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*LAW REVIEW CITATIONS: 37 EL 105 (2007).

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NOTES OF DECISIONS

The right given by a permit is merely a contingent right which may ripen into a complete appropriation, or may be defeated by the failure of the holder to comply with the terms of the statute. *Morse v. Gold Beach Water, Light & Power Co.*, (1938) 160 Or 301, 84 P2d 113.

FURTHER CITATIONS: *Re Deschutes River*, (1930) 134 Or 623, 286 P 563, 294 P 1049; *Re White River*, (1933) 141 Or 504, 16 P2d 1109.

*LAW REVIEW CITATIONS: 32 WLR 187 (1996); 47 WLR 405 (2011).

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*LAW REVIEW CITATIONS: 32 WLR 187 (1996).

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See also cases under ORS 536.065.

NOTES OF DECISIONS

Where no cause has been shown by an applicant to entitle him to an extension of time, the action of the State Engineer and the circuit court in refusing to grant an extension will be affirmed by the Supreme Court. *Re White River*, (1936) 155 Or 148, 62 P2d 22.

Commencement of work by the appropriator is the condition on which a permit is issued. If he does not do so, it is fatal to the completion of the appropriation, although reasonable diligence was exercised after the one year period. *Morse v. Gold Beach Water, Light & Power Co.*, (1938) 160 Or 301, 84 P2d 113.

Although the statute does not state the amount of work required within the year following date of approval of application, it is the reasonable intentment of the statute that the construction work must be so substantial in character as to manifest good faith and the intent to exercise reasonable diligence in the completion of the project. *Id.*

The State Engineer's discretion as to extension of time has no application to the mandatory terms of the statute requiring actual construction work to begin on a project within one year from date of approval of the application for a permit. *Id.*

Where the plans for defendant's proposed project were approved by the State Engineer, he must have found that the proposed use would not prejudicially affect the public interest. *State Game Comm. v. Beaver Portland Cement Co.*, (1942) 169 Or 1, 124 P2d 524, 126 P2d 1094.

A permit was properly canceled by the State Engineer, where construction work was not seriously commenced within the one year period, and it was shown that the purpose of the permit holder was more to deprive the competitor of water than to obtain water for his own system. *Morse v. Gold Beach Water, Light & Power Co.*, (1938) 160 Or 301, 84 P2d 113.

The State Engineer's approval of plans for reconstruction of a hydroelectric project amounted, in the game commission's suit for injunction, to findings that the reconstruction would not change the use of the water from that set forth in the original applications, that it would not conflict with determined water rights, and would not menace public safety and welfare. The approval did not determine that commercial and game

fishing would or would not be affected. *State Game Comm. v. Beaver Portland Cement Co.*, (1942) 169 Or 1, 124 P2d 524, 126 P2d 1094.

FURTHER CITATIONS: *Re Hood River*, (1925) 114 Or 112, 227 P 1065.

ATTY. GEN. OPINIONS: Duty to hold hearing in approval or rejection of application, 1954-56, p 122.

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NOTES OF DECISIONS

*Phrase "impair or be detrimental to public interest" in this section was sufficiently specific that Water Policy Review Board was not required to adopt rules establishing more definite standards before deciding whether to approve application for hydroelectric project. *Steamboaters v. Winchester Water Control Dist.*, 69 Or App 596, 688 P2d 92 (1984), Sup Ct **review denied**.

*Applicant is not exempt from requirement that protest of proposed order must be filed with Water Resources Department before judicial review of order in other than contested case. *Lentz v. Water Resources Dept.*, 154 Or App 217, 962 P2d 41 (1998).

ATTY. GEN. OPINIONS: State game or fish commission filing claims for appropriation of water for propagation and protection of fish, 1940-42, p 58; game commission's remedy where riparian owner attempts to drain lake, 1940-42, p 485.

LAW REVIEW CITATIONS: 46 OLR 245; 3 WLJ 280, 384, 385; *4 EL 332, 333 (1974); *16 EL 583, 592 (1986); *21 EL 11, 133 (1991); *32 WLR 187 (1996).

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*LAW REVIEW CITATIONS: 32 WLR 187 (1996).

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NOTES OF DECISIONS

Since an appeal was not taken therefrom, the decision of the State Engineer was final. *Re Walla Walla River*, (1933) 141 Or 492, 502, 16 P2d 939.

FURTHER CITATIONS: *Warner Valley Stock Co. v. Lynch*, (1959) 215 Or 523, 336 P2d 884.

ATTY. GEN. OPINIONS: Duty to hold hearing in approval or rejection of application, 1954-56, p 122.

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NOTES OF DECISIONS

Under former similar statute failure to appeal from the State Engineer's order made it final. *Oakes v. Dickson*, (1960) 225 Or 95, 357 P2d 385.

FURTHER CITATIONS: *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819; *Warner Valley Stock Co. v. Lynch*, (1959) 215 Or 523, 336 P2d 884; *Cleaver v. Judd*, (1964) 238 Or 266, 393 P2d 193.

ATTY. GEN. OPINIONS: Duty to hold hearing in approval or rejection of application, 1954-56, p 122.

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*ATTY. GEN. OPINIONS: Storage rights to store water for later beneficial use are not subordinate to later priority direct use rights unless made so by explicit conditions imposed on storage right, (1989) Vol 46, p 290.

LAW REVIEW CITATIONS: 3 WLJ 282.