

ANNOTATIONS

537.210

ATTY. GEN. OPINIONS: Effect of failure to mail indorsed application to applicant, 1954-56, p 210.

537.220

CASE CITATIONS: *Green v. Wheeler*, (1969) 254 Or 424, 458 P2d 938.

537.230

NOTES OF DECISIONS

State Engineer had authority to waive failure to request extension of time for completion of work. *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819.

*Extension of permit to perfect water rights must be conditioned on fish species protection and development of water management and conservation plan. Undeveloped portion of permit that requires extension is measured by reference to maximum rate of water applied to beneficial use before expiration of development deadline in original permit or last-issued extension. *WaterWatch of Oregon, Inc. v. Water Resources Dept.*, 259 Or App 717, 316 P3d 330 (2013).

"Persistence" as used under this section means that as prerequisite to grant of extension for water diversion, permits are subject to conditions that preserve continued existence or endurance of listed fish species in affected waterway. *WaterWatch of Oregon v. Water Resources Department*, 268 Or App 187, 342 P3d 712 (2014).

537.240

CASE CITATIONS: *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819.

537.250

NOTES OF DECISIONS

Where the appropriator has performed all of the acts which are incidental to the acquisition of a water right, the perfected right is considered to have existed from the date of the initial act. *Re Hood River*, (1925) 114 Or 112, 114, 227 P 1065.

Water or the right thereto is not separated from the land by the making of an application for and obtaining a permit and certificate of water right, even though the water right certificate is recorded separately from the deeds to the land. *Skinner v. Silver*, (1938) 158 Or 81, 75 P2d 21.

A certificate is conclusive only against a person whose right is "subsequent in priority." *Cleaver v. Judd*, (1964) 238 Or 266, 393 P2d 193.

Water right certificate, not the permit, even when followed by a beneficial use, marks the point at which a water right becomes vested. *Green v. Wheeler*, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

FURTHER CITATIONS: *Pacific Livestock Co. v. Cochran*, (1914) 73 Or 417, 432, 144 P 688; *California-Ore. Power Co v. Beaver Portland Cement Co.*, (1934) 73 F2d 555; *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819; *Phillips v. Gardner*, (1970) 2 Or App 423, 469 P2d 42.

*ATTY. GEN. OPINIONS: Public right to use artificial lake created for recreation on a nonnavigable stream on privately owned land, (1972) Vol 35, p 1202; 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 342; *33 EL 1019 (2003); *36 EL 1383 (2006).

537.260

NOTES OF DECISIONS

State Engineer had authority to waive failure to request extension of time for completion of work. *Smyth v. Jenkins*, (1956) 208 Or 92, 299 P2d 819.

Under this statute the State Engineer is vested with a wide discretion. *Id.*

A certificate is conclusive only against a person whose right is subsequent in priority. *Cleaver v. Judd*, (1964) 238 Or 266, 393 P2d 193.

The permit was inchoate and not vested until the permittee fully complied with all the statutory specifications. *Green v. Wheeler*, (1969) 254 Or 424, 458 P2d 938, cert. denied, 397 US 990.

537.270

NOTES OF DECISIONS

A certificate is conclusive only against a person whose right is "subsequent in priority." *Cleaver v. Judd*, (1964) 238 Or 266, 393 P2d 193.

In an action involving the right to use the waters of a creek, a water right certificate issued pursuant to a decree in a former action adjudicating the rights of predecessors in interest, though entitled to evidentiary effect, was regarded as embodying the conditions and limitations of the decree upon which it was based, and as subject to any modifications which might result from judicial interpretation of such conditions or limitations. *Tudor v. Jaca*, (1946) 178 Or 126, 164 P2d 770.

*In relation to mistakes of a nonclerical nature, the certificate holder must bring those mistakes to the attention of the state engineer within the three-month period to avoid being bound by the terms of the certificate. *Wilber v. Wheeler*, 273 Or 855, 543 P2d 1052 (1975).

*Issuance of water right certificate for transferred water right and passage of challenge period terminates ability to challenge new certificate based on abandonment of water right prior to transfer. *Kerivan v. Water Resources Commission*, 188 Or App 491, 72 P3d 659 (2003), Sup Ct **review denied**.

LAW REVIEW CITATIONS: 3 WLJ 336.

537.290

ATTY. GEN. OPINIONS: Authority of State Engineer to issue a certificate to the United States without the 50 years' limitation contained in this section, 1932-34, p 375; authority of State Engineer to eliminate statutory provisions from water right certificates issued to the Federal Government, 1936-38, p 440.

537.300

*See annotations under ORS 537.400.

NOTES OF DECISIONS

The primary reservoir permit contemplates a storage of water in some locality where it can be utilized for irrigation. The secondary permit contemplates that users of the water shall acquire a permanent ownership by agreement with the owner for a specified quantity of the stored water for the needs of and use upon his land. *Cookinham v. Lewis*, (1911) 58 Or 484, 491, 114 P 88, 115 P 342.

LAW REVIEW CITATIONS: 25 OLR 168; 3 WLJ 324.