



CENTRAL OREGON IRRIGATION DISTRICT

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A MUNICIPAL CORPORATION OF THE STATE OF OREGON

RESOLUTION 2014-7

PROTECTION OF DISTRICT WATER RIGHTS BEYOND THE DISTRICT'S POINTS OF DELIVERY

(Replaces Resolution 2006-15 in its entirety)

A policy developed for the purpose of protecting the water rights past the District's Points of Delivery (POD) and establishing District procedures for implementing the policy as adopted in accordance per Oregon Revised Statutes (ORS). Chapters 540 and 545.

Policy Summary and Background:

- District is responsible to deliver the allotted water to its POD.
- Ditches beyond the POD are private ditches and are the responsibility of the landowner(s) on the ditch.
- District has authority to follow the water past the POD to operate, maintain and repair the private system.

Failure by private landowners to adequately maintain private ditches can prevent the beneficial use of water rights and can jeopardize the water rights subjecting them to cancellation or forfeiture. These situations require the District to expend a significant amount of staff time and resources to resolve and are a considerable financial burden on the District.

Examples include:

- Lack of maintenance of private ditches, pipes and diversions
 - Removal of vegetation, silt, debris
 - Livestock and water fowl damage to ditch
 - Fences, crossings etc. collecting dead vegetation and debris
 - Tree and shrub roots growing into ditch banks
 - Excessive ditch seepage
- Inadequate infrastructure (headgates, measuring devices, pipe, ponds, pumps etc.)
- Failure to comply with rotation schedules
- Theft of water
- Lack of communication/collaboration between users on the ditch
- Denying or blocking user access
 - Fences, aggressive livestock, dogs
- Obstruction of flow to down-stream users
 - Tarps, boards, rocks, pivot wheels, unmaintained ditches, cross-fences, etc.

When the District makes a determination that the water rights are subject to jeopardy, then the "**Management Beyond the POD Procedures**" will be implemented.

Private Ditch Maintenance

Patrons are responsible for the maintenance and operation of their delivery systems and devices past the District's POD.

The District will notify patron(s) of the need to maintain or repair the private delivery system on their property. "Maintain and/or repair" includes, but is not limited to removal of vegetation and silt, water delivery device(s), such as head gates, slide gates, tarps, or cutouts. Patron shall take required action within 10 days of notice, or provide written commitment within 10 days of notice of when work will be performed. Notice term shall be counted from the date the notice is mailed by the District to the Patron(s). Applicable ORS. 540.420,440.

If the patron(s) does not comply with the procedure above, the District may perform such work and bill patron(s) accordingly. ORS 540.420, 430, 440; ORS 545.221, 237, 279, 287, 291, 293,

Private Ditch Improvements

When District determines that a private ditch system shall be upgraded as necessary to protect the District's water rights and improve efficient delivery of water to patrons, the District will follow the Management Beyond the POD Procedures

If a private delivery system needs to be improved, as evidenced by matters such as, but not limited to conflict, waste of water, inefficiency, or lack of beneficial use, the District may determine that an improvement to the system is necessary. Applicable ORS 540.420, 430, 440; ORS 545.221, 237, 279, 287, 293

Options available include:

- Landowners on the ditch perform (or contract) necessary work to District requirements
- District performs (or contracts) necessary maintenance work and bill patrons proportionately
- Board resolution for significant improvements to private system (engineering and construction)
- Formation of sub-district

Enforcement of Rotation Schedules and Access to Water

Patrons are responsible for keeping and following rotation schedules as set, and are prohibited from taking water outside the schedule unless arrangements are made with the District and/or other users on the rotation schedule. Applicable ORS 540.730, 545.291

- District shall set rotation schedules for respective rotations individually on an annual basis.
- Request for rotation schedule changes is contingent upon written agreement between all users on the rotation schedule and approved by the District.
- At the patron's scheduled time to receive water, it is the patron's right and responsibility to physically divert their water in accordance with the rotation schedule. This may include going up-stream to headgates, or other means of diversion used by up-stream patrons .

- Landowner(s) shall provide unobstructed and convenient access to diversion points.
- The patron is restricted to the right to divert only, and includes no other authority or act.
- If the District deems it necessary, it has the option to employ a competent person to distribute and apportion the water and may bill the patron's/landowner's for the expense.

Collections

District has the right and authority to bill, assess, collect and lien for all reasonable costs associated with issues beyond the POD.

Theft of Water

Policy is addressed in District Resolution #:2014-4

Note: All references to ORS are to current statutes in effect as of the date of adoption, and as they may be revised in the future.


ATTEST: CENTRAL OREGON IRRIGATION DISTRICT

Dated this 13th day of May 2014


Carroll Penhollow, President


Terry Blackwell


Robert Borlen


Thomas Burke



Paul Kasberger

EXHIBIT A

OREGON REVISED STATUTE RELATING TO BEYOND THE POINT OF DELIVERY ENFORCEMENT POLICY

ORS Chapter 540

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 within 10 days after the serving or mailing of the notice, the watermaster may refuse to deliver water to be used upon the lands of such person until after the expense has been paid. [Amended by 1991 c.249 §52]

540.440 Owner to clear weeds from ditch right of way. All persons owning or controlling any water ditches shall keep their right of way along the ditches clean and

free from wild oats, mustard, thistles, or any weeds or noxious grasses whatsoever.
[Amended by 2011 c.9 §73]

540.730 Obstruction interfering with access to or use of works. Whenever any appropriator of water has the lawful right of way for the storage, diversion, or carriage of water, no person shall place or maintain any obstruction that shall interfere with the use of the works, or prevent convenient access thereto.

ORS Chapter 545

545.095 Charges or assessments for improvements within subdistrict. The cost of constructing, purchasing, operating, maintaining and improving the works described in an engineering plan for a subdistrict shall be charged to the owners of the lands, or assessed against the lands, benefited by the works in proportion to the benefits to be received by each tract of land. The charges or assessments shall be in addition to the regular charges or assessments of the district under ORS 545.471. Only the lands or owners within a subdistrict shall be liable for, charged with or in any manner assessed for the payment of judgments, claims, damages, costs, expenses, debts or other liabilities of or against a district that arise out of or are incurred in the constructing, purchasing, operating, maintaining or improving of the works of the subdistrict.

545.221 Powers and duties of board as to management of district; water deliveries.

(1) The board shall:

(a) Manage and conduct the business and affairs of the district.

(b) Make and execute all necessary contracts, employ and appoint such agents, officers and employees as may be required, and prescribe their duties.

(c) Establish equitable bylaws, rules and regulations for the administration of the district and for the distribution and use of water among the landowners.

(d) Generally perform all acts necessary to fully carry out the purposes of the Irrigation District Law.

(2) The board may make available to any member user of the district, on an actual cost basis, any machinery or equipment required for the normal operation of an irrigation district. This machinery or equipment may be used by the member user only for improvement of water distribution or drainage systems and only at the convenience of the district. However, the machinery or equipment may not be used outside the boundaries of the district.

(3) The bylaws, rules and regulations established under this section may designate, either generally or particularly, the points of delivery within the district to which the district will make water deliveries for the use and benefit of member users at district expense. Water deliveries so made shall be in full and complete discharge of the district's

obligation of water deliveries to member users under the Irrigation District Law.
[Formerly 545.064; 1999 c.452 §22]

545.237 Right to enter upon lands for inspection and maintenance of water works.

(1) The board of directors, its officers or an agent or employee of the board of directors may enter upon land of a water user of the district for inspection, maintenance and regulation of ditches, pipelines, gates, pumps or other water works. In the absence of an emergency, the district shall provide adequate and appropriate notice prior to entering upon the land of the water user.

(2) Any person exercising the right of entry granted under this section shall not cause unnecessary damage to the property of the water user. The landowner shall not be responsible to the person or the district for any injury or damage to the person or district arising out of or occurring by reason of the entry, except when the landowner intentionally causes injury or damage to the person or district.

(3) The right of entry granted by this section shall not constitute a right of entry by the public onto the premises of the landowner.

545.279 District may require water control devices and measuring devices; notice to water user; objections; hearing. (1) The board of directors may require a water user of the district:

(a) To install and maintain a lockable and controllable headgate or other water control device at a point of delivery of water to the user's property; or

(b) To install a measuring device at a point of delivery as necessary to assist the board in determining the amount of water to be delivered to the user.

(2) When practicable, water control devices and measuring devices under this section shall be constructed on property for which the district holds existing easements.

(3) Except when an emergency requires the immediate installation of a water control device to avoid loss of water, the board shall notify a water user in writing that the water user is required by the board under this section to install a water control device or a measuring device. The notice shall be delivered personally or mailed by registered or certified mail, return receipt requested, to the water user. Within the 20-day period immediately following the date of personal delivery or mailing of the notice or at any time before the date of the next regular meeting of the board, the water user may file with the secretary of the board a written objection to the requirement for installation of the device and request a hearing before the board. After the hearing, the board may affirm, amend or rescind its order to the water user for installation of a water control device or measuring device. The decision of the board shall be final.

545.287 Directors may construct or maintain improvements, levy assessments or provide for charges. (1) This section applies:

(a) When a parcel of land lying within an irrigation district is subdivided or partitioned into tracts, and the owner has made no provision which in the opinion of the board of directors is adequate for the proper distribution of water to the tracts; or

(b) When improvements for the distribution or delivery of water to any tract of land are not owned by the district and the owner or person in control of the improvement fails to maintain, repair or replace the improvement as required for the proper and efficient distribution or delivery of water to any tract.

(2) When the interest or convenience of such tracts requires the construction, repair or maintenance of any ditch, flume, dike, aqueduct or other improvement, the board may construct, repair or maintain the improvement. In order to defray the whole or any portion of the cost and expense of the improvement, the board may levy and collect an assessment upon all tracts specially benefited by the improvement or provide for a charge against the landowner of any tract specially benefited by the improvement. The board may determine what lands are specially benefited by the construction, repair or maintenance, and the amount to which each tract is benefited.

545.291 Apportionment of water to tracts; employment of person to distribute water; assessment or charge; lien on land. When a parcel of land lying within an irrigation district is subdivided or partitioned into tracts, and plats of such subdivision are filed as provided by law, if the owners fail properly to apportion the water to their various tracts in the subdivision, the board of directors may employ some competent person to distribute and apportion water for the tracts. The reasonable cost of the distribution and apportionment of water shall be apportioned each year by the board to the tracts. The cost of the distribution and apportionment of water shall be assessed or charged by the board as a special charge to the tracts in the same manner as other assessments or charges are made and extended upon the tax rolls of the county in which the irrigation district lies. The assessments or charges so levied and apportioned shall be a lien upon the tracts and shall be collected in the same manner as all other assessments or charges are levied and collected by the board.

545.293 Resolution for water distribution works or services; hearing of objections; construction, repair or maintenance of improvement; apportionment of costs; assessment. (1) When the board of directors considers it expedient or necessary to construct, repair or maintain ditches, flumes, dikes, aqueducts or other improvement, as provided in ORS 545.287, or to employ the services of some competent person to distribute and apportion water for any subdivision, as provided in ORS 545.291, the board shall declare its intention by resolution.

(2) A resolution shall be posted in three public places in the subdivision for five days. Within 10 days from the date when the resolution is posted, the owner of any property within a tract may file with the secretary a written remonstrance against the proposed improvement or employment. The board hearing the remonstrances may, in its discretion, overrule any remonstrance and, by resolution, order construction, repair or maintenance of the improvements. The board may either enter into a contract to complete the improvement or, in its discretion, complete the improvement under its own supervision. After the work on the improvement is completed the board shall, by resolution, apportion the costs and declare an assessment upon each tract benefited. The assessments declared under this section shall be final and conclusive.

SUBDISTRICTS

545.093 Creation of subdistricts; purpose; change in subdistrict boundaries. (1)
Subdistricts within an irrigation district may be created as provided in this section.

(2) When the owners of more than 50 percent of the acreage in any contiguous tracts of land situated within a district and subject to the charges or assessments of the district desire to have the district undertake the construction of works for irrigation of their land or provide for the reconstruction, betterment, extension, purchase, operation or maintenance of works already constructed that will benefit their lands, they may petition the board for the creation of a subdistrict. The petition shall state the boundaries proposed for the subdistrict, the name and address of each person signing the petition, a brief general statement as to the works the petitioners desire to have constructed or provided and a prayer asking that the lands described be organized as a subdistrict. The description of the boundaries of the proposed subdistrict shall be certified as a complete and sufficient legal description by a qualified engineer or land surveyor and the certificate shall be filed with the board at the time the petition is filed. The petition shall be considered by the board at its next meeting. If the board approves the petition, the board shall adopt an order creating the subdistrict. The order shall contain a description of the boundaries of the subdistrict. A subdistrict may include all or any part of the lands within a district. A copy of the order shall be recorded in each county in which lands within the subdistrict are located.

(3) A subdistrict may also be created under this section by resolution of the board.

(4) After the creation of a subdistrict under this section, the boundaries of the subdistrict may be changed by the inclusion of lands outside of the subdistrict. A proceeding under this subsection may be initiated by petition of the owners of more than 50 percent of the lands sought to be included in the subdistrict. The lands to be included in the subdistrict must be contiguous to the subdistrict and within the boundaries of the district. The petition shall state the boundaries of the lands to be included in the subdistrict, the reason for adding the lands to the subdistrict, the name and address of each person signing the petition and a prayer asking that the lands described by the petition be included in the subdistrict. The petition shall be filed with the board. The description of the boundaries of the subdistrict after the proposed addition shall be

certified as a complete and sufficient legal description by a qualified engineer or land surveyor and the certificate shall be filed with the board at the time the petition is filed. The board of directors shall enter an order fixing a time and place for a hearing on the petition and shall either publish notice of the hearing or mail a notice of the hearing to all landowners within the boundaries of the lands proposed for inclusion in the subdistrict. At the hearing or at any time and place to which the hearing may be adjourned, the board shall determine what lands proposed to be included within the subdistrict will be benefited by inclusion in the subdistrict. The board shall adopt an order for inclusion of the benefited lands in the subdistrict and the new boundaries of the subdistrict shall be described in the order.

(5) A subdistrict created under this section may be designated "Subdistrict No. ___ of the _____ Irrigation District."

(6) A subdistrict created under this section may be an electoral district for purposes of district elections under ORS 545.167.

(7) The district board of the main district is the governing board of each subdistrict of the district.

(8) Except as otherwise provided in ORS 545.093 to 545.095, after the creation of a subdistrict, proceedings relating to a subdistrict shall conform to provisions of this chapter applicable to districts. In all other matters affecting only a subdistrict, provisions of this chapter applicable to a district apply to the subdistrict as though the subdistrict were a district.

545.094 Engineering plan for improvements within subdistricts; notice; hearing; remonstrance. After the creation of a subdistrict, the board may develop an engineering plan for the improvements requested in the petition for the creation of the subdistrict or proposed by the board. The board may make an engineering plan for the subdistrict or may adopt as an engineering plan any plan made by any department or agency of the federal government or the State of Oregon or a project work plan proposed for any soil and water conservation district in which lands within the subdistrict are located. Upon completion of the plan, the board shall give notice of the plan to the owners of the tracts of land within the subdistrict and shall permit the inspection of the plan at the office of the subdistrict by the landowners. The notice may be given by mail or by publication, as may be determined by the board. The notice shall fix a time and place for a hearing at which objections to the plan may be heard by the board. The hearing shall be held not less than 20 nor more than 30 days after the date of mailing or the date of the last publication of the notice. At the hearing, the board may make changes in the engineering plan that the board considers necessary after reviewing objections or suggestions made by any person at the hearing. After the hearing, the board may approve the plan, as corrected or changed, by adopting an order of approval. However, if the owners of more than 50 percent of the lands within the subdistrict subject to the charges or assessments of the district file written objections to the order approving the engineering plan with the secretary of the district within 15 days after the date of the order, no further action shall

be taken under the order and the plan shall be considered to have been rejected by the landowners. When an engineering plan for a subdistrict is rejected by the landowners, the board may obtain a new engineering plan and present it to the landowners in the manner provided in this section.

**MANAGEMENT BEYOND THE POD PROCEDURES
REFERENCED BUT NOT INCLUDED IN RESOLUTION # 2014-7**

1. Complaint(s)/staff observation(s) of delivery issue(s)
2. Determine and document the issue(s).
 - If District determines the matter can be readily resolved by the landowners the District will participate as necessary.
 - If the District determines that the water rights are subject to potential jeopardy then the following steps will be implemented.
3. Written notice by District to all landowners on the ditch of complaint directing the landowners to correct the problem themselves.
 - Provide District policy
 - Explanation of the issue(s)
 - Option(s) for correction(s)/improvement(s)
 - Landowners may contact District within 7 days from the date of the letter if they would like a Group Meeting*, or;
Encourage patron collaboration to resolve the issue within 10 days of letter.

***GROUP MEETING:**

1. Encourage group collaboration
2. Discuss improvement options
3. Scope of work
4. Cost of improvements
5. Determination of who will complete work
6. Payment options
 - a. Landowner pays upfront
 - b. Costs shall be levied proportionately against each property
 - c. Sub-district formation and assessment
7. Written agreement and/or recorded contract

ENFORCEMENT ACTIONS:

1. Failure by the landowners to resolve the issue(s) within the specified timeline will result in District enforcement.
2. Notification of proposed action to District Manager.
3. District determines work and completes.
4. Costs shall be levied proportionately against each property.
5. As appropriate request Board of Directors approval and/or resolution