and expense, with the county clerk. It may be enforced and foreclosed, and the same procedure, including the allowance of reasonable attorney's fees, shall be followed in such foreclosure as in the case of a lien claimed and foreclosed by the watermaster or assistant as set forth in ORS 540.250. But the lien shall not be deemed an exclusive remedy.

540.270 Irrigation districts and improvement companies not affected. Nothing contained in ORS 540.210 to 540.260 shall be applicable to the distribution of water from the irrigation systems or works of irrigation districts or district improvement companies. Distribution of water from such irrigation systems or works shall be under the exclusive control of the directors of the irrigation districts and district improvement companies.

HYDRAULIC WORKS AND STRUCTURES; DITCH RIGHT OF WAY

540.310 Ditches and canals; headgates; measuring devices; flumes along lines of ditches. (1) The owner of any ditch or canal shall maintain to the satisfaction of the State Engineer a substantial headgate at the point where the water is diverted. It shall be of such construction that it can be locked and kept closed by the watermaster.

(2) The owner shall construct and maintain, when required by the State Engineer, suitable measuring devices at such points along the ditch as may be necessary to assist the watermaster in determining the amount of water that is to be diverted into the ditch from the stream, or taken from it by the various users.

(3) When necessary for the protection of other water users, the State Engineer may require flumes to be installed along the line of any ditch.

540.320 Noncompliance with requirements; effect. If any owner of irrigation works refuses or neglects to construct and put in headgates, flumes or measuring devices, as required under ORS 540.310, after 10 days' notice, the watermaster may close the ditch, and it shall not be opened or any water diverted from the source of supply, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the State Engineer as to such headgates, flumes or measuring devices have been complied with.

540.330 Reservoirs; measuring devices; effect of noncompliance. (1) Any owner or manager of a reservoir, located across or upon the bed of a natural stream, shall construct and maintain, when required by the State Engineer, a measuring device below, and one above, the reservoir on each stream or source of supply discharging into the reservoir, to assist the watermaster in determining the amount of water to which appropriators are entitled and thereafter diverting it for their use.

(2) If any owner or manager of a reservoir located across the bed of a natural stream neglects or refuses to put in a measuring device after 10 days' notice by the State Engineer, the watermaster may open the sluicegate or outlet of the reservoir, and it shall not be closed, under penalties of the law for changing or interfering with headgates, until the requirements of the State Engineer as to such measuring devices are complied with.

540.340 Reservoir and diversion dam; suitable outlet; effect of noncompliance. (1) Whenever it may be necessary for the protection of other water users, the State Engineer shall require every owner or manager of a reservoir or diversion dam, located across or upon the bed of a natural stream, to construct and maintain a suitable outlet in the reservoir or diversion dam which will allow the free passage of the natural flow of the stream. The State Engineer shall determine what constitutes a suitable outlet.

(2) If any owner or manager of a reservoir or diversion dam refuses or neglects to construct or put in such outlet in the reservoir or diversion dam after 10 days' notice by the State Engineer, the State Engineer may close the ditch carrying water from the reservoir or diversion dam and it shall not be opened or any water diverted from the reservoir or diversion dam, under the penalties prescribed by law for the opening of headgates lawfully closed, until the requirements of the State Engineer regarding such outlet have been complied with.

540.350 Dams, dikes and other hydraulic works; examination and approval by engineer; approval not to relieve owners of responsibility; inspections; modification of works; hearing. (1) No person, firm or private or municipal corporation shall construct any dam, dike, or other hydraulic structure or works, the failure of which the State Engineer finds would result in damage to life or property, unless the State Engineer has made an examination of the site and of the plans and specifications and other features involved in the construction of such works, and has approved them in writing.

(2) His approval of the site, plans and specifications, or other features involved in the construction, maintenance and operation of any hydraulic works whatsoever shall not relieve the owners of their legal responsibilities.

(3) He may make inspections of any hydraulic structure, the site thereof, and of the plans and specifications, and any other features involved in the construction, maintenance and operation of such works. If, as a result of such inspections, he deems any modifications necessary to insure the safety of the works with reference to possible damage to life or property, he shall notify the legal owners by registered mail, stating wherein the lack of safety lies, setting forth the modifications necessary to insure the safety of the works in so far as it affects possible damage to life or property, and calling a hearing at such time and place as will give the owners a reasonable time to prepare therefor.

540.360 Order to modify; appeal. After the hearing the State Engineer may issue a written order to the owners to make such

modifications as he deems necessary to insure the safety of the works with reference to possible damage to life or property, and shall fix the time within which work shall be begun in good faith and the time for completion. However, the order shall be subject to appeal to the circuit court of the county in which the works or any part thereof are situated. The court may review the case de novo and without prejudice respecting any prior proceedings. The owners, upon receipt of such order, shall proceed to make the modifications so ordered within the time limit prescribed or shall initiate their appeal therefrom as above provided.

540.370 Enforcing compliance with order or decree. (1) If the owners fail to make the modifications within the time limits set by the State Engineer, or to institute their appeal or to comply with the decree of the appellate court in case an appeal is taken, the State Engineer shall issue an order in writing to the owners directing that the gates be kept open, or an opening made in the dam if necessary, or that the structure shall not be used for the storage, restraint or conveyance of water until the modifications have been made.

(2) No owner shall refuse to comply with the orders of the State Engineer or the decree of an appellate court.

(3) In case of noncompliance, the State Engineer shall direct the watermaster or other authorized assistant to carry out the orders, or he may file a copy of his order with the Attorney General or with the district attorney of the county within which the works are located. The Attorney General or district attorney shall bring proceedings in the name of the state, in the circuit court of the county within which the works or any part thereof are situated, to abate the offending works. The court, after a full hearing on the matter, may declare the works a nuisance and order their removal, or order any repairs or alterations, and may enforce its orders in the manner provided by law.

540.380 Reports of consultants; payment. The State Engineer may accept the reports of consulting engineers, geologists or other specialists whom the owners of the works in question may have employed. But if, for any reason, he deems the reports insufficient, he may employ consulting engineers, geologists or other specialists outside of his office to make special examinations and inspections and to prepare reports thereon for his guidance. The cost of such special examinations, inspections and reports shall be paid by the State Engineer from any funds at his disposal, or it may be divided by mutual agreement between the state and the owners.

540.390 Inspection by engineer upon application by resident, landowner or on own motion; expenses; deposit by applicant; payment by owner of works; lien. Should any person residing on or owning land in the neighborhood of any dam, dike or other hydraulic structure after completion, or in course of construction, apply to the State Engineer in writing desiring an inspection of the works, the State Engineer may order an inspection, or he may make such order on his own motion. Before doing so he may require the applicant for such inspection to make a deposit of a sum of money sufficient to pay the expenses of an inspection. In case the application appears to him not to have been justified he may cause the whole or part of the expenses to be paid out of the deposit. In case the application appears to the State Engineer to have been justified, he may require the owner of the works to pay the whole or any part of the expenses of the inspection, and it shall constitute a valid lien against the works, which may be enforced in the same manner as provided for the enforcement of mechanics' liens.

540.400 Law not applicable to certain works. ORS 540.350 to 540.390 shall not apply to:

(1) Any dam less than 10 feet in height or impounding less than 3,000,000 gallons of water.

(2) Splash dams used for driving logs.

(3) Farm dikes constructed by individuals on their own property.

(4) Ditches carrying less than five cubic feet of water per second.

540.410 Use of watercourse to deliver reservoir water; notice to watermaster; adjustment of headgates; expenses; liability for, and collection of, payment. Whenever the owner, manager or lessee of a reservoir constructed under the provisions of the Water Rights Act (as defined in ORS 537.010) desires to use the bed of a stream, or other watercourse, to carry stored or impounded water from the reservoir to the consumer thereof, he shall, in writing, notify the watermaster of the district in which the stored or

impounded water from the reservoir is to be used, giving the date when it is proposed to discharge water from the reservoir, its volume, and the names of all persons and ditches entitled to its use. The watermaster shall then close, or so adjust the headgates of all ditches from the stream or watercourse, not entitled to the use of such stored water, as will enable those having the right to secure the volume to which they are entitled. The watermaster shall keep a true and just account of the time spent by him in the discharge of his duties as defined in this section, and the State Engineer shall present a bill of one-half the expense so incurred to the reservoir owner, manager or lessee. If the owner, manager or lessee neglects for 30 days, after presentation of the bill of costs, to pay it, the costs shall be made a charge upon the reservoir and the state shall have a preference lien therefor. Upon notice from the State Engineer, the Attorney General shall foreclose the lien and collect the amount due, as provided in this section, in the same manner as other liens on real property are foreclosed.
[Amended by 1955 c.39 §1; 1961 c.636 §7]

540.420 Maintenance and operation of jointly owned ditches; performance by co-owner; recovery from one in default. In all cases where ditches are owned by two or more persons and one or more of such persons fails or neglects to do a proportionate share of the work necessary for the proper maintenance and operation of the ditch, or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, the owner desiring the performance of such work may, after having given 10 days' written notice to the other owner who has failed to perform his proportionate share of the work, perform such share, and recover therefor from the person in default the reasonable expense of the work.

540.430 Effect of nonpayment by co-owner; lien on interest; foreclosure; stoppage of delivery of water. (1) Upon the failure of any co-owner to pay his proportionate share of the expense, as mentioned in ORS 540.420, within 30 days after receiving a statement of the same as performed by his co-owner, the latter may secure payment of the claim by filing an itemized and sworn statement thereof, setting forth the date of performance and the nature of the labor performed, with the county clerk of the county wherein the ditch is situated. When so filed it shall constitute a valid lien against the interest of the person in default, which lien may be established and enforced in the same manner as provided by law for the enforcement of mechanic's liens.

(2) In lieu of proceeding to enforce the lien, the person performing the labor may file an itemized and sworn statement with the watermaster of the district within which the ditch is located, setting forth the date of performance, the nature of the labor performed, the total expense incurred by the person and the proportion of the expense each owner should pay, together with a written request that the watermaster take charge of the distribution of the water from the ditch to the parties entitled to the use thereof. Thereupon the watermaster may proceed to distribute the water in accordance with established rights. However, if an owner or user has not paid his proportion of expenses incurred for the proper maintenance and operation of the ditch, the watermaster may serve such party with written notice, personally or by registered mail, setting forth the proportion of expenses incurred for which he is obligated to pay. If the party so served refuses or neglects to pay his part of the expense within 10 days after the serving or mailing of the notice, the watermaster may refuse to deliver water to be used upon the lands of such person until after the expense has been paid.

540.440 Owner to clear weeds from ditch right of way. All persons owning or controlling any water ditches shall keep their right of way along the ditches clean and free from wild oats, mustard, thistles, or any weeds or obnoxious grasses whatsoever.

CHANGES IN USE OF WATER; TRANSFER OF WATER RIGHTS

540.510 Appurtenancy of water to premises; restrictions on change of use or place of use or point of diversion. All water used in this state for any purpose shall remain appurtenant to the premises upon which it is used and no change in use or place of use of any water for any purpose may be made without compliance with the provisions of ORS 540.520 and 540.530. However, the owner of any water right may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use theretofore made of the

water in all cases without losing priority of the right theretofore established.

540.520 Application for change of use, place of use, or point of diversion; public notice; filing of objections. (1) Whenever the owner of a water right for irrigation, domestic use, manufacturing purposes, or other use, for any reason desires to change the place of use, the point of diversion, or the use theretofore made of the water, an application to make such change, as the case may be, shall be filed with the State Engineer. The application shall state the name of the owner, the use theretofore made of the water, a description of the premises upon which the water is used, a description of the premises upon which it is proposed to use the water, the use which is proposed to be made of the water, and the reasons for making the proposed change.

(2) Upon the filing of the application the State Engineer shall give notice by publication in a newspaper printed and having general circulation in the county in which the water rights are located, for a period of at least three weeks and not less than one publication each week. The published notice shall set forth the time and place when a hearing shall be had upon the application; provided, that the date fixed for such hearing shall be not less than 30 days after the last publication of the notice. The hearing shall be had in the county where the rights are located. The cost of the publication shall be paid by the applicant in advance to the State Engineer. In applications for only a change in place of use or for a change in the point of diversion of less than one-fourth mile, and where there are no intervening diversions between the old diversion of the applicant and his proposed new diversion, no notice need be published.

(3) Any person having objections to the proposed change as set forth in the published notice shall file his objections with the State Engineer at least 10 days previous to the date set for the hearing. If no objections are filed the change may be approved by the State Engineer without a hearing.

540.530 Hearing on proposed change; order; new certificate; appeal. (1) At the time fixed for the hearing, if objections are filed, the State Engineer or his authorized assistant shall hear and determine the same. The proceedings shall be summary and informal, but witnesses may be called and testimony taken. If, after hearing or examination, the State Engineer finds that the proposed change can be effected without injury to existing rights, he shall make an order approving the transfer and fixing a time limit within which the application of water may be made to the new use. During the time allowed by the State Engineer for such application of water the right which has been transferred shall not be considered to be abandoned by nonuse.

(2) If a certificate has been theretofore issued covering the water right the State Engineer shall likewise make an order canceling it and on the filing of proper proof of complete application of the water to the new use he shall issue in lieu thereof a new certificate preserving the priority of rights theretofore established in connection therewith and covering the change in use or place of use.

(3) In case objections are filed an appeal may be taken from the decision of the State Engineer, in the manner provided in ORS 537.200.

540.540 County acquiring land in irrigation district; transfer of water rights to other lands; authority of county court. Whenever the title to lands within an irrigation district has been or is acquired by the county within which the land is located, by foreclosure of tax liens or otherwise, the county court or board of county commissioners, upon request of the irrigation district, may make application under the provisions of ORS 540.510 to 540.530 to have the water rights appurtenant to such lands transferred to other lands within the irrigation district which are owned by the county or privately owned.

540.550 Ratification of prior transfer of water rights to irrigation district. All attempted transfers or sales, prior to March 6, 1931, to an irrigation district, of water rights which theretofore had been appurtenant to lands located in the district and which lands at the time of the attempted transfer or sale were owned by the county, shall be considered to be legal and binding, and the water rights which were appurtenant to such lands shall be considered to have become the property of the district to which attempted to be conveyed, but appurtenant only to lands within the boundaries of the district as they existed on March 6, 1931, if the irrigation district applied to the State Engineer, within five years after March 6, 1931, under the provisions of section 47-712, Oregon Code 1930, as amended by chapter 102, Oregon Laws 1931,

to have the water rights made appurtenant to other lands within the irrigation district. In that event, the county shall sell the lands without any water rights being appurtenant thereto. If the irrigation district failed within five years after March 6, 1931, to make such application, then title to the water rights shall be considered to have been forfeited.

ABANDONMENT OF WATER RIGHTS

540.610 Use as measure of water right; nonuser as abandonment; nonapplication to municipalities; confirmation of rights of municipalities. (1) Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state. Whenever the owner of a perfected and developed water right ceases or fails to use the water appropriated for a period of five successive years, the right to use shall cease, and the failure to use shall be conclusively presumed to be an abandonment of water right. Thereafter the water which was the subject of use under such water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities.

(2) However, this section shall not apply to, or affect, the use of water, or rights of use, acquired by cities and towns in this state, by appropriation or by purchase, for all reasonable and usual municipal purposes; nor shall it be so construed as to impair any of the rights of such cities and towns to the use of water, whether acquired by appropriation or purchase, or heretofore recognized by Act of the legislature, or which may hereafter be acquired.

(3) The right of all cities and towns in this state to acquire rights to the use of the water of natural streams and lakes, not otherwise appropriated, and subject to existing rights, for all reasonable and usual municipal purposes, and for such future reasonable and usual municipal purposes as may reasonably be anticipated by reason of growth of population, or to secure sufficient water supply in cases of emergency, is expressly confirmed.

540.615 Nonuser, while land withdrawn under federal soil bank program, not an abandonment. The time within which land is withdrawn from use in accordance with the Act of Congress of May 28, 1956, chapter 327 (7 U.S.C. 1801-1814; 1821-1824; 1831-1837), shall not, for the purpose of computing the five-year period stated in subsection (1) of ORS 540.610, be considered a period within which the owner of a water right ceases or fails to use water appropriated.
[1961 c.140 §1]

540.620 [Repealed by 1955 c.671 §1]

540.621 Cancellation of abandoned water right upon request of owner. Whenever the owner of a perfected and developed water right certifies under oath to the State Engineer that the water right has been abandoned by him and that he desires cancellation thereof, the State Engineer shall enter an order canceling the water right. Effective upon the date of the entering of such order, the water which was the subject of use under the water right shall revert to the public and become again the subject of appropriation in the manner provided by law, subject to existing priorities. Upon the entering of such order the State Engineer shall cause a certified copy thereof to be transmitted to the county clerk of the county in which the water right was located, and such county clerk shall stamp or write across the face of the recorded water right certificate which evidenced the water right the words "Canceled by order of State Engineer, dated ....."
[1955 c.670 §1]

540.630 [Repealed by 1955 c.671 §1]

540.631 Notice by State Engineer of initiation of proceedings to cancel abandoned water right. Whenever it appears to the satisfaction of the State Engineer upon his own determination or upon evidence submitted to him by any person that a perfected and developed water right has been abandoned as provided in ORS 540.610, the State Engineer may initiate proceedings for the cancellation of such water right by causing written notice of such initiation of proceedings to be given by registered mail, return receipt requested, to the legal owner of the lands to which the water right is appurtenant and to the occupant of such lands. The notice to the legal owner shall be addressed to him at his last address of record in the office of the county assessor of the county in which the lands are located. The notice shall contain a complete description of the water right and of the lands to which the water right is appurtenant. The notice shall state that the legal owner or the occupant has a period of 60 days from the date of the

mailing of the notice within which to protest the proposed cancellation of the water right. [1955 c.670 §2]

540.640 [Repealed by 1955 c.671 §1]

540.641 Cancellation if no protest; procedure for cancellation if owner or occupant files protest. (1) If the legal owner or the occupant receiving notice as provided in ORS 540.631 fails to protest the proposed cancellation of the water right within the 60-day period prescribed in the notice, the State Engineer may enter an order canceling the water right.

(2) If the legal owner or the occupant receiving notice as provided in ORS 540.631 files a protest against the proposed cancellation of the water right with the State Engineer within the 60-day period prescribed in the notice, the State Engineer shall fix a time and place for a hearing on the protest. The State Engineer shall cause written notice of the hearing to be given at least 10 days prior to the hearing to the person protesting the cancellation of the water right and to any other person who in the opinion of the State Engineer is an interested party to the proceeding. The hearing shall be held by the State Engineer or his authorized assistant, and shall be conducted in a manner similar to that provided in ORS 537.430. After the hearing the State Engineer shall enter an order canceling the water right, canceling in part or modifying the water right, or declaring that the water right shall not be canceled or modified. Such order is subject to appeal as provided in ORS 536.060 by any party to the proceeding within a period of 30 days from the date of mailing a copy of the order to such party. [1955 c.670 §3]

540.650 Filing copy of order or decree with county clerk; issuance of new water right certificate for water rights not canceled. (1) Upon the entering of an order by the State Engineer under subsection (1) of ORS 540.641 canceling a water right, or upon the expiration of the 30-day period for appeal from an order of the State Engineer under subsection (2) of ORS 540.641 canceling, canceling in part or modifying a water right, or, if such order is appealed within the 30-day period, upon a final decree on the appeal canceling, canceling in part or modifying the water right, the State Engineer shall cause a certified copy of such order or final decree to be transmitted to the county clerk of the county in which the water right was located. Upon receipt of such certified copy the county clerk shall stamp or write across the face of the recorded water right certificate which evidenced the water right canceled, canceled in part or modified the words "Canceled by order of State Engineer, dated .....," or "Canceled by decree of circuit court for .....County, dated .....," as the case may be.

(2) If the order of the State Engineer or the final decree on the appeal therefrom cancels in part or modifies the water right, that portion of the water right not canceled or continued as modified shall be reaffirmed by a new water right certificate issued by the State Engineer. Such certificate shall be of the same character as that described in ORS 539.140. The certificate shall be recorded and transmitted to the owner of the water right as provided in ORS 539.140. [1955 c.670 §4]

PROHIBITED ACTS; INJUNCTIONS

540.710 Interference with headgate, or use of water denied by watermaster or other authority; evidence of guilt. No person shall wilfully open, close, change or interfere with any lawfully established headgate or water box without authority, or wilfully use water or conduct water into or through his ditch which has been lawfully denied him by the watermaster or other competent authority. The possession or use of water when the same shall have been lawfully denied by the watermaster or other competent authority shall be prima facie evidence of the guilt of the person using it.

540.720 Unauthorized use or waste of water; evidence of guilt of user. No person shall use without authorization water to which another person is entitled, or wilfully waste water to the detriment of another. The possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using it.

540.730 Obstruction interfering with use of works or access thereto prohibited. Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, no person shall place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto.

540.740 Injunctive relief against action of watermaster. Any person who may be injured by the action of any watermaster may appeal to the circuit court for an injunction. The injunction shall only be issued in case it can be shown at the hearing that the watermaster has failed to carry into effect the order of the State Engineer or decrees of the court determining the existing rights to the use of water.

540.750 Injunction suits; notice and hearing to authorize restraining order; time of hearing. In suits for injunction affecting the use of water from streams upon which the rights to water have been determined, no restraining order shall be granted before hearing had after at least three days' notice thereof, served upon all parties defendant. All suits for injunction involving the use of water shall be heard, either in term time or during vacation, not later than 15 days after issues joined, unless for good cause shown further time be allowed.

PENALTIES

540.990 Penalties. (1) Violation of any provision of ORS 540.440 is punishable, upon conviction, by a fine of not less than $25 nor more than $150, together with the costs and disbursements of the action, and in default of the payment of the fine and costs, by confinement in the county jail one day for each $2 thereof. Justice courts shall have concurrent jurisdiction with the circuit courts in the trial of all proceedings under this subsection.

(2) Violation of any provision of ORS 540.710, 540.720 or 540.730, or of subsection (2) of ORS 540.370, is punishable, upon conviction, by a fine of not less than $10 nor more than $250, or by imprisonment in the county jail for not more than six months, or both. Justice courts and district courts shall have concurrent jurisdiction with the circuit courts in the trial of all violations under this subsection.

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, 1963

Sam R. Haley
Legislative Counsel