

WATER LAWS

FURTHER CITATIONS: *Masterson v. Pac. Livestock Co.*, (1933) 144 Or 396, 24 P2d 1046; *Warner Valley Stock Co. v. Lynch*, (1959) 215 Or 523, 336 P2d 884.

539.140

NOTES OF DECISIONS

A certificate is conclusive only against a person whose water right is subsequent in priority. *Cleaver v. Judd*, (1964) 238 Or 266, 393 P2d 193.

FURTHER CITATIONS: *Re Deschutes River*, (1930) 134 Or 623, 286 P 563, 294 P 1049; *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819.

ATTY. GEN. OPINIONS: Fees for recordation of certificate of water rights, 1948-50, p 330.

539.150

NOTES OF DECISIONS

The procedural provisions of the statute are valid. *Pacific Livestock Co. v. Lewis*, (1916) 241 US 440, 36 S Ct 637, 60 L Ed 1084.

The appellate court will consider only errors which are shown with reasonable certainty to have been prejudicial. *Re Silvies River*, (1925) 115 Or 27, 31, 237 P 322.

Where contestants have made no objections to a priority claim, as set out in the amended application of contestees, the court's decree allowing the prior claim cannot be questioned on appeal. *Re Owyhee River*, (1928) 124 Or 44, 259 P 292.

The circuit court is a court of general jurisdiction, in determining the right to use water of a stream. The proceedings are like those of a suit in equity except that any proceedings including the entry of the decree may be had in vacation with the same force and effect as in term time. *Abel v. Mack*, (1930) 131 Or 586, 283 P 8.

The function of an adjudication under the Water Code is primarily to allocate definite quantities of water on the basis of a prior or contemplated use. *California-Ore. Power Co. v. Beaver Portland Cement Co.*, (1934) 73 F2d 555.

The circuit court, whether in reviewing the State Engineer's determination or in making an original disposition of the suit, is not acting in an administrative capacity; its determination is res judicata as to all parties and issues properly before it. *Id.*

The enactment of ORS 19.026 (1) did not result in a repeal of this section by express provision or implication. *Appleton v. Ore. Iron & Steel Co.*, (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.

Motion to dismiss appeal because of omission from the notice of appeal of names of a water users' association was filed too late. *Re Willow Creek*, (1925) 119 Or 155, 177, 236 P 487, 763, 237 P 682, 239 P 123.

Where no objection was made in the circuit court to showing of priority in amended application claiming water rights, application was to establish prima facie case of the truth of the priority claim. *Re Owyhee River*, (1928) 124 Or 44, 259 P2d 292.

After obtaining jurisdiction in a suit for application to construct water reservoirs, the circuit court was empowered to exercise the powers of a court of equity in reviewing the determination of the State Engineer, and could reexamine de novo the findings of the State Engineer to the extent there was no usurpation of the legislative function. *Warner Valley Stock Co. v. Lynch*, (1959) 215 Or 523, 336 P2d 884.

In exercising his equity powers, a trial judge was privileged to rely on those findings within the State Engineer's special competence. *Id.*

539.170

ATTY. GEN. OPINIONS: The State Engineer's order determining the area of land reclaimed and irrigated as conclusive until modified by a decree of the circuit court, 1940-42 p 8; duty of State Engineer to regulate distribution of water, 1948-50, p 378.

539.190

NOTES OF DECISIONS

One who has not appealed from the decree may not invoke the jurisdiction of the Supreme Court by way of a new investigation to revise the decree. *Re Umatilla River*, (1918) 88 Or 376, 168 P 922, 172 P 97.

A decree entered in the circuit court on mandate from the Supreme Court after appeal is final except as to matters resubmitted under the mandate, subject only to the special statutory provisions authorizing the circuit court on certain applications to grant a rehearing. *Re Silvies River*, (1927) 122 Or 47, 257 P 693.

An application within six months after determination of an appeal is within time. *Oliver v. Jordan Valley Land & Cattle Co.*, (1931) 137 Or 243, 1 P2d 1097.

A water user is a "party interested" in respect of the right to apply for a rehearing, although not a party to a former appeal from a determination of the right to waters of the stream of which he is a user. *Id.*

Service of notice, as required by this section, upon the interested parties confers upon the court jurisdiction of the application for rehearing. *Id.*

All water users are entitled to notice of rehearing where allowance of the petition may affect their rights. *Id.*

One of the reasons for this section is to correct the descriptions of ditches or clerical errors occurring by an oversight or vagueness of expression. *Id.*

That the notices were not mailed "forthwith" was not an objection to a rehearing where the time consumed was because of a change in judges and other reasons and where after a rehearing was allowed the claimant acted promptly in sending out notices. *Id.*

539.200

NOTES OF DECISIONS

A 1929 decree adjudicating water rights in Warner Valley subordinated the rights of the lower owner to the rights of the upper owners, although the latter were not parties to the proceeding. *Warner Valley Stock Co. v. Lynch*, (1959) 215 Or 523, 336 P2d 884.

LAW REVIEW CITATIONS: 3 WLJ 343.

539.210

NOTES OF DECISIONS

All controversies on matters which existed before entry of a decree, and were or could have been litigated in an earlier determination are settled and not open to question by any of the parties to the litigation or their privies. *Adams v. Perry*, (1941) 168 Or 132, 119 P2d 581.

The determination of the State Engineer, as confirmed or modified by the court, is conclusive as to all prior and existing rights. *Bull v. Siegrist*, (1942) 169 Or 180, 126 P2d 832.