

commission's own motion. Before doing so the commission may require the applicant for inspection to deposit a sum of money sufficient to pay the expenses of an inspection. If the application appears to the commission not to have been justified the commission may cause the whole or part of the expenses to be paid out of the deposit. If the application appears to have been justified, the commission may require the owner of the works to pay the whole or any part of the expenses of the inspection, and it shall constitute a valid lien against the works, which may be enforced in the same manner as provided for the enforcement of mechanic's liens. [Amended by 1985 c.673 §92]

540.400 Applicability of ORS 540.350 to 540.390. ORS 540.350 to 540.390 shall not apply to:

- (1) Any dam less than 10 feet in height or impounding less than 3,000,000 gallons of water.
- (2) Splash dams used for driving logs.
- (3) Farm dikes constructed by individuals on their own property.
- (4) Ditches carrying less than five cubic feet of water per second.

540.410 Delivery of reservoir water; notice to watermaster; adjustment of headgates; expenses; payment. Whenever the owner, manager or lessee of a reservoir constructed under the provisions of the Water Rights Act, as defined in ORS 537.010, desires to use the bed of a stream, or other watercourse, to carry stored or impounded water from the reservoir to the consumer of the water, the owner, manager or lessee shall, in writing, notify the watermaster of the district in which the stored or impounded water from the reservoir is to be used, giving the date when it is proposed to discharge water from the reservoir, its volume, and the names of all persons and ditches entitled to its use. The watermaster shall then close, or so adjust the headgates of all ditches from the stream or watercourse, not entitled to the use of such stored water, as will enable those having the right to secure the volume to which they are entitled. The watermaster shall keep a true and just account of the time spent in the discharge of the watermaster's duties as defined in this section, and the Water Resources Commission shall present a bill of one-half the expense so incurred to the reservoir owner, manager or lessee. If the owner, manager or lessee neglects for 30 days, after presentation of the bill of costs, to pay it, the costs shall be made a charge upon the reservoir and the state shall have a preference lien therefor. Upon notice from the commission, the Attorney General shall foreclose the lien and collect the amount due, as provided in this

section, in the same manner as other liens on real property are foreclosed. [Amended by 1955 c.39 §1; 1961 c.636 §7; 1985 c.673 §93]

540.420 Jointly owned ditches; performance by co-owner; recovery for default. In all cases where ditches are owned by two or more persons and one or more of such persons fails or neglects to do a proportionate share of the work necessary for the proper maintenance and operation of the ditch, or to construct suitable headgates or measuring devices at the points where water is diverted from the main ditch, the owner desiring the performance of such work may, after having given 10 days' written notice to the other owner who has failed to perform a proportionate share of the work, perform such share, and recover therefor from the person in default the reasonable expense of the work.

540.430 Nonpayment by ditch co-owner; lien on interest; foreclosure; stoppage of water delivery. (1) Upon the failure of any co-owner to pay a proportionate share of the expense, as mentioned in ORS 540.420, within 30 days after receiving a statement of the same as performed by the co-owner, the latter may secure payment of the claim by filing an itemized and sworn statement thereof, setting forth the date of performance and the nature of the labor performed, with the county clerk of the county wherein the ditch is situated. When so filed it shall constitute a valid lien against the interest of the person in default, which lien may be established and enforced in the same manner as provided by law for the enforcement of mechanic's liens.

(2) In lieu of proceeding to enforce the lien, the person performing the labor may file an itemized and sworn statement with the watermaster of the district within which the ditch is located, setting forth the date of performance, the nature of the labor performed, the total expense incurred by the person and the proportion of the expense each owner should pay, together with a written request that the watermaster take charge of the distribution of the water from the ditch to the parties entitled to the use thereof. Thereupon the watermaster may proceed to distribute the water in accordance with established rights. However, if an owner or user has not paid the proportion of expenses of the owner or user incurred for the proper maintenance and operation of the ditch, the watermaster may serve such party with written notice, personally, by registered mail or by certified mail with return receipt, setting forth the proportion of expenses incurred for which the owner or user is obligated to pay. If the party so served refuses or neglects to pay that part of the expense