Chapter 539

2013 EDITION

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WATER RIGHTS BEFORE 1909

539.005 Purpose of chapter; rules. (1) The Legislative Assembly declares that it is the purpose of this chapter to set forth the procedures for carrying out a general stream adjudication in Oregon.

(2) In accordance with the applicable provisions of ORS chapter 183, the Water Resources Director shall adopt rules necessary to carry out the provisions of this chapter. [1989 c.691 §§2,3]

539.010 Protection of water rights vested or initiated prior to February 24, 1909. (1) Actual application of water to beneficial use prior to February 24, 1909, by or under authority of any riparian proprietor or the predecessors in interest of the riparian proprietor, shall be deemed to create in the riparian proprietor a vested right to the extent of the actual application to beneficial use; provided, such use has not been abandoned for a continuous period of two years.

(2) Where any riparian proprietor, or any person under authority of any riparian proprietor or the predecessor in interest of the riparian proprietor, was, on February 24, 1909, engaged in good faith in the construction of works for the application of water to a beneficial use, the right to take and use such water shall be deemed vested in the riparian proprietor; provided, that the works were completed and the water devoted to a beneficial use within a reasonable time after February 24, 1909. The Water Resources Director, in the manner provided in subsection (5) of this section, may determine the time within which the water shall be devoted to a beneficial use. The right to water shall be limited to the quantity actually applied to a beneficial use within the time so fixed by the director.

(3) Nothing contained in the Water Rights Act (as defined in ORS 537.010) shall affect relative priorities to the use of water among parties to any decree of the courts rendered in causes determined or pending prior to February 24, 1909.

(4) The right of any person to take and use water shall not be impaired or affected by any provisions of the Water Rights Act (as defined in ORS 537.010) where appropriations were initiated prior to February 24, 1909, and such appropriators, their heirs, successors or assigns did, in good faith and in compliance with the laws then existing, commence the construction of works for the application of the water so appropriated to a beneficial use, and thereafter prosecuted such work diligently and continuously to completion. However, all such rights shall be adjudicated in the manner provided in this chapter.

(5) The director shall, for good cause shown upon the application of any appropriator or user of water under an appropriation of water made prior to February 24, 1909, or in the cases mentioned in subsections (2) and (4) of this section, where actual construction work was commenced prior to that time or within the time provided in law then existing, prescribe the time within which the full amount of the water appropriated shall be applied to a beneficial use. In determining said time the director shall grant a reasonable time after the construction of the works or canal or ditch used for the diversion of the water, and in doing so, the director shall take into consideration the cost of the appropriation and application of the water to a beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demands therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment. For good cause shown the director may extend the time.

(6) Where appropriations of water attempted before February 24, 1909, were undertaken in good faith, and the work of construction or improvement thereunder was in good faith commenced and diligently prosecuted, such appropriations shall not be set aside or voided in proceedings under this chapter because of any irregularity or insufficiency of the notice by law, or in the manner of posting, recording or publication thereof.

(7) In any proceeding to adjudicate water rights under this chapter, the Water Resources Department may adjudicate federal reserved rights for the water necessary to fulfill the primary purpose of the reservation or any federal water right not acquired under ORS chapter 537 or ORS 540.510 to 540.530.

(8) All rights granted or declared by the Water Rights Act (as defined in ORS 537.010) shall be adjudicated and determined in the manner and by the tribunals provided therein. The Water Rights Act shall not be held to bestow upon any person any riparian rights where no such rights existed prior to February 24, 1909. [Amended by 1989 c.691 §6; 1993 c.157 §1]

539.015 Certification of statements of claimants; oaths. Each claimant or owner who files a statement and proof of claim form or a registration statement shall be required to certify to the statements of the claimant or owner under oath. The Water Resources Director or the authorized assistant of the director may administer such oaths, which shall be done without charge, as also shall

be the furnishing of blank forms for the statement. [1989 c.691 §4]

539.020 [Repealed by 1987 c.541 §1 (539.021 enacted in lieu of 539.020)]

539.021 Determination by Water Resources Director of rights of claimants; transfer of action to director. (1) The Water Resources Director upon the motion of the director or, in the discretion of the director, upon receipt of a petition from one or more appropriators of surface water from any natural watercourse in this state shall make a determination of the relative rights of the various claimants to the waters of that watercourse.

(2) If an action is brought in the circuit court for determination of rights to the use of water, the case may, in the discretion of the court, be transferred to the director for determination as provided in this chapter. [1987 c.541 §2 (enacted in lieu of 539.020)]

539.030 Notice of investigation of stream. The Water Resources Director shall prepare a notice, setting forth the date when the director or the assistant of the director will begin such investigation as may be necessary for a proper determination of the relative rights of the various claimants to the use of the waters of the stream. The notice shall be published in two issues of one or more newspapers having general circulation in the counties in which the stream is situated, the last publication of the notice to be at least 10 days prior to the date set in the notice for the beginning of the investigation by the director or the assistant of the director. [Amended by 1955 c.669 §1; 1979 c.53 §1; 1987 c.541 §8]

539.040 Notice of hearing by director. (1) As soon as practicable after the examination and measurements are completed, as described in ORS 539.120, the Water Resources Director shall prepare a notice setting forth a place and time certain when the director or the authorized assistant of the director shall begin taking testimony as to the rights of the various claimants to the use of the waters of the stream or its tributaries. The notice shall be published in two issues of one or more newspapers having general circulation in the counties in which the stream is situated, the last publication of the notice to be at least 30 days prior to the beginning of taking testimony by the director or the authorized assistant of the director.

(2) The director shall also send by registered mail or by certified mail with return receipt to each claimant or owner who filed with the director a registration statement as provided in ORS 539.240 and to the Attorney General of the United States or the designated representative of the Attorney General of the United States, on behalf of the United States and its agencies and as trustee for the Indian tribes, a notice similar to that provided in subsection (1) of this section setting forth the date when the director or the authorized assistant of the director will take testimony as to the rights to the use of the water of the stream. The notice must be mailed at least 30 days prior to the date set therein for taking testimony.

(3)(a) For purposes of the Klamath Basin adjudication, the Water Resources Department will provide notice, substantially like that specified in subsection (2) of this section, to claimants or owners who desire to claim a water right under this chapter, or to contest the claims of others, and have so notified the director. The notice shall be accompanied by a blank form on which the claimant or owner shall present in writing all of the particulars necessary for determination of the right of the claimant or owner to contest the claims of others or to the use of the waters of a stream to which the claimant or owner lays claim. That form shall require substantially the same information required in a registration statement, as provided in ORS 539.240 (2), except that the map need not be prepared by a certified water right examiner, as required by ORS 539.240 (2)(d).

(b) In the already adjudicated areas of the Klamath Basin, the notice provided to holders of permitted or certificated surface water rights acquired under ORS chapter 537 will specify that they may contest the statement and proof of claims of others made under this chapter, but only in the unadjudicated areas of the Klamath Basin. [Amended by 1955 c.669 §2; 1987 c.541 §9; 1989 c.691 §7; 1991 c.249 §45; 1993 c.157 §2; 2013 c.1 §77]

539.050 [Amended by 1955 c.669 §3; repealed by 1987 c.541 §10]

539.060 [Repealed by 1987 c.541 §10]

539.070 Hearing by director; adjournments. Upon the date named in the notice for taking testimony, the Water Resources Director or the authorized assistant of the director shall begin taking testimony and shall continue until completed. But the director may adjourn the taking of testimony from time to time and from place to place, to suit the convenience of those interested.

539.080 [Amended by 1971 c.621 §37; 1975 c.607 §40; 1979 c.67 §3; 1981 c.627 §2; 1983 c.256 §2; repealed by 1987 c.541 §6 (539.081 enacted in lieu of 539.080)]

539.081 Fees; exemption; disposition. (1) At the time the owner or registrant submits a registration statement under ORS 539.240 or, if a registration statement is not filed, when a statement and proof of claim is filed pursuant to notice by the Water Resources Director under ORS 539.030, the

owner or registrant shall pay a fee as follows:

(a) If for irrigation use, $2 for each acre of irrigated lands up to 100 acres and $1 for each acre in excess of 100 acres. The minimum fee for any owner or registrant for irrigation use shall be $100.

(b) If for power use, $2 for each theoretical horsepower up to 100 horsepower, 75 cents for each horsepower in excess of 100 up to 500 horsepower, 50 cents for each horsepower in excess of 500 horsepower up to 1,000 horsepower and 35 cents for each horsepower in excess of 1,000 horsepower, as set forth in the proof. The minimum fee for any owner or registrant for power use shall be $300.

(c) If for mining or any other use, $500 for the first second-foot or fraction of the first second-foot and $100 for each additional second-foot.

(2) The fees under subsection (1) of this section shall not apply to any federally recognized Indian tribe, or to the United States acting as trustee for such a tribe, claiming, under ORS 539.010, an undetermined vested right to the use of surface water for any nonconsumptive and nondiverted in-stream use to satisfy tribal hunting, fishing or gathering rights.

(3) If the registration statement shows that the water right was initiated by making application for a permit under the provisions of ORS chapter 537, the owner or registrant shall be given credit for the money paid as examination and recording fees. A credit under this subsection shall be allowed only if the application under ORS chapter 537 was for a permit to appropriate water to be applied to the same parcel of land or for the same use as set forth in the registration statement.

(4) All fees paid under this section shall be deposited into the General Fund of the State Treasury and credited to an account of the Water Resources Department. The fees shall be used to pay for the expenses of the department to:

(a) Register claims to undetermined vested rights or federal reserved rights under ORS 539.230 and 539.240; and

(b) Determine claims filed or registered under ORS 539.230 and 539.240.

(5) No registration statement or statement and proof of claim shall be accepted for filing unless the registration statement or claim is accompanied by the fee in the amount set forth in this section. If the federal government is determined to be immune from the payment of such fees, the director may elect to accept a federal claim for filing without the accompanying fees. [1987 c.541 §7 (enacted in lieu of 539.080); 1989 c.691 §8; 1993 c.157 §3; 1993 c.535 §1; 2013 c.644 §11]

Note: The amendments to 539.081 by section 12, chapter 644, Oregon Laws 2013, become operative July 1, 2017. See section 16, chapter 644, Oregon Laws 2013. The text that is operative on and after July 1, 2017, is set forth for the user's convenience.

539.081. (1) At the time the owner or registrant submits a registration statement under ORS 539.240 or, if a registration statement is not filed, when a statement and proof of claim is filed pursuant to notice by the Water Resources Director under ORS 539.030, the owner or registrant shall pay a fee as follows:

(a) If for irrigation use, $2 for each acre of irrigated lands up to 100 acres and $1 for each acre in excess of 100 acres. The minimum fee for any owner or registrant for irrigation use shall be $30.

(b) If for power use, $2 for each theoretical horsepower up to 100 horsepower, 50 cents for each horsepower in excess of 100 up to 500 horsepower, 35 cents for each horsepower in excess of 500 horsepower up to 1,000 horsepower and 25 cents for each horsepower in excess of 1,000 horsepower, as set forth in the proof. The minimum fee for any owner or registrant for power use shall be $200.

(c) If for mining or any other use, $200 for the first second-foot or fraction of the first second-foot and $50 for each additional second-foot.

(2) The fees under subsection (1) of this section shall not apply to any federally recognized Indian tribe, or to the United States acting as trustee for such a tribe, claiming, under ORS 539.010, an undetermined vested right to the use of surface water for any nonconsumptive and nondiverted in-stream use to satisfy tribal hunting, fishing or gathering rights.

(3) If the registration statement shows that the water right was initiated by making application for a permit under the provisions of ORS chapter 537, the owner or registrant shall be given credit for the money paid as examination and recording fees. A credit under this subsection shall be allowed only if the application under ORS chapter 537 was for a permit to appropriate water to be applied to the same parcel of land or for the same use as set forth in the registration statement.

(4) All fees paid under this section shall be deposited into the General Fund of the State Treasury and credited to an account of the Water Resources Department. The fees shall be used to pay for the expenses of the department to:

(a) Register claims to undetermined vested rights or federal reserved rights under ORS 539.230 and 539.240; and

(b) Determine claims filed or registered under ORS 539.230 and 539.240.

(5) No registration statement or statement and proof of claim shall be accepted for filing unless the registration statement or claim is accompanied by the fee in the amount set forth in this section. If the federal government is determined to be immune from the payment of such fees, the director may elect to accept a federal claim for filing without the accompanying fees.

539.090 Notice of right to inspect evidence, and of place of court hearing. Upon the completion of the taking of testimony by the Water Resources Director, the director shall at once give notice by registered mail or by certified mail with return receipt to the various claimants and to any party who has notified the director that the party wishes to contest the claims of others, that all of the evidence will be open to inspection of the various claimants or owners.

The notice shall specify the times when and the places where the evidence will be open to inspection, and the director shall keep the evidence open for inspection at the specified times and places. The earliest time for inspection shall be at least 10 days after mailing the notice; and, in the aggregate, the hours during which the director is to keep the evidence open to inspection shall at least equal 80 hours, counting only the hours between 8 a.m. and 5 p.m. during any day of the week except Sunday. The director shall also state in the notice the county in which the determination will be heard by the circuit court; provided, that the cause shall be heard in the county in which the stream or some part thereof is situated. [Amended by 1955 c.191 §1; 1989 c.691 §9; 1991 c.249 §46]

539.100 Contest of claims submitted to director; notice by contestant; service on contestee. Any person owning any irrigation works, or claiming any interest in the stream involved in the determination shall be a party to, and bound by, the adjudication. Any party who desires to contest any of the rights of the persons who have submitted their evidence to the Water Resources Director as provided in ORS 539.021 to 539.090 shall, within 15 days after the expiration of the period fixed in the notice for public inspection, or within such extension of the period, not exceeding 20 days, as the director may allow, notify the director in writing, stating with reasonable certainty the grounds of the proposed contest, which statement shall be verified by the affidavit of the contestant, the agent or attorney of the contestant. A party not claiming an undetermined vested right under this chapter or not contesting the claim of another need not participate further in the proceeding, nor be served with further notices or documents regarding the adjudication. Upon the filing of a statement of contest, service thereof shall be made by the contestant upon the contestee by mailing a copy by registered mail or by certified mail, return receipt requested, addressed to the contestee or to the authorized agent or attorney of the contestee at the post-office address of the contestee as stated in the statement and proof of claim of the contestee. Proof of service shall be made and filed with the Water Resources Department by the contestant as soon as possible after serving the copy of statement of contest. [Amended by 1989 c.691 §10; 1991 c.102 §5; 1991 c.249 §47]

539.110 Hearing of contest; notice of; procedure. The Water Resources Director shall fix the time and a convenient place for hearing the contest, and shall notify the contestant and the person whose rights are contested to appear before the director or the authorized assistant of the director at the designated time and place. The date of hearing shall not be less than 30 nor more than 60 days from the date the notice is served on the parties. The notice may be served personally or by registered or certified mail, return receipt requested, addressed to the parties at their post-office addresses as stated in the statement and proof of claimant. The director may adjourn the hearing from time to time upon reasonable notice to all the parties interested; may issue subpoenas and compel the attendance of witnesses to testify, which subpoenas shall be served in the same manner as subpoenas issued out of the circuit court; may compel the witnesses so subpoenaed to testify and give evidence in the matter; and may order the taking of depositions and issue commissions therefor in the same manner as depositions are taken in the circuit court. The witnesses shall receive fees as provided in ORS 44.415 (2), the costs to be taxed in the same manner as are costs in suits in equity. The evidence in the proceedings shall be confined to the subjects enumerated in the notice of contest. The burden of establishing the claim shall be upon the claimant whose claim is contested. The evidence may be taken by a duly appointed reporter. [Amended by 1989 c.980 §14d; 1991 c.249 §48]

539.120 Examination by director of stream and diversions in contest; record; map. The Water Resources Director, or a qualified assistant, shall proceed at the time specified in the notice to the parties on the stream given as provided in ORS 539.030, to make an examination of the stream and the works diverting water therefrom used in connection with water rights subject to this chapter, for which a registration statement has been filed as provided in ORS 539.240. The examination shall include the measurement of the discharge of the stream and of the capacity of the various diversion and distribution works, and an examination and approximate measurement of the lands irrigated from the various diversion and distribution works. The director shall take such other steps and gather such other data and information as may be essential to the proper understanding of the relative rights of the parties interested. The observations and measurements shall be made a matter of record in the Water Resources Department. The department shall make or have made a map or plat on a scale of not less than one inch to the mile, showing with substantial accuracy the course of the stream, the location of each diversion point and each ditch, canal, pipeline or other means of conveying the water to the place of use, and the location of lands irrigated, or in connection with which the water is otherwise used,

within each legal subdivision. [Amended by 1955 c.669 §4; 1989 c.691 §11; 1991 c.102 §6]

539.130 Findings of fact and determination of director; certification of proceedings; filing in court; fixing time for hearing by court; notice; force of director's determination. (1) As soon as practicable after the compilation of the data the Water Resources Director shall make and cause to be entered of record in the Water Resources Department findings of fact and an order of determination determining and establishing the several rights to the waters of the stream. The original evidence gathered by the director, and certified copies of the observations and measurements and maps of record, in connection with the determination, as provided for by ORS 539.120, together with a copy of the order of determination and findings of fact of the director as they appear of record in the Water Resources Department, shall be certified to by the director and filed with the clerk of the circuit court wherein the determination is to be heard. A certified copy of the order of determination and findings shall be filed with the county clerk of every other county in which the stream or any portion of a tributary is situated.

(2) Upon the filing of the evidence and order with the court the director shall procure an order from the court, or any judge thereof, fixing the time at which the determination shall be heard in the court, which hearing shall be at least 40 days subsequent to the date of the order. The clerk of the court shall, upon the making of the order, forthwith forward a certified copy to the department by registered mail or by certified mail with return receipt.

(3) The department shall immediately upon receipt thereof notify by registered mail or by certified mail with return receipt each claimant or owner who has appeared in the proceeding of the time and place for hearing. Service of the notice shall be deemed complete upon depositing it in the post office as registered or certified mail, addressed to the claimant or owner at the post-office address of the claimant or owner, as set forth in the proof of the claimant or owner theretofore filed in the proceeding. Proof of service shall be made and filed with the circuit court by the department as soon as possible after mailing the notices.

(4) The determination of the department shall be in full force and effect from the date of its entry in the records of the department, unless and until its operation shall be stayed by a stay bond as provided by ORS 539.180. [Amended by 1991 c.102 §7; 1991 c.249 §49]

539.140 Water right certificates. Upon the final determination of the rights to the waters of any stream, the Water Resources Department shall issue to each person represented in the determination a certificate setting forth the name and post-office address of the owner of the right; the priority of the date, extent and purpose of the right, and if the water is for irrigation purposes, a description of the legal subdivisions of land to which the water is appurtenant. The original certificate shall be mailed to the owner and a record of the certificate maintained in the Water Resources Department. [Amended by 1971 c.621 §38; 1975 c.607 §41; 1979 c.67 §4; 1991 c.102 §8]

539.150 Court proceedings to review determination of director. (1) From and after the filing of the evidence and order of determination in the circuit court, the proceedings shall be like those in an action not triable by right to a jury, except that any proceedings, including the entry of a judgment, may be had in vacation with the same force and effect as in term time. At any time prior to the hearing provided for in ORS 539.130, any party or parties jointly interested may file exceptions in writing to the findings and order of determination, or any part thereof, which exceptions shall state with reasonable certainty the grounds and shall specify the particular paragraphs or parts of the findings and order excepted to.

(2) A copy of the exceptions, verified by the exceptor or certified to by the attorney for the exceptor, shall be served upon each claimant who was an adverse party to any contest wherein the exceptor was a party in the proceedings, prior to the hearing. Service shall be made by the exceptor or the attorney for the exceptor upon each such adverse party in person, or upon the attorney if the adverse party has appeared by attorney, or upon the agent of the adverse party. If the adverse party is a nonresident of the county or state, the service may be made by mailing a copy to that party by registered mail or by certified mail with return receipt, addressed to the place of residence of that party, as set forth in the proof filed in the proceedings.

(3) If no exceptions are filed the court shall, on the day set for the hearing, enter a judgment affirming the determination of the Water Resources Director. If exceptions are filed, upon the day set for the hearing the court shall fix a time, not less than 30 days thereafter, unless for good cause shown the time be extended by the court, when a hearing will be had upon the exceptions. All parties may be heard upon the consideration of the exceptions, and the director may appear on behalf of the state, either in person or by the Attorney General. The court may, if necessary, remand the case for further testi-

mony, to be taken by the director or by a referee appointed by the court for that purpose. Upon completion of the testimony and its report to the director, the director may be required to make a further determination.

(4) After final hearing the court shall enter a judgment affirming or modifying the order of the director as the court considers proper, and may assess such costs as it may consider just except that a judgment for costs may not be rendered against the United States. An appeal may be taken to the Court of Appeals from the judgment in the same manner and with the same effect as in other cases in equity, except that notice of appeal must be served and filed within 60 days from the entry of the judgment. [Amended by 1979 c.284 §165; 1989 c.691 §12; 1991 c.249 §50]

539.160 Transmittal of copy of decree to department; instructions to watermasters. The clerk of the circuit court, upon the entry of any decree by the circuit court or judge thereof, as provided by ORS 539.150, shall transmit a certified copy of the decree to the Water Resources Department where a record of the decree shall be maintained. The Water Resources Director shall issue to the watermasters instructions in compliance with the decree, and in execution thereof. [Amended by 1991 c.102 §9]

539.170 Division of water pending hearing. While the hearing of the order of the Water Resources Director is pending in the circuit court, and until a certified copy of the judgment, order or decree of the court is transmitted to the director, the division of water from the stream involved in the appeal shall be made in accordance with the order of the director.

539.180 Bond or irrevocable letter of credit to stay operation of director's determination; notice to watermaster. At any time after the determination of the Water Resources Director has been entered of record, the operation thereof may be stayed in whole or in part by any party by filing a bond or an irrevocable letter of credit issued by an insured institution as defined in ORS 706.008 in the circuit court wherein the determination is pending, in such amount as the judge may prescribe, conditioned that the party will pay all damages that may accrue by reason of the determination not being enforced. Upon the filing and approval of the bond or letter of credit, the clerk of the circuit court shall transmit to the Water Resources Department a certified copy of the bond or letter of credit, which shall be recorded in the department records, and the department shall give notice thereof to the watermaster of the proper district. [Amended by 1991 c.102 §10; 1991 c.331 §79; 1997 c.631 §486]

539.190 Rehearing by circuit court. Within six months from the date of the decree of the circuit court determining the rights upon any stream, or if appealed, within six months from the date of the decree of the circuit court on the decision of the Supreme Court, the Water Resources Director or any party interested may apply to the circuit court for a rehearing upon grounds to be stated in the application. If in the discretion of the court the application states good grounds for the rehearing, the circuit court or judge shall make an order fixing a time and place when the application shall be heard. The clerk of the circuit court shall, at the expense of the petitioner, forthwith mail written notice of the application to the director and to every party interested, and state in the notice the time and place when the application will be heard. [Amended by 1981 c.178 §15]

539.200 Conclusiveness of determinations as to water rights. The determinations of the Water Resources Director, as confirmed or modified as provided by this chapter in proceedings, shall be conclusive as to all prior rights and the rights of all existing claimants upon the stream or other body of water lawfully embraced in the determination.

539.210 Duty of claimants to appear and submit proof; nonappearance as forfeiture; intervention in proceedings. Whenever proceedings are instituted for determination of rights to the use of any water, it shall be the duty of all claimants interested therein to appear and submit proof of their respective claims, at the time and in the manner required by law. Any claimant who fails to appear in the proceedings and submit proof of the claims of the claimant shall be barred and estopped from subsequently asserting any rights theretofore acquired upon the stream or other body of water embraced in the proceedings, and shall be held to have forfeited all rights to the use of the water theretofore claimed by the claimant. Any person interested in the water of any stream upon whom no service of notice has been had of the pendency of proceedings for determination of the rights to the use of water of the stream, and who has had no actual knowledge or notice of the pendency of the proceedings may, at any time prior to the expiration of one year after entry of the determination of the Water Resources Director, file a petition to intervene in the proceedings. The petition shall contain, among other things, all matters required by this chapter of claimants who have been duly served with notice of the proceedings, and also a statement that the intervenor had no actual knowledge or notice of the pendency of the proceedings.

Upon the filing of the petition in intervention, the petitioner shall be allowed to intervene upon such terms as may be equitable and thereafter shall have all rights vouchsafed by this chapter to claimants who have been duly served.

539.220 Procedure when rights to same stream have been determined in different proceedings. Whenever the rights to the waters of any stream have been determined as provided in this chapter and it appears by the records of such determination that it had not been at one and the same proceeding, then the Water Resources Director may open to public inspection all proofs or evidence of rights to the water, and the findings of the director in relation thereto, in the manner provided in ORS 539.090. Any person who then desires to contest the claims or rights of other persons, as set forth in the proofs or established by the director, shall proceed in the manner provided for in ORS 539.100 and 539.110; provided, that contests may not be entered into and shall not be maintained except between claimants who were not parties to the same adjudication proceedings in the original hearings.

539.230 Notice of need to file registration statement; publication requirements; additional methods of providing notice. (1) In order to preserve information relating to claims to undetermined vested rights as described in ORS 539.010 and federal reserved rights, the Water Resources Director shall prepare a general notice stating the need for any person, corporation or governmental agency claiming an undetermined vested right, federal reserved right or a right derived from such rights to file a registration statement as required under ORS 539.240. The notice shall outline the process for obtaining a blank registration statement and shall describe the rights that may be claimed under this chapter.

(2) The notice required under subsection (1) of this section shall be published at least two times in one or more newspapers having general circulation in each county in which streams with potentially vested rights or reserved rights that have not been adjudicated under this chapter are located.

(3) In addition to the notice described under subsection (2) of this section, in any rural county in which there is not a newspaper having general circulation, the director shall use additional methods of providing notice of the requirement to file a registration statement. These methods may include but need not be limited to holding public meetings, inserting announcements in trade or organization newsletters, public service announcements on local radio stations and informing the county extension agent of the requirement. [1987 c.541 §4; 1989 c.691 §13; 1991 c.67 §154]

539.240 Claim to undetermined right to appropriate surface water; registration statement; contents; effect of failure to file; recognizing changes to right; rules. (1) Any person, corporation or governmental agency claiming an undetermined vested right, federal reserved right or right derived from such rights to appropriate surface water under ORS 539.010 shall file in the office of the Water Resources Department, on or before December 31, 1992, a registration statement of the claim.

(2) Upon request, the Water Resources Director shall make available a blank registration statement required under subsection (1) of this section. The claimant shall complete the registration statement by providing the information necessary for determination of the claimed vested or reserved right. The registration statement shall include at least the following:

(a) The name and mailing address of the claimant.

(b) The claimed beneficial use of the water and the amount used.

(c) The stream from which the water is diverted.

(d) A map from a survey prepared by a water right examiner certified under ORS 537.798 showing:

(A) The location of the point of diversion in reference to an established corner of the United States Public Lands Survey or, if within a platted and recorded subdivision, from an established lot corner of the subdivision.

(B) The location of the place of use by quarter-quarter section of the United States Public Lands Survey. If the use is for irrigation, the number of acres irrigated within each quarter-quarter section.

(e) The time of commencement of the claimed use of water.

(f) The times of beginning and completion of any division and distribution works used to appropriate the claimed use of water and the water carrying capacity of such works, if known.

(g) The location of the place of use by quarter-quarter section of the United States Public Lands Survey. If the use is for irrigation, the number of acres irrigated within each quarter-quarter section during the first year of use and during each subsequent year until the full amount of claimed use was accomplished.

(h) The period of the year during which the claimed use of water is usually made.

(3) The failure of any person, corporation or governmental agency to file a registration statement for an undetermined vested right or federal reserved right shall create a rebuttable presumption that the claim has been abandoned.

(4) For good cause shown, any person who fails to file a registration statement within the period set forth in subsection (1) of this section may file within one year after December 31, 1992, a petition with the director requesting that the person be given an opportunity to rebut the presumption that the person has abandoned the claim. Upon the filing of such a petition, the director may schedule a hearing to take testimony and evidence on the date the water was applied to beneficial use or the director may accept sworn statements in writing in support of such petition. The director shall not deny a petition without first holding a contested case hearing. If it appears after hearing or from such sworn statements that the person has a use of water that would be subject to registration under this chapter, the director shall issue an order authorizing the person to file a registration statement as described under subsection (1) of this section. A person who files a petition under this subsection shall submit with the petition a fee, the amount of which shall be one and one-half times the amount the person would have submitted under ORS 539.081 with a timely registration statement.

(5) The director shall accept for filing all registration statements described in subsections (1) and (4) of this section made in proper form when the statements are accompanied by the fees prescribed in ORS 539.081. The director shall indorse the date of receipt on each registration statement.

(6) The director shall examine each registration statement to insure that the statement is complete and in proper form. If the director determines the information required under subsection (2) of this section is complete and in proper form, the director shall:

(a) Enter the indorsed statement in the record of the department;

(b) Mail a copy of the indorsed statement to the person filing the registration statement; and

(c) Include the person or the properly designated assignee of the person in any further proceeding to adjudicate the water rights represented by the indorsed registration statement.

(7) Upon entry of the indorsed statement in the department's records, the registrant is entitled to continue to appropriate the surface water and apply it to beneficial use to the extent and in the manner disclosed in the recorded registration statement. However, the registrant shall not be entitled to the benefits of an existing water right of record under ORS 540.045.

(8) No registration statement recorded under this section shall be construed as a final determination of any matter stated therein, nor shall the act of indorsement by the director constitute a determination of the validity of the matters contained in the registration statement. The right of the registrant to appropriate surface water under a recorded registration statement is subject to determination under ORS 539.010 to 539.240, and is not final or conclusive until so determined. A right to appropriate surface water under a recorded registration statement has a tentative priority from the date claimed in the indorsed registration statement.

(9) Any indorsed registration statement may be assigned, subject to the conditions in the registration statement, but no such assignment will be binding, except upon the parties to the assignment, unless filed with the department.

(10) Notwithstanding the filing deadline prescribed under subsection (1) of this section, and the late filing period allowed under subsection (4) of this section, if any person submitted, before December 31, 1994, a registration statement or other similar documentation claiming a right to appropriate surface water under ORS 539.010, the director shall examine the material submitted to determine if the documents filed would substantially comply with the requirements of subsection (2) of this section. If the director determines that the documents substantially comply with the surface water registration filing requirements of subsection (2) of this section, the director may accept the registration. If the director determines that the documents filed under this subsection are incomplete or if additional information is required to comply with subsection (2) of this section, or fees required under ORS 539.081 have not been submitted, the director shall notify the claimant of the deficiency, setting a date certain for submittal of the information or fees. The time for submittal of additional information or fees shall be not less than 30 days nor more than 180 days after the director notifies the claimant of the deficiency. If the additional information or fees are not submitted on or before the date certain, the registration statement shall be considered void and shall be returned to the claimant.

(11) The director shall adopt by rule a process and standards for recognizing changes in the place of use, type of use or point of diversion of water uses registered pursuant to this section. [1987 c.541 §5; 1989 c.691 §14; 1993 c.157 §4; 1995 c.365 §7; 1999 c.860 §1]

WATER RIGHTS OF FEDERALLY RECOGNIZED INDIAN TRIBES

539.300 Legislative findings. The Legislative Assembly of the State of Oregon finds it is desirable to provide a procedure for conducting negotiations to determine the water rights of any federally recognized Indian tribe that may have a federal reserved water right claim in Oregon. [1987 c.81 §2; 1993 c.67 §1]

539.310 Negotiation for water rights. (1) The Water Resources Director may negotiate with representatives of any federally recognized Indian tribe that may have a federal reserved water right claim in Oregon and representatives of the federal government as trustee for the federally recognized Indian tribe to define the scope and attributes of rights to water claimed by the federally recognized Indian tribe to satisfy tribal rights under treaty between the United States and the tribes of Oregon. All negotiations in which the director participates under this section shall be open to the public.

(2) During negotiations conducted under subsection (1) of this section, the director shall:

(a) Provide public notice of the negotiations;

(b) Allow for public input through the director; and

(c) Provide regular reports on the progress of the negotiations to interested members of the public. [1987 c.81 §3; 1993 c.67 §2]

539.320 Agreement; submission to court. When the Water Resources Director and the representatives of any federally recognized Indian tribe that may have a federal reserved water right claim in Oregon and the federal government have completed an agreement, the Water Resources Director shall submit an original copy of the agreement to the appropriate court. The copy shall be signed by the Water Resources Director on behalf of the State of Oregon and by authorized representatives of the Indian tribe and the federal government as trustee for the Indian tribe. [1987 c.81 §4; 1993 c.67 §3]

539.330 Notice to persons affected by agreement. (1) Upon filing of the agreement with the appropriate court under ORS 539.320, the Water Resources Director shall notify owners of water right certificates or permits that may be affected by the agreement:

(a) That the agreement has been filed with the court; and

(b) Of the time and manner specified by the court for filing an exception to the agreement.

(2) Unless notice by registered mail is required by the court, the notice required under subsection (1) of this section may be given by:

(a) Publication; or

(b) Any other method the director considers necessary. [1987 c.81 §5]

539.340 Court decree; effective date of agreement; remand. (1) An agreement negotiated under ORS 539.310 to 539.330 shall not be effective unless and until incorporated in a final court decree, after the court has provided an opportunity for an owner of a water right certificate or permit that may be affected by the agreement or for a claimant in an adjudication that may be affected by the agreement to submit an exception to the agreement.

(2) If the court does not sustain an exception, the court shall issue a final decree incorporating the agreement as submitted without alteration.

(3) If the court sustains an exception to the agreement, the court shall remand the agreement to the Water Resources Director for further negotiation according to the provisions of ORS 539.300 to 539.350, if desired by the parties to the agreement. [1987 c.81 §6; 1997 c.708 §1]

539.350 Procedures after remand of agreement. Within 180 days after the court remands the agreement under ORS 539.340, the Water Resources Director shall file with the court:

(1) An amended agreement complying with ORS 539.320, which shall be subject to the procedure specified by ORS 539.330;

(2) A motion to dismiss the proceedings, which shall be granted by the court; or

(3) A stipulated motion for a continuance for a period not to exceed 180 days, within which period the parties shall submit to the court an amended agreement, a motion to dismiss or a motion for further continuance. [1987 c.81 §7]