

WATER LAWS

LAW REVIEW CITATIONS: 3 WLJ 280; *47 WLR 405 (2011).

537.742

*LAW REVIEW CITATIONS: 47 WLR 405 (2011).

537.747 to 537.795

NOTES OF DECISIONS

*Water Resources Commission implementation and enforcement of state control over inspection and construction of wells is discretionary. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well construction permit, imposing construction permit fees, regulating well location, requiring submission of plot plans, and requiring flow testing are preempted by state law. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well water quality testing, requiring inclusion of notice in deed of inadequate water supply, and regulating subdivision of lands having inadequate water supply are not preempted by state law. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

537.765

NOTES OF DECISIONS

*Certified copy of well construction log filed with State Engineer is public record intended as representation to all affected parties. *Handy v. Beck*, 282 Or 653, 581 P2d 68 (1978).

537.769

NOTES OF DECISIONS

*Water Resources Commission implementation and enforcement of state control over inspection and construction of wells is discretionary. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well construction permit, imposing construction permit fees, regulating well location, requiring submission of plot plans, and requiring flow testing are preempted by state law. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

*County ordinance provisions requiring well water quality testing, requiring inclusion of notice in deed of inadequate water supply, and regulating subdivision of lands having inadequate water supply are not preempted by state law. *Ashland Drilling, Inc. v. Jackson County*, 168 Or App 624, 4 P3d 748 (2000), Sup Ct **review denied**.

537.775

LAW REVIEW CITATIONS: 46 OLR 245; *40 EL 141 (2010); *47 WLR 405 (2011).

537.800

NOTES OF DECISIONS

1. In general

This statute, together with Ore. Const. Art. I, §18, had the effect of limiting the common-law riparian

rights. *Minton v. Coast Property Corp.*, (1935) 151 Or 208, 46 P2d 1029.

Springs and seepage water therefrom were part and parcel of the land itself. The right, title and interest therein passed by virtue of a mortgage and foreclosure proceedings thereunder. *Skinner v. Silver*, (1938) 158 Or 81, 75 P2d 21.

2. Appropriation

The right of appropriation of the waters of a spring does not differ from the right of appropriation of the waters of a flowing stream. *Brosnan v. Harris*, (1901) 39 Or 148, 65 P 867.

The prior appropriator of the waters of a spring will be as much protected as the appropriator of the waters of a stream. *Brosnan v. Harris*, (1901) 39 Or 148, 65 P 867; *Hildebrandt v. Montgomery*, (1925) 113 Or 687, 234 P 267.

Waters flowing through a gulch, and derived from melting snows and springs, are subject to appropriation. *Borman v. Blackmon*, (1911) 60 Or 304, 310, 118 P 848.

Waste water escaping from a city reservoir and allowed to find its way to the natural level of the country is subject to appropriation under this section regardless of a contract entered into by the city for disposition thereof. *Vaughan v. Kolb*, (1929) 130 Or 506, 280 P 518.

3. Permit to appropriate water

A person needs no permit to use the seepage water which arises upon his own land. *Barker v. Sonner*, (1931) 135 Or 75, 294 P 1053.

A permit from the State Engineer to appropriate water does not authorize a trespass upon private land to obtain such water, and a court will not assist the taking of such water and confirm the trespass. *Minton v. Coast Property Corp.*, (1935) 151 Or 208, 46 P2d 1029.

*Permit requirement applies only if spring produces sufficient water to flow, undiverted, off property or into another watercourse. *Norden v. Water Resources Dept.*, 158 Or App 127, 973 P2d 910 (1999), **aff'd** 329 Or 641, 996 P2d 958 (2000).

4. Landowner's right

The landowner may prevent spring water from passing off his own land. *Morrison v. Officer*, (1906) 48 Or 569, 87 P 896.

A spring having no overflow and but little seepage belongs exclusively to the landowner, and other owners have no right to appropriate the water thereof. *Henrici v. Paulson*, (1929) 128 Or 514, 274 P 314; *Henrici v. Paulson*, (1930) 134 Or 222, 293 P 424.

The filing upon the water of springs before the State Engineer, and obtaining a permit and certificate, have only the effect of protecting the right of the owner of the land to the water in case there should be an increase of the flow from the springs so as to pass from the land in question to other lands. *Skinner v. Silver*, (1938) 158 Or 81, 75 P2d 21.

Spring or seepage waters, which are not public waters, may be filed for only by the owner of the land. *Id.*

The legislature has the power to provide that the person upon whose land the seepage or spring waters first arise has the right to the use of such waters. *Id.*

Where waters leaving a spring on owner's land flow into a watercourse, which does not leave owner's land before emptying into another watercourse, the waters are subject to appropriation and the owner has no preference over other persons. *Fitzstephens v. Watson*, (1959) 218 Or 185, 344 P2d 221.