

ANNOTATIONS

The court, in classifying lands according to nature of soil, and ascertaining the amount of water sufficient for various classes of land, may properly treat the matter of seepage and evaporation. *Re Umatilla River*, (1918) 88 Or 376, 168 P 922, 172 P 97.

Board of Control [now State Engineer] did not have jurisdiction to supervise the distribution of water before priorities had been determined. *Wattles v. Baker Co.*, (1911) 59 Or 255, 117 P 417.

A suit brought in the circuit court to restrain an irrigation district from interfering with the natural flow of water in a stream was tantamount to a petition addressed directly to the water board [now State Engineer]. *Oregon Lbr. Co. v. East Fork Irr. Dist.*, (1916) 80 Or 568, 572, 157 P 963.

FURTHER CITATIONS: *Re Willow Creek*, (1915) 74 Or 592, 613, 144 P 505, 146 P 475; *Amalgamated Sugar Co. v. Hempe*, (1915) 226 Fed 1012; *Re Sucker Creek*, (1917) 83 Or 228, 163 P 430; *Byers v. We-Wa-Ne*, (1917) 86 Or 617, 169 P 121; *Re Chewaucan River*, (1918) 89 Or 659, 669, 171 P 402, 175 P 421; *Pacific Livestock Co. v. Balcombe*, (1921) 101 Or 233, 199 P 587; *Squaw Creek Irr. Dist. v. Mamero*, (1923) 107 Or 291, 294, 214 P 889; *Re Hood River*, (1924) 114 Or 112, 126, 227 P 1065; *Hutchinson v. Stricklin*, (1934) 146 Or 294, 28 P2d 295; *California-Ore. Power Co. v. Beaver Portland Cement Co.*, (1935) 295 US 142, 55 S Ct 725, 79 L Ed 1356; *Dill v. Killip*, (1944) 174 Or 94, 147 P2d 896; *Beisdel v. Wood*, (1947) 182 Or 66, 185 P2d 570; *Gardner v. Dollina*, (1955) 206 Or 1, 288 P2d 796.

ATTY. GEN. OPINIONS: Authority of State Engineer to regulate distribution of water when the rights of users have not been adjudicated, 1948-50, p 378.

LAW REVIEW CITATIONS: 5 OLR 91; 36 OLR 212; 3 WLJ 342.

539.021

*See also annotations under ORS 539.020 in permanent edition.

NOTES OF DECISIONS

Under former similar statute (ORS 539.020)

*Under this section, Water Resources Director must, after investigation, additionally decide that facts and conditions justify making determination of water rights. *U.S. v. Adair*, 723 F2d 1394 (1983).

In general

*Oregon water right determination procedure is suit within meaning of McCarran Amendment waiver of sovereign immunity for United States and Indian tribes. *U.S. v. State of Oregon Water Resources Dept.*, 44 F3d 758 (9th Cir. 1994).

539.030

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

539.040

NOTES OF DECISIONS

Prescribing notice by registered mail is within the province of the legislature. *Re Willow Creek*, (1915) 74 Or 592, 620, 144 P 505, 146 P 475.

The notice is sent to the person's post office address. *Id.*

539.050

NOTES OF DECISIONS

Claimant who filed statement was an adverse party to be served with notice of appeal from the decree of the circuit court. *Re Chewaucan River*, (1918) 89 Or 659, 171 P 402, 175 P 421.

539.060

CASE CITATIONS: *Re Althouse Creek*, (1917) 85 Or 224, 162 P 1072; *Re Chewaucan River*, (1918) 89 Or 659, 670, 171 P 402, 175 P 421.

539.080

NOTES OF DECISIONS

Before the 1947 amendment, in so far as this section exempted from payment claimants having permits issued under Acts of 1909, the law was not discriminatory. *Pacific Livestock Co. v. Cochran*, (1914) 73 Or 417, 430, 144 P 668.

Payment of fees by claimant under protest, in proceedings instituted in order that he might establish his claim and not suffer a forfeiture thereof, was not voluntary so as to preclude him from subsequently suing to recover the same on the ground that the fees exacted were illegal. *Id.*

FURTHER CITATIONS: *Re Deschutes River*, (1930) 134 Or 623, 286 P 563, 294 P 1049.

ATTY. GEN. OPINIONS: Exaction by State Engineer of fees in advance from the United States, 1926-28, p 135; right of state to tax exercise of right for use of water covered thereby, 1928-30, p 620; recording fees for filing notices of contest of claim with State Engineer relative to rights to waters of streams. 1936-38, p 117; fees for recordation of certificate of water rights, 1948-50, p 330.

539.081

NOTES OF DECISIONS

*United States government and Indian tribes are exempt from payment of filing fees assessed for adjudication of water rights. *U.S. v. State of Oregon Water Resources Dept.*, 44 F3d 758 (9th Cir. 1994).

539.100

NOTES OF DECISIONS

Failure to contest a claim under this section did not preclude an aggrieved party from filing exceptions. *Re North Powder River*, (1915) 75 Or 83, 144 P 485, 146 P 475.

539.120

CASE CITATIONS: *Masterson v. Pac. Livestock Co.*, (1933) 144 Or 396, 24 P2d 1046; *Staub v. Jensen*, (1947) 180 Or 682, 178 P2d 931; *Gardner v. Dollina*, (1955) 206 Or 1, 288 P2d 796.

539.130

NOTES OF DECISIONS

The decision of the State Engineer, if not appealed from, becomes final. *Re Walla Walla River*, (1933) 141 Or 492, 502, 16 P2d 939.

The State Engineer's determination of the facts of the extent of the use is entitled to great weight on appeal. *Appleton v. Ore. Iron & Steel Co.*, (1961) 229 Or 81, 358 P2d 260, 366 P2d 174.