

ANNOTATIONS

An adjudication under the water code awarding defendants certain water rights did not conclude plaintiff from asserting rights as adverse user where adverse use began prior to the code and plaintiff received no notice of pendency of adjudication, even if she had actual knowledge. *Staub v. Jensen*, (1947) 180 Or 682, 178 P2d 931.

Filing of an application for permit did not constitute an abandonment of plaintiff's rights by adverse user; the law presumes the contrary. *Id.*

*"Claimant" means person who claims legal title to water right, not person who asserts equitable or beneficial interest in another person's water right. *Klamath Irrigation District v. United States*, 348 Or 15, 227 P3d 1145 (2010).

FURTHER CITATIONS: *Ebell v. City of Baker*, (1931) 137 Or 427, 299 P 313.

ATTY. GEN. OPINIONS: Duty of State Engineer to regulate distribution of water, 1948-50, p 378.

LAW REVIEW CITATIONS: 3 WLJ 343.

539.240

NOTES OF DECISIONS

*Registration statements are not part of water right adjudication process and therefore not subject to McCarran Amendment sovereign immunity waiver. *U.S. v. State of Oregon Water Resources Dept.*, 44 F3d 758 (9th Cir. 1994).

Chapter 540 Distribution of Water; Watermasters; Change in Use; Transfer or Forfeiture of Water Rights

Chapter 540

NOTES OF DECISIONS

When a state agency exercising a power granted to it by the legislature undertakes to appropriate any of the waters of the state it must do so pursuant to the provisions of the water code, and in a controversy with a private owner of water the state is subject to the rules of law that govern the rights of the private litigant. *Withers v. Reed*, (1952) 194 Or 541, 243 P2d 283.

LAW REVIEW CITATIONS: 3 WLJ 318, 336; *11 EL 390 (1981).

540.010 to 540.150

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

540.010

CASE CITATIONS: *Gardner v. Dollina*, (1955) 206 Or 1, 288 P2d 796.

540.020

CASE CITATIONS: *Wattles v. Baker County*, (1911) 59 Or 255, 260, 117 P 417; *Masterson v. Kennard*, (1932) 140 Or 288, 12 P2d 560; *State v. Stewart*, (1939) 163 Or 585, 96 P2d 220; *Gardner v. Dollina*, (1955) 206 Or 1, 288 P2d 796, *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819.

ATTY. GEN. OPINIONS: Watermaster's status as preventing his owning irrigated land or receiving pecuniary aid from an irrigation company, 1930-32, p 504; appointment of a watermaster as discretionary with State Engineer, 1940-42, p 201.

540.030

NOTES OF DECISIONS

The State Engineer has no authority to enter into an agreement whereby he would accept a conveyance of a water right which water right is to be retransferred, if as a result of an investigation he concludes that an irrigation project would not be feasible. *Rowley v. City of Medford*, (1930) 132 Or 405, 285 P 1111.

The State Engineer properly granted an extension of time to applicants to complete the appropriation of inchoate water rights, where the only opposition was offered by an irrigation district which had hindered the applicants in the development of water rights.

Broughton's Estate v. Cent. Ore. Irr. Dist., (1940) 165 Or 435, 101 P2d 425, 108 P2d 276.

FURTHER CITATIONS: *Wattles v. Baker County*, (1911) 59 Or 255, 117 P 417.

ATTY. GEN. OPINIONS: Authority of State Engineer to make reasonable regulations to secure equal and fair distribution of water, 1922-24, p 672; appointment of watermaster as discretionary with State Engineer, and engineer and assistants as having same authority as watermasters, 1940-42, p 201; duty of State Engineer to regulate distribution of water, 1948-50, p 378.

540.040

NOTES OF DECISIONS

1. In general

A watermaster must preserve priorities and quantities of irrigation water, consistent with the highest duty of water, as applied to all concerned. *Nault v. Palmer*, (1920) 96 Or 538, 190 P 346.

For an erroneous construction of a decree determining water rights, a watermaster may not be held liable in damages. *Norwood v. E. Ore. Land Co.*, (1932) 139 Or 25, 5 P2d 1057, 7 P2d 996.

A decree declaring that a certain amount of water shall not be taken as granting that specific amount to any water user, but shall only be taken as a rule and guide for the watermaster in the distribution of a maximum amount to any water user, was improper in view of subsections (1) and (2). *Re Umatilla River*, (1918) 88 Or 376, 168 P 922, 172 P 97.

The watermaster and an appropriator changing the application or use of water pursuant to an ex parte void order of the State Water Board [now State Engineer] were joint tortfeasors. *Norwood v. E. Ore. Land Co.*, (1932) 139 Or 25, 5 P2d 1057, 7 P2d 996.

Although no statutory provision appeared to authorize the cancellation of a water right certificate and the issuance of a new one where its terms were affected by judicial interpretation of the decree upon which it was based, it was required that the watermaster in regulating the division and use of the waters involved, under the direction of the State Engineer, should be governed by the court's interpretation. *Tudor v. Jaca*, (1946) 178 Or 126, 165 P2d 770.

2. Subsection (3)