

chapter fails, after receiving notice under ORS 537.289 (2), to amend the joint agreement so the owner continues to qualify as a municipal applicant, or if the holder of the certificate has assigned ownership of the certificate to an entity other than a municipal corporation or district, the Water Resources Commission shall initiate proceedings to cancel the certificate.

(2) A proceeding to cancel a certificate under subsection (1) of this section shall be conducted according to the provisions under ORS chapter 183 for a contested case hearing. [1985 c.392 §8; 1985 c.673 §189]

**537.299 Consequences of cancellation of permit or certificate if holder no longer municipal applicant; conditions to protect public health and welfare.** (1) If the Water Resources Commission cancels a permit or certificate under ORS 537.295 or 537.297, the municipal applicant may apply for a permit to appropriate water for hydroelectric purposes under this chapter, or the private developer may apply for a hydroelectric license under ORS chapter 543. However, the parties may not jointly apply for a permit to appropriate water for hydroelectric purposes pursuant to ORS 537.285.

(2) When a permit or certificate is canceled under ORS 537.295 or 537.297, the cancellation order may include such conditions and requirements as the commission deems necessary for the public safety and welfare, including but not limited to:

(a) Delay of the effective date of cancellation until such time as another entity is authorized to operate the facility under this chapter or ORS chapter 543; or

(b) Provision for operation of the facility during the period between cancellation and issuance of a new permit, certificate or license. [1985 c.392 §9; 1985 c.673 §190]

**537.300** [Subsection (2) enacted as 1961 c.187 §2; 1985 c.673 §39; renumbered 537.345 and then 537.400 in 1987]

**537.310 Acquisition of water rights for railway purposes; certificates.** (1) Any corporation organized for the construction, maintenance or operation of any railway may acquire, hold and appropriate to its use for railway purposes any waters within the state. The appropriation may be accomplished by the procedure provided by ORS 537.130 and 537.140 to 537.252. A railway corporation may acquire by purchase, gift or devise, or by condemnation as provided in subsection (2) of this section, any water rights owned by any person and the rights of other persons affected by change of place or character of use of the water rights. Upon acquisition of the water rights by the corporation the right shall be severed from the land of the grantor and simultaneously

transferred and become appurtenant to the operating property of the railway corporation, without losing the priority of the water right as originally established.

(2) Any such corporation may condemn and appropriate for railway operating purposes the rights of any private appropriator of waters within the state. The right of condemnation shall be exercised in the same manner as other property is condemned and appropriated for railway purposes; provided, that no water right so condemned shall exceed two cubic feet per second.

(3) Upon satisfactory proof of the acquisition of water rights by any such corporation through purchase, gift, devise or condemnation, the Water Resources Commission shall issue to the corporation a certificate of the same character as that described in ORS 539.140, which shall be recorded and transmitted to the corporation, as provided in that section. All certificates of water rights issued before May 29, 1925, by the Board of Control or the Water Resources Director to any such corporation shall be sufficient in law to convey to the corporation the water rights described in the certificates, and such certificates shall be received in evidence in all courts in this state. [Amended by 1985 c.673 §40]

**537.320 Entry on land for survey purposes, preliminary to appropriation and diversion of waters.** Any person may enter upon any land for the purpose of locating a point of diversion of the water intended to be appropriated, and upon any land lying between such point and the lower terminus of the proposed ditch, canal or flume of the person, for the purpose of examining the same and of locating and surveying the line of such ditch, canal or flume, together with the lines of necessary distributing ditches and feeders, and to locate and determine the site for reservoirs for storing water.

**537.330 Disclosure required in real estate transaction involving water right; exception; delivery of available permit, order or certificate; effect of failure to comply.** (1) In any transaction for the conveyance of real estate that includes a water right, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

(2) Upon closing and delivery of the instrument of conveyance in a real estate transaction involving the transfer of a water