

WATER LAWS

536.390

ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299; classification of ground waters as a restriction to particular uses, 1960-62, p 426.

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ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299.

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ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299.

LAW REVIEW CITATIONS: 3 WLJ 282; *21 EL 1 (1991).

536.420

ATTY. GEN. OPINIONS: Construing proposed Columbia Interstate Compact, 1964-66, p 146.

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ATTY. GEN. OPINIONS: Manner and method of water resources study, 1956-58, p 299.

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ATTY. GEN. OPINIONS: Construing statement of state water resources policy, 1956-58, p 299.

536.470

ATTY. GEN. OPINIONS: Agreement to hold United States free from damages caused by river construction works as an invalid loan of state credit, 1956-58, p 50.

536.560

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

Chapter 537 Appropriation of Water Generally

Chapter 537

NOTES OF DECISIONS

*Water control district, in applying for water appropriation permit for hydroelectric project, was exempt from licensing provisions of ORS 543.010 to 543.620 and needed only to comply with requirements of this chapter. *Steamboaters v. Winchester Water Control Dist.*, 69 Or App 596, 688 P2d 92 (1984), Sup Ct **review denied**.

CASE CITATIONS: *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819; *Warner Valley Stock Co. v. Lynch*, (1959) 215 Or 523, 336 P2d 884; *Fitzstephens v. Watson*, (1959) 218 Or 185, 344 P2d 221.

*ATTY. GEN. OPINIONS: Reservation to state of "all coal and other minerals" in deed of land by state as reservation of geothermal resources, (1980) Vol 41, p 298.

LAW REVIEW CITATIONS: 36 OLR 197, 241; 3 WLJ 295-316; *11 EL 387 (1981); *16 EL 583, 592 (1986); *28 WLR 285 (1992).

537.010

CASE CITATIONS: *Federal Power Comm. v. Oregon*, (1955) 349 US 435, 453, 75 S Ct 832, 843, 99 L Ed 1215, 1229; *Phillips v. Gardner*, (1970) 2 Or App 423, 469 P2d 42.

ATTY. GEN. OPINIONS: Authority of State Engineer in the prevention of wastage, 1952-54, p 146.

LAW REVIEW CITATIONS: 46 OLR 244.

537.110 to 537.320

LAW REVIEW CITATIONS: 3 WLJ 318.

537.110

NOTES OF DECISIONS

The water flowing over the public domain is a part thereof, and the general government may grant or otherwise dispose of its riparian interest separate from the rest of the estate. *Hough v. Porter*, (1909) 51 Or 318, 95 P 732, 98 P 1083, 102 P 728.

This section was not unconstitutional as denying due process of law under U.S. Const. Amend. XIV, §1. *Re Hood River*, (1925) 114 Or 112, 115, 227 P 1065.

Water escaping from a city reservoir and allowed to find its way to the natural level of the country is subject to appropriation. *Vaughan v. Kolb*, (1929) 130 Or 506, 280 P 518.

*The exercise of water rights established prior to appropriation under this chapter as between the original grantors of the right and their grantees or as between their respective successors in interest is not unlawful. *Jewell v. Kroo*, 268 Or 103, 517 P2d 657, 518 P2d 1305 (1973).

FURTHER CITATIONS: *Eldredge v. Mill Ditch Co.*, (1919) 90 Or 590, 598, 177 P 939; *California-Ore. Power Co. v. Beaver Portland Cement Co.*, (1934) 73 F2d 555.

LAW REVIEW CITATIONS: 25 OLR 160; 30 OLR 257; 2 WLJ 345-351; *2 EL 187 (1971); *4 EL 337 (1974).

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NOTES OF DECISIONS

1. In general

After water has been diverted from a natural stream into ditches or other artificial works, it becomes personal property and cannot be appropriated. *Vaughan v. Kolb*, (1929) 130 Or 506, 280 P 518.

It is debatable whether, subsequent to 1909, an appropriation can be initiated by adverse use or in any other manner not prescribed by statute. *Tudor v. Jaca*, (1945) 178 Or 126, 164 P2d 680.

If a prior appropriator desires to enlarge his appropriation, he must make a new appropriation, but such new appropriation will be inferior to all intervening rights. *Id.*

Subsequent appropriators may insist that prior appropriations are not enlarged, if the enlargement interferes with their rights. *Id.*

A prior appropriator cannot claim or use more water than is reasonably necessary for the purpose of his appropriation. *Id.*