

this section shall submit a survey prepared by a water right examiner certified under ORS 537.798. The survey required under this subsection shall apply to the storage reservoir and to the secondary use of the water in the reservoir. [1995 c.752 §4; 1997 c.446 §5; 1997 c.502 §2; 1997 c.587 §7; 2005 c.410 §4; 2017 c.704 §3]

### **CANCELLATION OF PERMIT FOR APPROPRIATION**

**537.410 Failure to commence or complete work, or to properly apply water, as grounds for cancellation of permit; irrigation districts, municipalities and public utilities excepted.** (1) Whenever the owner of a permit to appropriate the public waters of Oregon fails to commence actual construction work within the time required by law, or having commenced construction work as required by law, fails or neglects to prosecute the construction work with reasonable diligence, or fails to complete the construction work within the time required by law, or as fixed in the permit, or within such further time as may be allowed under ORS 537.230, or having completed construction work, fails or neglects to apply the water to beneficial use within the time fixed in the permit, the Water Resources Commission may cancel the permit on the records in the Water Resources Department as provided in ORS 537.410 to 537.450.

(2) However, permits issued by the commission to irrigation districts for reclamation purposes under the irrigation district laws of this state, to municipal corporations for municipal uses or purposes or to public utilities complying with subsection (3) of this section for an energy facility granted a site certificate by the Energy Facility Siting Council, are not subject to cancellation under the provisions of ORS 537.410 to 537.450.

(3) For a public utility to qualify under subsection (2) of this section:

(a) The energy facility of the public utility must not be a facility required to be licensed under ORS chapter 543; and

(b) The public utility must supply information every two years that demonstrates to the satisfaction of the commission that the conditions in the site certificate issued by the Energy Facility Siting Council contemplate the future use of the remaining portion of the water applied for in the original permit application. [Amended by 1985 c.673 §41; 1995 c.372 §1]

**537.420 Notice of hearing.** Whenever a permit holder fails to comply with the laws of the state and the requirements of the permit as to the commencement of work with due diligence, completion of the work of construction or the application of the water for a beneficial use, and the permit is subject

to cancellation as provided in ORS 537.410 to 537.450, the Water Resources Commission shall, not less than 30 nor more than 60 days prior to the hearing provided for in ORS 537.445, notify each person who, according to Water Resources Department records, is the holder of a water right permit or certificate whose right may be injured by the proposed cancellation. The notice shall require the holder of the permit to appear before the commission at the time and place designated in the notice, and show cause why the permit described in the notice should not be canceled for the reasons therein specified. The notice shall contain a brief statement of the grounds for cancellation and shall be served in accordance with ORS 183.415. [Amended by 1983 c.740 §212; 1985 c.673 §42; 1991 c.103 §1]

**537.430** [Repealed by 1971 c.734 §21]

**537.440 Cancellation of permit; priorities of other permits.** If the decision of the Water Resources Commission requires the cancellation of a permit, then the commission shall at once cancel, or have canceled, the permit. Thereafter the permit shall be of no further force or effect, and shall not be recognized or admitted as evidence of any right or interest in or to the waters covered by it in any proceeding in the courts or before other tribunals of the state. Permits having subsequent priority shall upon such cancellation have priority in the order of the filing of the applications upon which subsequent permits are based, as if the canceled permit, or the application upon which it was based, had never existed. [Amended by 1985 c.673 §43]

**537.445 Hearing upon proposal to cancel permit or appropriation; cancellation suspended pending review.** (1) If the Water Resources Commission proposes to cancel a permit or appropriation under ORS 537.410 to 537.450, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) If a petition for review of an order canceling a permit or appropriation is filed under ORS 536.075, the commission shall not cancel the permit or appropriation under ORS 537.440 until the petitioner's right of review is exhausted and the order is finally approved. [1971 c.734 §82; 1985 c.673 §44]

**537.450 Rules for proof as to work and use of water under permits; noncompliance as evidence in cancellation proceedings.** The Water Resources Commission may by rule provide that the owners of permits shall submit or furnish proofs of commencement of work, prosecution of work with due diligence, completion of work, and of the application of water to a beneficial use under the permits. Failure to comply with the commission's rules in respect to the proofs shall be considered prima facie evi-