

Chapter 541

Miscellaneous Provisions on Water Rights, Uses and Protection

541.010

NOTES OF DECISIONS

A mutual ditch company organized for the sole purpose of transmitting and delivering to appropriators and owners of the water the quantity to which each is entitled is not a "general corporation," a "public service corporation," or a "common carrier." *Eldredge v. Mill Ditch Co.*, (1919) 90 Or 590, 177 P 939.

A corporation organized for profit for the purpose of supplying water to all persons whose lands lie within reach of its ditch is the owner of the use of the water appropriated. A mutual ditch corporation organized for the purpose of carrying water to its stockholders is simply the agent of the appropriator to carry his water to where he makes the beneficial use. *Re Walla Walla River*, (1933) 141 Or 492, 16 P2d 939.

A private corporation appropriating water for rental or irrigation was not a public utility without some act of dedication of water so appropriated to public use. *De Pauw Univ. v. Public Serv. Comm.*, (1917) 247 Fed 183, (1918) 253 Fed 848.

Irrigation company was not a public utility. *Central Ore. Irr. Co. v. Public Serv. Comm.*, (1921) 101 Or 442, 196 P 832.

Use of water by particular individuals was not a public use. *Smith v. Cameron*, (1922) 106 Or 1, 210 P 716.

FURTHER CITATIONS: *Re Hood River*, (1925) 114 Or 112, 227 P 1065; *Eastern Ore. Land Co. v. Willow River Land & Irr. Co.*, (1913) 204 Fed 516; *United States v. Humboldt Lovelock Irr. Co.*, (1938) 97 F2d 38, 44.

LAW REVIEW CITATIONS: 3 WLJ 296.

541.030

ATTY. GEN. OPINIONS: Procedure for acquiring right of way for an irrigation ditch over land owned by state, 1924-26, p 537.

541.050

NOTES OF DECISIONS

One who charged that seepage from an irrigation company's ditch was injuring his land was required to assume the burden of proving that the water escaped from the defendant's ditch. *Taylor v. Farmers' Irr. Co.*, (1917) 82 Or 701, 162 P 973.

Evidence did not entitle plaintiff to a remedy by way of injunction. *Id.*

LAW REVIEW CITATIONS: 8 OLR 89; 1 WLJ 346, 348, 351.

541.080

NOTES OF DECISIONS

The court, in a suit involving inceptive rights to divert

the waters of a river, would only determine the right as between the parties claiming as appropriators; it would not determine the extent of the right that may be obtained. *Pringle Falls Power Co. v. Patterson*, (1913) 65 Or 474, 483, 128 P 820, 132 P 527.

541.110

NOTES OF DECISIONS

Surplus waters of the streams of the state may be utilized by corporations which are engaged in the business of furnishing electrical power. *Grand Ronde Elec. Co. v. Drake*, (1905) 46 Or 243, 78 P 1031.

The right of a prior appropriator of waters for mining use cannot be encroached upon through the summer season by subsequent appropriation for irrigation purposes. *Re Rogue River*, (1921) 102 Or 60, 201 P 724.

It is the state's policy to protect migratory fish and also to permit and encourage the use of waters for the development of electric power, neither of which may be disregarded. *State Game Comm. v. Beaver Portland Cement Co.*, (1942) 169 Or 1, 124 P2d 524, 126 P2d 1094.

Where plans for defendant's proposed project were filed with the State Engineer and by him approved, he must have found that the use proposed would not prejudicially affect the public interest. *Id.*

LAW REVIEW CITATIONS: 3 WLJ 296, 297.

541.120

NOTES OF DECISIONS

Use of ditch by city in common with individual members of irrigation district was not illegal. *Butler & Thompson Co. v. City of Ashland*, (1924) 109 Or 683, 222 P 346.

541.220 to 541.250

LAW REVIEW CITATIONS: 3 WLJ 295.

541.230

ATTY. GEN. OPINIONS: Transfer of land by State Land Board to United States, 1922-24, p 71, 1956-58, p 252; conveyance by State Land Board of right of way over state land for ditches, canals and reservoir sites for irrigation purposes to the United States, 1922-24, p 662.

LAW REVIEW CITATIONS: 36 OLR 204.

541.240

ATTY. GEN. OPINIONS: Transfer by State Land Board to United States, 1956-58, p 252.

541.310

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

LAW REVIEW CITATIONS: 36 OLR 212; 3 WLJ 295.

541.320

NOTES OF DECISIONS

Having jurisdiction for one purpose, equity could retain jurisdiction for the determination of all issues involved. Re Willow Creek, (1926) 119 Or 155, 236 P 487, 237 P 682, 239 P 123.

A decree of the circuit court in proceedings to determine the right to use water of the stream for irrigation purposes is res adjudicata upon the question of abandonment. Abel v. Mack, (1930) 131 Or 586, 283 P 8.

Rights which are not involved in the litigation in which the decree is rendered are not affected. Krebs v. Perry, (1930) 134 Or 290, 292 P 319, 293 P 432.

In order to constitute a decree res judicata and to bar a subsequent action, there must be a concurrence of the identity of the right sued for, the identity of the cause of action, and the identity of the parties to the action. Master-son v. Pac. Livestock Co., (1933) 144 Or 396, 24 P2d 1046.

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

LAW REVIEW CITATIONS: 36 OLR 204, 212; 3 WLJ 295.

541.410

NOTES OF DECISIONS

The use of water for lifting water for irrigation and for generating electricity for lifting water for irrigation is a beneficial use. Re Deschutes River, (1930) 134 Or 623, 286 P 563, 294 P 1049.

Where a water user intended using a waterwheel for irrigation purposes, his notice of appropriation should have included a claim for the quantity of water desired to be appropriated for power purposes, and such appropriation was required to be reasonable. Re Owyhee River, (1928) 124 Or 44, 259 P 292.

541.540

ATTY. GEN. OPINIONS: Action against irrigation district for flood damage, 1960-62, p 204.

541.620

CASE CITATIONS: State Land Bd. v. Gen. Constr. Co., (1970) 2 Or App 53, 465 P2d 731.