

Chapter 541

1973 REPLACEMENT PART

Miscellaneous Provisions on Water Rights, Uses and Protection

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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.

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 con-

sent 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.

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 may, in the discretion of the Division of State Lands, be conveyed to it without charge.

[Amended by 1967 c.79 §1]

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.

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.

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.

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]

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.624 §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 in accordance with ORS 183.310 to 183.500 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, in addition to the notice requirements of ORS 183.310 to 183.500, 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.

[1961 c.379 §3; 1971 c.734 §83]

541.530 Order of State Engineer regulating release of water from structure; judicial review. (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.

(2) The order is subject to judicial re-

view as provided in ORS 183.310 to 183.500. [1961 c.379 §4; 1971 c.734 §84]

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]

REMOVAL OF MATERIAL; FILLING

541.605 Definitions for ORS 541.605 to 541.665. As used in ORS 541.605 to 541.665, unless the context requires otherwise:

(1) "Director" means the Director of the Division of State Lands.

(2) "Division" means the Division of State Lands.

(3) "Governmental body" includes the Federal Government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(4) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of this state and any materials, organic or inorganic, used to fill waters of this state.

(5) "Fill" means the total of deposits by artificial means equal to or exceeding 50 cubic yards or more of material at one location in any waters of this state.

(6) "Removal" means the taking of more than 50 cubic yards or the equivalent weight in tons of material in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters.

(7) "Water resources" includes not only water itself but also aquatic life and habitats therein and all other natural resources in and under the waters of this state.

(8) "Waters of this state" means natural waterways including all tidal and nontidal bays, constantly flowing streams, lakes and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state.

[1967 c.567 §2; 1971 c.509 §4; 1971 c.754 §1; 1973 c.330 §1; 1973 c.674 §1]

541.610 Policy. (1) The protection, conservation and best use of the water resources of this state are matters of the utmost public concern. Streams, lakes and other bodies of water in this state, including not only water and materials for domestic, agricultural and industrial use but also habitats and spawning areas for game and food fish, avenues for transportation and sites for public recreation, are vital to the economy and well-being of this state and its people. Unregulated removal of material from the beds and banks of the waters of this state may create hazards to the health, safety and welfare of the people of this state. Unregulated filling in the waters of this state may result in interfering with or injuring public navigation, fishery and recreational uses of the waters. In order to provide for the best possible use of the water resources of this state, it is desirable to centralize authority in the Director

of the Division of State Lands, and implement control of the removal of material from the beds and banks or filling of the waters of this state.

(2) There shall be no condemnation, inverse condemnation, other taking, or confiscating of property under ORS 541.605 to 541.665 without due process of law.

[1967 c.567 §1; 1971 c.754 §2; 1973 c.330 §2; 1973 c.674 §2]

541.615 Permit required to remove material from bed or banks of waters; exceptions.

(1) Except as otherwise specifically permitted under ORS 541.605 to 541.665, no person or governmental body shall remove any material from the beds or banks or fill any waters of this state without a permit issued under authority of the Director of the Division of State Lands, or in a manner contrary to the conditions set out in the permit.

(2) No governmental body shall issue a lease or permit contrary or in opposition to the conditions set out in the permit issued under ORS 541.605 to 541.665.

(3) Subsection (1) of this section does not apply to removal of material under a contract, permit or lease with any governmental body entered into before September 13, 1967. However, no such contract, permit or lease may be renewed or extended on or after September 13, 1967, unless the person removing the material has obtained a permit under ORS 541.605 to 541.665.

(4) Subsection (1) of this section does not apply to removal of material from the beds or banks or filling of any waters of this state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property, when notice of such emergency removal or filling is given to the Division of State Lands within 24 hours following the start of such activity. The division, not later than 24 hours following notice, shall inspect the emergency activity, and deny or approve; provided, however, that in emergency actions involving highways, the appropriate highway authority having jurisdiction over the highway in which the work is being performed, shall notify the division within 72 hours following the start of such activity.

[1967 c.567 §3; 1971 c.754 §3]

541.620 Application for permit; fee; disposition of fees. (1) Each applicant for a permit to remove material from the bed or banks or fill any waters of this state first

shall file a written application with the Director of the Division of State Lands, specifying the nature and amount of material to be removed or the amount of fill, the waters and the specific location from which it is to be removed or where the fill will be placed, the method of removal or filling and the times during which removal or filling is to be conducted. The director may require additional information as is necessary to enable him to determine whether the granting of the permit applied for is consistent with the protection, conservation and best use of the water resources of this state. For the purposes of this subsection, fills or removals of material at locations not more than one mile apart may be combined in one application.

(2) The Director of the Division of State Lands shall furnish to any member of the public upon his written request and at his expense a copy of any application for a permit pursuant to subsection (1) of this section.

(3) (a) Each application under subsection (1) of this section must be accompanied by a fee in accordance with the following schedule:

(A) For a removal by a private operator or public body, or a person contracting to perform services for such persons, \$50;

(B) For a removal by a commercial operator, \$100;

(C) For a fill by a private operator or public body, or a person contracting to perform services for such persons, \$100;

(D) For a fill by a commercial operator, \$250;

(E) For erosion—flood repair by a private landowner or public body, or a person contracting to perform services for such persons, \$25;

(F) For erosion—flood repair by multiproject, \$150;

(G) Riprap, no fee.

(b) For the purposes of paragraph (a) of this subsection, the following terms shall have the following meanings:

(A) "Private operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(B) "Public body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services;

(C) "Commercial operator" means any person undertaking a project having financial profit as a goal;

(D) "Multiproject" means projects where storm or flood damage has necessitated multiple projects to maintain and repair existing facilities or land in natural waterways, in which case a single permit with multiple attachments may be issued;

(E) "Riprap" means the facing of a streambank with rock or similar substance to control erosion in accordance with regulations promulgated by the division; and

(F) "Erosion—flood repair" means any work necessary to preserve existing facilities and land from flood and high stream flows, in accordance with regulations promulgated by the division.

(4) Annually on the anniversary date of the permit, each holder of a material removal permit shall pay a fee during the term of the permit in accordance with the schedule set forth in subsection (3) of this section. The permit shall be suspended during any period of delinquency of payment as though no permit was applied for. Notwithstanding this subsection the director may, before granting any extension of the permit, require the permittee to show that the continued exercise of the permit is consistent with the protection, conservation and best use of the water resources of this state.

(5) Fees received under subsections (3) and (4) of this section shall be credited to the Common School Fund for use by the division in administration of ORS 541.605 to 541.665 and 541.990 and as otherwise required by law.

[1967 c.567 §4; 1969 c.338 §4; 1971 c.754 §4; 1973 c.674 §3]

541.625 Conditions of permit; consultation with other agencies; hearing; appeal.

(1) The Director of the Division of State Lands shall issue a permit to remove material from the beds or banks of any waters of this state applied for under ORS 541.620 if he determines that the removal described in the application will not be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS 541.610.

(2) The Director of the Division of State Lands may issue a permit applied for under ORS 541.620 for filling waters of this state. In determining whether or not a permit shall be issued, the director shall consider the following:

(a) Whether the proposed fill unreasonably interferes with the paramount policy of this state to preserve the use of its waters for navigation, fishing and public recreation;

(b) Whether the proposed fill conforms to sound policies of conservation and would not interfere with public health and safety;

(c) Whether the proposed fill is in conformance with existing public uses of the waters; and

(d) Whether the proposed fill is consistent with a duly enacted zoning or land use plan for the area where the proposed fill is to take place.

(3) If the director issues a permit, he may impose such conditions as he considers necessary to carry out the purposes of ORS 541.610 and subsection (2) of this section. In formulating such conditions the director may consult with the State Geologist, the State Wildlife Director, the State Fisheries director, the State Forester, the Director of the Department of Environmental Quality, the administrative officer of the State Soil and Water Conservation Commission, the Director of Agriculture, the State Parks Superintendent, the State Marine Director, the Director of the State Water Resources Board, the State Highway Engineer and the State Engineer. Each permit is valid only for the time specified therein. Obtaining a lease from the Division of State Lands shall not be one of the conditions to be considered in granting a permit under ORS 541.620.

(4) Any applicant whose application for a permit has been denied, or who objects to any of the conditions imposed under subsections (2) and (3) of this section by the director or any of the state agencies specified under subsection (3) of this section, may, within 10 days of the denial of the permit or the imposition of any condition, request a hearing from the director. Thereupon the director shall set the matter down for hearing, which shall be conducted as a contested case in accordance with ORS 183.415 to 183.470. After such hearing, the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's initial order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by subsection (2) of ORS 183.480.

(5) In the event that a decision on issuance of a permit by the Director of the Division of State Lands is delayed for a period exceeding 45 days from the date of application in the case of a removal, or 90 days from the date of application in the case of a fill, a temporary permit shall be issued pending such final decision.

(6) Permits issued under this section shall be in lieu of any permit that might be required for the same operation under ORS 164.775, 164.785, 468.010, 468.030 to 468.045, 468.055, 468.060, 468.075, 468.110, 468.120, 468.700 to 468.725 and 468.735 to 468.775, so long as:

(a) The operation is that for which the permit is issued; and

(b) The standards for granting such permits are substantially the same as those established pursuant to ORS 164.775, 164.785, 468.010, 468.035, 468.040, 468.055, 468.110, 468.120, 468.700 to 468.725 and 468.735 to 468.775 to the extent they affect water quality.

[1967 c.567 §5; 1969 c.593 §49; 1971 c.754 §5; 1973 c.330 §3; 1973 c.674 §6]

541.627 Hearing regarding issuance of permit; procedure; appeals; suspension of permit pending appeal. Any person aggrieved or adversely affected by the director's grant of a permit may file a written request for hearing with the director. If the director finds that the person making the written request has a legally protected interest which is adversely affected by the grant of the permit, the director shall set the matter down for hearing within 30 days after receipt of the request. The hearing shall be conducted as a contested case in accordance with ORS 183.415 to 183.470. The permittee shall be a party to the proceeding. Within 45 days of the hearing the director shall enter an order containing findings of fact and conclusions of law. The order shall rescind, affirm or modify the director's original order. Appeals from the director's final order may be taken to the Court of Appeals in the manner provided by subsection (2) of ORS 183.480. A permit to fill granted by the director may be suspended by the director during the pendency of the proceedings before the director and any appeal. The director shall not suspend the permit unless the person aggrieved or adversely affected by the grant of permit makes a showing before the director by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 541.605 to 541.665.

[1973 c.674 §5]

541.630 Closure of specified waters to removal or filling. Any agency listed in subsection (3) of ORS 541.625 may request the State Water Resources Board by rule to close one or more specified waters of this state to

the issuance of permits. After a public hearing held in conformity with ORS chapter 183, if the State Water Resources Board finds that issuance of permits with respect to such water resources would be inconsistent with the protection, conservation and best use of the water resources of this state as specified in ORS 541.610, the State Water Resources Board may by rule close such waters to the issuance of permits and to any other removals or fills under ORS 541.640 for an indefinite period or during such other times as are stated in the rule.

[1967 c.567 §6; 1971 c.754 §6; 1973 c.330 §4; 1973 c.674 §7]

541.635 Investigations and surveys. In considering applications for permits, the Director of the Division of State Lands may cause investigations or surveys to be made of the location of the work contemplated to determine whether such removal or filling is consistent with ORS 541.610 and 541.625.

[1967 c.567 §7; 1971 c.754 §7]

541.640 Waiving permit requirement in certain cases. Notwithstanding any other provision of ORS 541.605 to 541.665, the Director of the Division of State Lands by rule may make exceptions from the application of ORS 541.605 to 541.665 with respect to removals or fills of a limited nature if no substantial harm could result to the water resources of this state as specified in ORS 541.610. However, the director shall notify each agency listed in subsection (3) of ORS 541.625 of any exceptions made under this section.

[1967 c.567 §8; 1971 c.754 §8; 1973 c.330 §5; 1973 c.674 §8]

541.645 Noncomplying removal of material or filling constitutes public nuisance. The removal of material from the beds or banks or filling any of the waters of this state without a permit issued under ORS 541.625, or in a manner contrary to the conditions set out in the permit, is a public nuisance.

[1967 c.567 §9; 1971 c.754 §9]

541.650 Enforcement powers of director. If the director determines that material is being removed from or filling is occurring in any of the waters of this state without a permit issued under ORS 541.625, or in a manner contrary to the conditions set out in the permit, he may:

(1) Investigate, hold hearings, make orders and take action, as provided in ORS 541.605 to 541.665, as soon as possible.

(2) For the purpose of investigating conditions relating to such removal or filling,

through the employes or the duly authorized representatives of the division, enter at reasonable times upon any private or public property.

(3) Conduct public hearings in accordance with ORS chapter 183.

(4) Publish his findings and recommendations as they are developed relative to public policies and procedures necessary for the correction of conditions or violations of ORS 541.605 to 541.665.

(5) Give notice of any order relating to a particular violation of his rules or orders, or relating to a particular violation of any condition of a permit, by mailing notice of such order to the person or governmental body affected and by filing a duplicate original of such order in the manner required by ORS chapter 183. Any person aggrieved by an order of the director may appeal from such order to the circuit court of the county in which the property or any part thereof affected by such order is situated.

(6) Take appropriate action for the enforcement of his rules or orders promulgated as a result of any hearing. Any violation of ORS 541.605 to 541.665 or of any rule or order of the director under ORS 541.605 to 541.665 may be enjoined in civil abatement proceedings brought in the name of the State of Oregon; and in any such proceedings the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation. Proceedings thus brought by the director shall set forth the dates of notice and hearing and the specific rule or order of the director, together with the facts of noncompliance, the facts giving rise to the public nuisance, and a statement of the damages to any public right of navigation, fishery or recreation, if any, resulting from such violation.

[1967 c.567 §10; 1971 c.754 §10; 1973 c.330 §6; 1973 c.674 §9]

541.655 Revocation of permit. If the director finds that a person or governmental body holding a permit issued under ORS 541.625 is removing material from the bed or banks or filling any of the waters of this state contrary to the conditions set out in the permit, he may revoke such permit after notice and hearing as provided in ORS 183.415 to 183.470.

[1967 c.567 §11; 1971 c.754 §11; 1973 c.330 §7; 1973 c.674 §10]

541.660 Abatement proceedings. (1) In lieu of penal enforcement proceedings, proceedings to abate alleged public nuisances under ORS 541.645 may be instituted at law or in equity, in the name of the State of Oregon, upon relation of the Director of the Division of State Lands.

(2) However, notwithstanding any other provisions of law, the director, without the necessity of prior administration procedures or hearing and entry of an order or at any time during such administrative proceedings if such proceedings have been commenced, may institute a suit at law or in equity in the name of the State of Oregon to abate or restrain threatened or existing nuisances under ORS 541.645, whenever such nuisances or threatened nuisances create an emergency that requires immediate action to protect the public health, safety or welfare. In any suit brought under this section, the director may seek and the court may award a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from an existing public nuisance under ORS 541.645. No temporary restraining order or temporary injunction or abatement order shall be granted unless the defendant is accorded an opportunity to be heard thereon at a time and place set by the court in an order directing the defendant to appear at such time and place, and to then and there show cause, if any he has, why a temporary restraining order or temporary injunction or abatement order should not be granted. The order to show cause, together with affidavits supporting the application for such temporary restraining order, temporary injunction or abatement order, shall be served on the defendant as a summons. The defendant may submit counteraffidavits at such time and place. The director shall not be required to furnish any bond in such proceeding. Neither the State Land Board nor the Director of the Division of State Lands or the employes or duly authorized representatives of the division, shall be liable for any damages defendant may sustain by reason of an injunction or restraining order or abatement order issued after such hearing.

(3) Cases filed under this section shall be given preference on the docket over all other civil cases except those given an equal preference by statute.

[1967 c.567 §12; 1973 c.330 §8; 1973 c.674 §11]

541.662 Double damages for destruction of public right of navigation, fishery or recreation; treble damages for intentional violations; damages in addition to criminal penalties. (1) If any person or governmental body, through his or its negligence, violates ORS 541.615, the director, in a proceeding brought pursuant to ORS 541.660, may seek and the court may award double a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(2) If any person or governmental body intentionally violates ORS 541.615, the director, in a proceeding brought pursuant to ORS 541.660, may seek and the court may award treble a sum of money sufficient to compensate the public for any destruction or infringement of any public right of navigation, fishery or recreation resulting from such violation.

(3) An award made pursuant to this section shall be in addition to and not in lieu of any criminal penalties imposed for a violation of ORS 541.615.

[Enacted by 1973 c.330 §10 and 1973 c.674 §13]

Note: 541.662 was enacted by two identical provisions, section 10 of chapter 330 and section 13 of chapter 674, Oregon Laws 1973. Both are compiled as a single section.

541.665 Fill under permit presumed not to affect public rights; public rights extinguished. If the director issues a permit to fill pursuant to ORS 541.605 to 541.665, it shall be presumed that such fill does not infringe upon the public rights of navigation, fishery or recreation, and the public rights to lands created by the fill shall be considered extinguished.

[1971 c.754 §14]

541.695 Application of ORS 541.605 to 541.665. (1) Nothing in ORS 541.605 to 541.665 applies to filling the beds of the waters of this state for the purpose of constructing, operating and maintaining dams or other diversions for which permits or certificates have been or shall be issued under ORS chapter 537 or 539 and for which preliminary permits or licenses have been or shall be issued under ORS 543.010 to 543.620.

(2) Nothing in ORS 541.605 to 541.665 applies to filling of the waters of a nonnavigable natural waterway, or any portion thereof, in this state, if:

(a) Such waterway or portion is situated within forest land; and

(b) Such filling is conducted in accordance with ORS 527.610 to 527.730 and 527.990.

[1971 c.754 §12]

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.

(4) Violation of ORS 541.615 is a misdemeanor.

[1957 c.163 §4; subsection (2) enacted as 1959 c.624 §2; subsection (3) enacted as 1961 c.379 §9; subsection (4) enacted as 1967 c.567 §13]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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 November 1, 1973.

Thomas G. Clifford
Legislative Counsel

