Chapter 549

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Drainage and Flood Control Generally

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CONTRACTS WITH FEDERAL AGENCIES AS TO FLOOD CONTROL

549.010 Definitions for ORS 549.020 and 549.030. As used in ORS 549.020 and 549.030, unless a different meaning appears from the context:

(1) "Federal agency" includes the United States, the President of the United States, and any agency or instrumentality of the United States which is designated, granted or authorized to engage in the building, construction and maintaining of flood control projects on any lakes, rivers or streams within Oregon.

(2) "Board of commissioners" means the governing body of any county in the state, whether the same consists of two county commissioners and the county judge or three commissioners.

(3) "Contract" includes contracts and agreements in the customary form; also a commitment by a federal agency by which it undertakes to make or engage in the construction of works for the purpose of controlling floods, and the terms, conditions and restrictions therein set forth.

(4) "Flood control project" means any plan, system, manner or means for the control, diversion, conservation or abatement of flood waters or any excessive or unusual accumulation of water in any natural or artificial stream or body of water, or for protection of life and property against danger, menace, injury or damage resulting therefrom.

549.020 Contracts between counties and federal agencies. Any county may make contracts with any federal agency containing such terms, provisions and conditions as, in the discretion of the board of commissioners, may be necessary, proper or advisable for the purpose of meeting the conditions necessary in the construction of flood control projects as provided in any federal flood control Acts wherein the Federal Government is entirely financing such projects.

549.030 Agreement by two or more counties with federal agency. If two or more counties in the state desire jointly or severally to make any agreement with federal agencies relative to flood control, they may enter into such agreements with any agency named in ORS 549.010 in accordance with all the provisions stated in ORS 549.010 and 549.020 that will facilitate cooperative action between boards of commissioners and federal agencies to meet conditions of any federal flood control Acts wherein the Federal Government is entirely financing such projects.

DITCHES TO DRAIN LAND; FLOOD CONTROL MEASURES

549.110 Application to county court for authority to build drainage ditch or levee, or to widen or straighten a stream. (1) When any person owns land which requires draining, or any incorporated city in which there is any ditch, standing water or surplus water requiring draining has no means of draining such ditch, standing water or surplus water, and objection is made by the owners of adjacent land to the construction thereon or thereover of necessary means of drainage, such person or city may make application in writing to the county court of the county in which such land or city is situated, for the right of way or privilege to cut or dig or construct sufficient means of drainage over the adjacent land.

(2) Likewise any person or municipal corporation whose land is so situated that it is injured or liable to be injured by flood waters from any natural stream flowing through or near the land may make application to the county court for the right to enlarge or straighten the bed of such natural stream, or strengthen or build up the banks so as to protect such lands from overflow or injury.

549.120 Procedure; appointment of commissioners; order to commissioners. Thereupon the court shall appoint three disinterested householders of the county as a commission and shall issue an order directing them to meet on a day named in the order, after subscribing to an oath or affirmation to faithfully and impartially discharge the duties of their appointment. At least three days' notice of the time and place of the meeting shall be given to all persons through whose lands the ditch is to be located or upon whose lands the natural stream is to be straightened, enlarged, or its banks are to be strengthened or built up.

549.130 Commissioner's oath. In the absence of an officer authorized to administer oaths, the commissioners may administer the oath to each other.

549.140 Duties of commissioners. The commissioners shall proceed to locate and mark out the route of the ditch so as to do the least damage to the lands the ditch passes through, or to designate the location, character and extent of the work to be done in straightening the bed or building up the banks of the stream, and shall at the same time assess the damages sustained by the person owning the land.

549.150 Considering benefits in assessing damages. In assessing damages, the commissioners shall take into consideration

all benefits which will accrue to the lands from the work contemplated.

549.160 Report of commissioners to county court; payment to landowner; recording report; construction of improvement. The commissioners, or a majority of them, shall make a report to the county court at the next regular session thereof, stating the location of the ditch or other work contemplated, the name of the person entitled to damage, and the amount, if any is assessed. If the county court is satisfied that the report is just, and after payment by the applicant for the right of way of all costs of locating such ditch or other work, and the damages, if any are assessed, the court shall cause the same to be recorded. The applicant then may proceed to make such ditch, or do such work of straightening the stream or building up or straightening the banks thereof, doing as little damage to the land it passes through as possible.

549.170 Appeal to circuit court from assessment of damages. Any person aggrieved by the assessment of damages may appeal within 20 days to the circuit court.

549.180 Bringing additional water into ditch without payment of compensation prohibited; civil liability. No person shall tap or bring additional water into any drainage district or drainage district ditch already dug without paying a reasonable compensation therefor and securing the written permission of district officials. The criminal penalty for violation of this section shall not relieve the defendant from civil liability for damages.

549.190 Other rights protected. ORS 549.110 to 549.180 shall not be construed so as to interfere with the rights of companies or individuals for mining, manufacturing, or watering towns or cities.

IMPROVEMENT OF WATERCOURSES OR DRAINS WEST OF CASCADES

549.310 Alternative nature of law; application restricted to west of Cascades. ORS 549.320 to 549.400 shall not be construed to interfere with or to prevent the right or power to construct drainage ditches under any other statute of this state, and shall apply only to that portion of the state lying west of the Cascade Mountains.

549.320 Petition by landowners to drain lands or improve drains. Whenever 60 percent or more of the owners of land contiguous to and crossed by some watercourse or drain desire to have such lands drained or such natural course or drain straightened, altered, widened or deepened, they may petition the county court of the county in which the land is situated for such improvement, describing all property affected thereby and giving the names of the owners thereof. Upon the filing of the petition the county court shall ascertain whether 60 percent or more of the owners of land affected have signed the petition, and if so, shall make a finding to that effect.

549.330 Survey of work; plats, plans; estimates of cost; assessment of damages; hearing and determination by county court. The county court shall direct the county surveyor, or county engineer if the county employs a registered professional engineer, to make a survey of the work contemplated to be done and prepare plats, plans, profiles and estimates of cost of the work to be done, and shall assess the damage sustained by any person owning any land affected by such improvement, taking into consideration all benefits which will accrue from the work contemplated to be done to the land. The county surveyor, or county engineer, shall file with the county clerk the plats, plans, profiles, estimates of cost, and assessment of damages. Not less than 30 nor more than 60 days after the county surveyor, or county engineer, has filed the data with the county clerk, the county court shall hold a hearing, of which at least 10 days' notice shall be given to all landowners affected, and to the authority which maintains any highway and to the owners of any railroad or tramway through which or under which any conduit is to be constructed, by publishing the same once a week for two successive weeks in a newspaper of general circulation in the county. At the hearing the county court shall hear evidence in support of the petition and in support of any protest or objection thereto, and after consideration shall determine whether it is to the interest and benefit of the land affected and conducive to the public welfare to grant the petition for the improvement. [Amended by 1965 c.287 §1]

549.340 Construction; functions of county surveyor or county engineer; performance by landowner. If the county court authorizes the improvement, it shall be done under the direction and supervision of the county surveyor, or the county engineer, who shall set all necessary grade stakes and bench marks. The owner of any of the lands through which or on which any portion of the improvement is to be constructed may, at the expense of the owner, perform such construction work under the supervision of the county surveyor, or the county engineer. If the owner does not elect to do such work, it shall be done by the county under the direction and supervision of the county surveyor, or the county engineer. [Amended by 1965 c.287 §2]

549.350 Report as to work done; assessment of costs; unpaid assessments. On the completion of the work by the county, the county surveyor or the county engineer shall make and file with the county clerk a report showing in detail the work done on each parcel of land separately owned, the names of the owners, and the amount of costs to each such parcel of land. The cost shall be assessed against the owner of the lands by the county court. Any unpaid assessment may be recorded with the county clerk in any county of this state. The clerk shall thereupon record the name of the person incurring the assessment and the amount of the assessment in the County Clerk Lien Record. [Amended by 1965 c.287 §3; 1991 c.459 §427]

549.360 Extension of work across or under highway or railroad; duty as to construction and maintenance; cost. The drainage work may be extended across or under any highway and may also be carried under or through any railroad or tramway. The authority which maintains the highway through which the conduit crosses shall construct and maintain the same in good condition and repair, free from obstruction, at its own expense. The owner of the railroad or tramway under or through which the conduit is to be constructed shall construct and maintain the same in good condition and repair, free from obstruction, at its own expense.

549.370 Maintenance of work; inspection; notice to landowners; when work ordered; assessment of cost. At least one member of the county court in the fall of each year shall inspect the improvements constructed under the provisions of ORS 549.310 to 549.400, for the purpose of ascertaining whether or not they have been properly maintained and are in a good and serviceable condition. If it is found that the works are not properly maintained or are not in a good and serviceable condition either in whole or in part, the county court shall give notice in writing to the owner of land upon which it was found that the works are not properly maintained or are not in a good and serviceable condition, which notice shall set forth the necessary work to be done and the time of beginning and completion of the same. In the event the owner fails to comply with the conditions set forth in the notice, the county court shall order the necessary work to be done and assess the cost against the land upon which the work was done in the manner provided in ORS 549.350.

549.380 Acquisition of property necessary to improvement; condemnation; prior payment of compensation unnecessary. Whenever a county court finds it necessary, in order to carry out any of the purposes mentioned in ORS 549.310 to 549.370, to condemn, acquire or appropriate any land, property or right of any nature, it shall so declare its intention by resolution spread on the records of the court, setting out the necessity that exists. If it is unable to agree with the owner for the purchase of such land, property or right, the district attorney for the county, upon request of the county court, shall commence and prosecute in any court of competent jurisdiction, in the name of the county, any necessary suit, action or proceeding for the condemnation of such land, property or right, for such public use. The procedure in such suit, action or proceeding shall be, as far as applicable, the procedure provided by law for the condemnation of lands or rights of way by public or quasi-public corporations for public use or for corporate purposes; provided, nothing in this section shall be construed to require the county to make or tender compensation prior to the condemnation and taking possession of such land, property or right.

549.390 Appeal from order authorizing work or assessing damages. Any person aggrieved by any order pursuant to the provisions of ORS 549.310 to 549.400 authorizing any construction work or by the assessment of any damages, may appeal to the circuit court within 20 days from the date when the county court approved such improvement. From the judgment of the circuit court an appeal to the Court of Appeals may be taken in the manner provided for appeals in civil proceedings. [Amended by 1979 c.562 §26]

549.400 Obstruction, befoulment or pollution of ditch prohibited. No person shall throw, dump, place or allow to be thrown, dumped or placed, any rubbish, refuse or any article or thing in any ditch, lateral, canal, slough, waterway or conduit constructed, operated or maintained under the provisions of ORS 549.310 to 549.390, or befoul, pollute or allow to be befouled or polluted any such ditch, lateral, canal, slough or conduit.

REPAIR OF DIKES

549.510 Repair of dikes protecting contiguous tracts of different owners; refusal of one owner to repair; reconstruction by other; recovery of expense. Whenever two or more contiguous tracts of land, not in a diking district, the property of separate owners, have been protected by a common dike or by separate dikes so constructed as to afford a common benefit to the lands affected thereby, or upon which the dike has been constructed, and any portion of the dike has become broken or destroyed or in such condition of repair that the lands intended to be benefited and protected by the

dike are being injured by reason of its broken, destroyed or other bad condition, and the owner of the land upon which the broken or destroyed dike is located refuses to rebuild, repair, reconstruct or otherwise improve the same so as to afford the proper protection and benefit to the land, the owners of the other contiguous tracts may attempt to agree with the owner of the land upon which the dike in question is located, with reference to its repair, reconstruction or rebuilding. If the owner refuses to rebuild, reconstruct or repair the dike, the owners of the other contiguous tracts of land affected by the dike and upon whose land the dikes are in a good condition of repair, may reconstruct, rebuild or repair the broken or destroyed dike and shall be entitled, by action in any court having jurisdiction, to recover from the delinquent owner the reasonable value of the material furnished and labor used in rebuilding, reconstructing or repairing the same, together with the cost and disbursements of such action. The action shall be prosecuted in the name of the owners and against the delinquent party. Any party to the action is entitled to a jury trial.

549.520 Complaint to county judge of neglect to repair; notice; examination; findings; direction to delinquent owner to repair dike. If anyone neglects to repair, rebuild or reconstruct a dike as specified in ORS 549.510, the owners of the contiguous tracts of land may complain to the county judge of the county in which the lands or some portion thereof are situated, who, after due notice, shall examine the premises. If the county judge determines that the dike is in need of reconstruction, rebuilding or repair, and that the dike is of sufficient benefit to the lands affected thereby to warrant its maintenance, and if the county judge finds that the dikes on the other contiguous tracts owned by the persons complaining are in a good state of repair, the county judge shall so signify in writing and shall cause to be served upon the delinquent owner a copy of such finding and shall direct the owner to rebuild, reconstruct or repair the dike within such time as the judge determines to be reasonable.

549.530 Entry on land by complainant to repair dike; recovery of cost of repair. If such dike is not repaired or rebuilt accordingly, the complainants may repair or rebuild the dike, and for that purpose may go upon the premises where the destroyed or broken dike is located, doing as little damage as possible thereto, and may recover the value or cost of rebuilding, reconstructing or repairing the dike from the delinquent owner, before any court having jurisdiction.

549.540 Dikes constructed under agreement excepted. The provisions of ORS 549.510 to 549.530 shall not apply to dikes constructed under agreement between the owners of contiguous tracts of land, under which agreement the maintenance of the dike is provided for.

FEDERAL FLOOD CONTROL PROJECTS

549.605 Definitions for ORS 549.605 to 549.645. As used in ORS 549.605 to 549.645, unless the context requires otherwise:

(1) "Commission" means the Water Resources Commission.

(2) "Federal flood control projects" includes all authorized federal projects located wholly or partially within this state which the commission determines would be beneficial to this state as flood control measures.

(3) "Federal Government" means the United States, or any agency or instrumentality of the United States which is designated or authorized to engage in flood control projects within Oregon. [1957 c.466 §1]

549.610 Water Resources Commission to participate on behalf of state in federal flood control projects; powers and duties of commission. The commission is directed to carry out, for and on behalf of the state, the state's participation in federal flood control projects. In discharging this responsibility, the commission, or one or more of its members or employees designated by the commission to represent it, may sign agreements with the Federal Government and other persons, to integrate, if possible, into the federal project necessary or desirable state or local features and works, to relocate facilities displaced by such projects and to perform all other acts connected with and necessary to such participation. Work to be done by the state may be carried out by contract or by available state forces or by a combination of these two methods. If the commission deems it to be in the public interest, they may agree with public or quasi-public bodies and other persons affected by such projects to have such bodies or persons perform the work. The commission shall, in all instances, carry out the powers and duties imposed upon it by ORS 549.605 to 549.645 in a manner which will comply with federal flood control legislation and rules and regulations promulgated pursuant to such legislation. [1957 c.466 §2]

549.615 Entering upon land. The commission and its agents and employees may enter upon lands to gather information when necessary for the performance of those duties imposed upon them by ORS 549.605 to 549.645. [1957 c.466 §3]

549.620 Acquisition of property. The commission may acquire property, as defined in ORS 281.210 (1), by purchase, donation or condemnation in the manner provided in ORS 281.210 to 281.260, when necessary to carry out the duties assigned it by ORS 549.610. [1957 c.466 §4]

549.625 Powers of commission with respect to its property. As to any property acquired pursuant to ORS 549.605 to 549.645, the commission may sell, donate, exchange or lease it or grant easements thereon, on terms which are beneficial to the state and meet all federal flood control project requirements; and the commission, or one or more of its members or employees designated by the commission to represent it, may execute and deliver, in the name of the State of Oregon, a lease, deed or other instrument of conveyance of such property. These leases, deeds and instruments may contain such reservations as the commission deems necessary to protect the interests of the state in flood control. [1957 c.466 §5]

549.630 Operation and maintenance of projects. After the completion of a flood control project or a portion thereof and, in the case of projects constructed by the Federal Government, after such project or a useful portion thereof has been turned over to the state by the Federal Government, such projects may be operated and maintained by the commission for the primary purpose of flood control; or, when the commission deems such action to be in the public interest, the commission may enter into agreements with public or quasi-public bodies and other persons to operate and maintain such projects. [1957 c.466 §6]

549.635 Agreements by commission with Federal Government, public and quasi-public bodies or other persons for joint participation or aid. The commission may enter into agreements with the Federal Government, public and quasi-public bodies, including but not limited to drainage and irrigation districts organized under the laws of Oregon, water control districts and subdistricts formed under ORS chapter 553 and district improvement companies formed under ORS chapter 554, and other persons for the purpose of participating jointly with such bodies or persons in federal flood control projects or aiding such bodies or persons in meeting obligations imposed upon them in connection with federal flood control project agreements. The commission shall not aid or agree to aid any public or quasi-public body or person unless such body or person is meeting satisfactorily or to the best of its ability all obligations imposed upon it under such agreements. [1957 c.466 §7]

549.640 Disposition of moneys received by commission. Except as provided in ORS 536.500, all moneys received by the commission under the provisions of ORS 549.605 to 549.645, including any allotment of moneys from the Federal Government to reimburse the state for expenditures made in connection with a flood control project, shall be turned over to the State Treasurer to be placed in the State Treasury to the credit of the General Fund. [1957 c.466 §8]

549.645 Waiver of state's immunity to suit or action. Except upon contracts providing for arbitration under the provisions of ORS 36.300 to 36.365, a suit or action may be maintained against the State of Oregon through and in the name of the Water Resources Commission for an injury to the rights of the plaintiff arising from some act or omission attributable to the Water Resources Commission acting as authorized by ORS 549.605 to 549.645. [1957 c.466 §9]

POWERS OF CERTAIN COUNTIES WITH RESPECT TO WATER CONSERVATION AND FLOOD CONTROL

549.710 Powers of counties over 50,000 population with respect to water conservation and flood control. In any county having a population in excess of 50,000, according to the latest federal decennial census, the county court or board of county commissioners may:

(1) Carry out surveys and plan and engage in projects relating to water conservation and flood control.

(2) Contract and cooperate with federal and state agencies, with other counties and with other public corporations in making surveys and planning and engaging in projects relating to water conservation and flood control.

(3) Provide lands and rights of way, operate and maintain flood control projects and do such other things as are necessary for county participation in federal flood control and water conservation projects.

(4) Remove or destroy drifts and drifting material in rivers and streams or on land that has been flooded. [1957 c.296 §1]

549.720 Procedure for removing or destroying drifts and drifting materials. When removing or destroying drifts or drifting material in rivers or streams or on land that has been flooded the county shall:

(1) Have the right to enter upon any land for purposes of inspection, removal and destruction of drifts and drifting material.

(2) Give reasonable notice to owners of salvable material that the county has sal-

vaged their property and that if such property has not been reclaimed or arrangements made for its removal within a reasonable time but in no event less than 30 days the county will dispose of the property by sale and, after deducting the amount necessary to reimburse the county for removal costs, hold the balance for one year for the owner. If, at the end of that time, the balance remains unclaimed it shall be placed in the general fund of the county. The county may hold any salvable material until the owner has reimbursed the county for removal costs. [1957 c.296 §2]

549.730 Budgeting and appropriating money for water conservation and flood control. The county court of each county may include in its budget and appropriate out of moneys in the general fund of the county not otherwise appropriated, an amount for the purposes of ORS 549.710 to 549.730. Out of the amount so appropriated the county court may set aside an amount, not to exceed one-half of the annual appropriation, to be placed in a special fund to be expended for emergency purposes or for future water conservation and flood control programs. [1957 c.296 §3; 1981 c.416 §11]

PENALTIES

549.990 Penalties. (1) Violation of ORS 549.180 is punishable, upon conviction, by a fine of not more than $100 and costs, and the violator shall be compelled to restore the drainage to the condition previously existing.

(2) Violation of ORS 549.400 is punishable, upon conviction, by a fine of not less than $10 nor more than $25, or by imprisonment in the county jail for not more than 10 days, or both. Justices of the peace shall have concurrent jurisdiction with the circuit court over violations of ORS 549.400.