

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