

the commission issues a final order approving or denying the pending hydroelectric application. [1987 c.859 §15]

### MISCELLANEOUS

**537.385 Extension of irrigation season; rules; limitations.** (1) Notwithstanding any condition or limitation of a water right permit issued under ORS 537.211 or 537.625 or a water right certificate issued under ORS 537.250, 537.630 or 539.140, upon receipt of a request by the State Department of Agriculture, the Water Resources Commission may, by rule, extend the irrigation season of a subbasin beyond the period established by adjudication, by rule or by condition imposed on a permit or certificate, if the commission finds:

(a) Water is available during the period of the extended irrigation season;

(b) Water use during the extended season would not impair in-stream flows that are necessary to protect aquatic resources; and

(c) Water diversion and use during the period of the extended season would not impair the achievement or maintenance of water quality standards as established for the water source by the Department of Environmental Quality.

(2) If the source of water identified in the request is stored water and water is available from the storage source during the period of the extended irrigation season, the commission may extend the irrigation season as requested without making the findings required by subsection (1) of this section. However, use of water during the extended period shall be limited to the stored water.

(3) In order to ensure that use of water during an extended irrigation season does not injure existing and future water rights, use of water during the extended period of the irrigation season shall be subordinated to all existing and future water rights.

(4) Use of water during the extended irrigation season shall comply with all conditions and limitations of the permit or certificate, including the rate, duty and place of use of the right.

(5) Use of water shall be regulated among irrigators for whom the season has been extended during the extended irrigation season according to the priority date of the permit or certificate. [1995 c.356 §1; 2007 c.187 §1]

**Note:** 537.385 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 537 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**537.390 Valuation of water rights.** In any valuation for rate-making purposes, or in any proceeding for the acquisition of rights

to the use of water and the property used in connection therewith, under any license or statute of the United States or under the laws of Oregon, no value shall be recognized or allowed for such rights in excess of the actual cost to the owner of perfecting them in accordance with the provisions of the Water Rights Act. [Formerly 537.280; and then 537.335]

**537.395 Public recapture of water power rights and properties; no recapture of other rights.** (1) Any certificate issued for power purposes to a person other than the United States, or the State of Oregon or any municipality thereof, shall provide that after the expiration of 50 years from the granting of the certificate or at the expiration of any federal power license, and after not less than two years' notice in writing to the holder of the certificate, the State of Oregon, or any municipality thereof, may take over the dams, plants and other structures, and all appurtenances thereto, which have been constructed for the purpose of devoting to beneficial use the water rights specified in the certificate. The taking over shall be upon condition that before taking possession the state or municipality shall pay not to exceed the fair value of the property taken, plus such reasonable damages, if any, to valuable, serviceable and dependent property of the holder of the certificate, not taken over, as may be caused by the severance therefrom of the property taken.

(2) The fair value of the property taken and the severance damages, if any, shall be determined by agreement between the holder of the certificate and the state or municipality, or, in case they cannot agree, by proceedings in equity instituted by the state or municipality in the circuit court of the county in which the largest portion of the property is located.

(3) The right of the state or any municipality to take over, maintain and operate any property which has devoted to beneficial use water rights specified in the certificate, by condemnation proceedings upon payment of just compensation, is expressly reserved.

(4) The provision for the recapture of any rights other than for power purposes, as provided in this section, contained in any certificate issued before June 14, 1939, shall be of no force and effect and may be canceled from the records wherever recorded and a new certificate issued with the recapture clause eliminated.

(5) The owner of any certificate issued before June 14, 1939, for such rights may, upon surrendering the certificate, receive a new certificate therefor issued under and subject to the provisions of this section. [Formerly 537.290; and then 537.340]