

ANNOTATIONS FOR CHAPTER 390
Statutes Relating to Scenic Waterways
(2017 Cumulative Supplement Annotations are indicated with *)

Chapter 390 (Partial)
Scenic Waterways

390.805 to 390.925

NOTES OF DECISIONS

*An easement is not involved in the state's right under these sections to regulate use of related adjacent land, but an easement is an additional right which the state may acquire by purchase or gift. *Scott v. State Hwy. Comm.*, 23 Or App 99, 541 P2d 516 (1975).

*Time factors involved are not designed to freeze land values to subsidize later acquisition by the state, nor do they impose unreasonable restraints upon landowners. *Scott v. State Hwy. Comm.*, 23 Or App 99, 541 P2d 516 (1975).

*The regulatory provisions are separate from the provisions giving the state the right to acquire land or interests in related adjacent land, and the state does not gain an interest in land by the adoption of the Act. *Scott v. State Hwy. Comm.*, 23 Or App 99, 541 P2d 516 (1975).

*The state's power to regulate is analogous to zoning restrictions and therefore the state does not acquire an interest for which compensation must be paid. *Scott v. State Hwy. Comm.*, 23 Or App 99, 541 P2d 516 (1975).

*Where water would otherwise flow through scenic waterway, provisions of Scenic Waterways Act requiring showing that proposed diversion was necessary to beneficial use applied to proposed diversion in city's application for permit to operate hydroelectric facility. *Diack v. City of Portland*, 306 Or 287, 759 P2d 1070 (1988).

ATTY. GEN. OPINIONS: Application of regulations to state highways, (1971) Vol 35, p 445.

*Prohibition of landfills on scenic waterways, (1971) Vol 35, p 844; authority to designate segment of Snake River as a scenic waterway, (1972) Vol 35, p 1226; definition and regulation of "placer mining," (1982) Vol. 42, p 213.

*LAW REVIEW CITATIONS: 4 EL 299-303, 373-376 (1974); 19 EL 841 (1989); 21 EL 133 (1991); 29 WLR 95 (1993).

390.805

*ATTY. GEN. OPINIONS: Authority to designate segment of Snake River as a scenic waterway, (1972) Vol 35, p 1226.

*LAW REVIEW CITATIONS: 4 EL 301 (1974); 21 EL 133 (1991).

390.815

*LAW REVIEW CITATIONS: 4 EL 301 (1974).

390.825

NOTE: Repealed December 8, 1988; ORS 390.826 enacted in lieu

*See annotations under ORS 390.826.

390.826

ATTY. GEN. OPINIONS

Under former similar statute (ORS 390.825)

*Application of Scenic Waterways Act to future expansion of City of Maupin boundaries, (1977) Vol 38, p 697.

390.835

NOTES OF DECISIONS

*Where petitioner challenges Water Resources Commission's temporary rule amending OAR 690-80-060 (5)(c), Commission's findings and statement of need do not provide adequate support for promulgation of temporary rule and rule was therefore adopted without compliance with applicable rulemaking procedures and violates Scenic Waterways Act. *Waterwatch of Oregon v. Oregon Water Res. Comm.*, 97 Or App 1, 774 P2d 1118 (1989).

*"Mitigation" must be designed to fully offset ground water appropriation impacts on surface flows. *WaterWatch v. Water Resources Commission*, 199 Or App 598, 112 P3d 443 (2005).

*ATTY. GEN. OPINIONS: Whether federal designation of portion of John Day River as scenic would supersede state law, (1977) Vol 38, p 1321; definition of "placer mining," (1982) Vol 42, p 213; prohibition on placer mining in scenic waterways, (1994) Vol 47, p 84.

*LAW REVIEW CITATIONS: 19 EL 860 (1989); 36 EL 1125 (2006).

390.845

NOTES OF DECISIONS

*Value of improvements upon land condemned pursuant to ORS 390.805 to 390.925 is measured as of date of taking, and not as of date of Act, where development of land began before effective date of Act. *State Hwy. Comm. v. Chaparral Recreation Assn.*, 13 Or App 346, 510 P2d 352 (1973).

*Provisions of this section authorizing condemnation of "related adjacent land" (for which, despite department's disapproval, owner proposed and refused to abandon plan substantially impairing natural beauty