

**WATER LAWS OF THE STATE OF  
OREGON, COMPILED FROM  
LORD'S OREGON LAWS AND  
SESSION LAWS OF 1911 AND 1913**

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Water laws of the State of Oregon, compiled from Lord's Oregon laws and session laws of 1911 and 1913 by Various

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**VARIOUS**

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# WATER LAWS

OF THE

## STATE OF OREGON

COMPILED FROM

Lord's Oregon Laws and Session Laws  
of 1911 and 1913

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TO WIND  
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## CONSTITUTIONAL PROVISIONS

The constitution of Oregon contains no provisions directly relating to the diversion and use of water from public streams.

No administrative machinery for distributing public waters to those entitled thereto, was available until the adoption of what is commonly called the "Water Code," on February 24, 1909.

Similar laws have been upheld by the courts in Wyoming and Nebraska, (*Farm Inv. Co. v. Carpenter*, 9 Wyo. 110; 61 Pac. 267; *Crawford v. Hathaway*, 67 Neb. 325; 93 NW. 795), as being a proper exercise of the police power.

(The American and English Encyclopedia of Law, vol. 22, p. 916, defines police power in its broadest acceptation as "the general power of a government to preserve and promote the public welfare by prohibiting all things hurtful to the comfort, safety

and welfare of society, and establishing such rules and regulations for the conduct of all persons, and the use and management of all property as may be conducive to the public interest.")

### ERRATA.

- Page 26, § 5 is not L. O. L., but § 5 of Ch. 86, L. 1913.  
Page 36, read § 6575 instead of § 6675.  
Page 41, read § 6838 instead of § 6638.  
Page 42, read § 6839 instead of § 6639.  
Page 72, read § 6447 instead of § 6477.

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# WATER LAWS OF OREGON

## PART I.

### 1909 WATER CODE WITH AMENDMENTS

#### (a) INITIATION OF RIGHTS.

##### § 6594. Waters May Be Appropriated for Beneficial Use—Limitations.

Subject to existing rights, all waters within the State may be appropriated for beneficial use, as herein provided, and not otherwise; but nothing herein contained shall be so construed as to take away or impair the vested right of any person, firm, corporation, or association to any water; *provided*, that the provisions of this act do not apply or extend to that certain stream situated in Multnomah County, Oregon, known as Multnomah Creek, and sometimes called Coon Creek, which stream forms Multnomah Falls, but said stream and the flow of water therein shall not be diverted or interrupted for any purposes whatsoever; *and also provided further*, that the provisions of this act do not apply or extend to the waters of the Columbia River beginning at a point on the Columbia River three (3) miles down stream from what is known as the Big Eddy at The Dalles and extending to a point ten (10) miles above the Celilo Falls on said river, but said stream and the flow of water therein shall not be diverted or interrupted for any purpose or purposes whatsoever, excepting by authority hereafter to be granted and given by the legislature of the State of Oregon. (L. 1909, c. 216, p. 319, § 1; L. 1913, c. 157, p. 273.)

In view of the general revisions of the law relating to the use of water effected by the legislation of 1909, it has not been considered that a full annotation of the earlier decisions affecting the law of water rights would be useful. A list of the more important decisions is given in this note, however.

On the subject of riparian rights, see *Williamette L. & T. Co.*, 7 Or. 335; *Taylor v. Welch*, 6 Or. 198; *Moore v. Hayden v. Long*, 8 Or. 244; *Coffman v. Robbins*, 8 Or. 278; *Shively v. Hume*, 10 Or. 76; *Shaw v. Oswego Iron Co.*, 10 Or. 371; *Shook v. Calahan*, 12 Or. 239, 6 Pac. 503; *Weiss v. Oregon Iron Co.*, 13 Or. 496, 11 Pac. 255; *Faulk v. Cooke*, 19 Or. 455, 26 Pac. 662; *Jones v. Conn.*, 39 Or. 30, 64 Pac. 855; *Salem*

*Mills Co. v. Lord*, 42 Or. 82, 69 Pac. 1033; *Harrington v. Demaris*, 46 Or. 111, 77 Pac. 603; *Brown v. Gold Coin Min. Co.*, 48 Or. 277, 86 Pac. 361; *Morton v. Oregon S. L. Ry. Co.*, 48 Or. 444, 87 Pac. 151, 1046; *Williams v. Aitnoor*, 51 Or. 275, 95 Pac. 299; *Davis v. Chamberlain*, 51 Or. 394, 98 Pac. 154.

There is no such thing as prior riparian ownership so far as distribution of water for irrigation purposes between riparian owners is concerned; the rights of a riparian owner to the waters being a variable one, depending on use by other proprietors; *Hough v. Porter*, 51 Or. 318, 95 Pac. 732.

Act of Congress of July 26, 1866, c. 262, § 9, 14 Stat. (U. S. Comp. St. 1901, p. 1437), relative to the appropriation of water, was merely a recog-

dition of rights existing at the time, rather than the creation of a new one: *Hough v. Porter, supra*.

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, supra*.

The legal effect of the language in Act of Congress March 3, 1877, c. 107, 19 Stat. 377 (U. S. Comp. St. 1901, p. 1548), namely, "There shall be and remain and be held free for the appropriation and use of the public for irrigation," etc., constitutes a reservation and dedication to the public of all interest, riparian or otherwise, held at the time by the national government, so far as such interests affect the uses for irrigation and other purposes there enumerated, from which it follows that this act abrogated the common law rule respecting riparian rights as to all lands settled upon or entered after March 3, 1877: *Hough v. Porter, supra*.

While the legal effect of the desert land act [act Congress March 3, 1877, c. 107, 19 Stat. 377 (U. S. Comp. St. 1901, p. 1548)] was to abrogate the modified doctrine of riparian rights as to all lands to which title has been acquired after the enactment thereof, it does not go so far as to affect the rights originally giving rise to the doctrine of riparian rights; that is, for

domestic and stock requirements: *Hough v. Porter, supra*.

Every riparian owner, therefore, regardless of the date of settlement, is entitled to the quantity of water reasonably essential to his domestic use and for the watering of his stock, including sufficient supply for the proper irrigation of such garden produce as may be essential to the proper sustenance of his family: *Hough v. Porter, supra*.

Settlement upon land bordering upon or through which a stream may flow, or to which a natural source of water supply may be adjacent, or upon which it may be situated, is in itself notice that sufficient water for domestic uses and requirements incident thereto are and will continue to be demanded; but, to constitute an appropriation for mining, irrigation, or power purposes, some steps towards a diversion thereof, or other good and sufficient notice, is necessary: *Hough v. Porter, supra*.

The references in the Code to riparian rights constitute a recognition of whatever riparian rights the landed proprietor may have, but do not attempt to define, nor to in any manner establish any rule respecting such interests. The case of *Starr v. Beck*, 133 U. S. 541 (10 Sup. Ct. 550, 33 L. Ed. 761), together with Oregon cases, examined and held not in conflict with the conclusions here reached: *Hough v. Porter, supra*; *Coquille Mill & Mergo Co. v. Johnson*, 53 Or. 547, 98 Pac. 132.

#### § 6624. Application—Unlawful Use or Diversion a Misdemeanor—Evidence.

Any person, association or corporation hereafter intending to acquire the right to the beneficial use of any waters shall, before commencing the construction, enlargement or extension of any ditch, canal or other distributing or controlling works, or performing any work in connection with said construction, or proposed appropriation, make an application to the State Engineer for a permit to make such appropriation. Any person who shall willfully divert or use water to the detriment of others without compliance with law, shall be deemed guilty of a misdemeanor. The possession or use of water, except when a right of use is acquired in accordance with law, shall be *prima facie* evidence of the guilt of the person using it. [L. 1909, c. 216, p. 332, § 45.]

The cases of *Gardner v. Wright*, 49 Or. 609, 81 Pac. 286; *Watts v. Spencer*, 51 Or. 262, 94 Pac. 39; *Williams v. Alloway*, 51 Or. 275, 95 Pac. 200; 87 Pac. 539; *Davis v. Chamberlain*, 51 Or. 304, 98 Pac. 154; and *Hough v. Porter*, 51 Or. 318, 95 Pac. 732, 98 Pac. 1038; though decided prior to the enactment of the present statute, may be referred to as expounding the common law doctrine as to use and appropriation of waters previously in force

in this State. *Hough v. Porter* especially contains full and ample discussions of the general doctrines of appropriation.

For cases decided since the enactment of this statute, the latter, alluding to the present water code, see *Whited v. Cavin*, 55 Or. 98, 105 Pac. 396; *Carnes v. Dalton*, 56 Or. 596, 110 Pac. 170.

A number of persons may be tenants in common in a water ditch, yet

each may have a right to water flowing through it differing in time and right: *McPhee v. Kelsey*, 44 Or. 133, 74 Pac. 401, 75 Pac. 713; *Carnes v. Dalton*, 56 Or. 596, 110 Pac. 170; *Ison v. Sturgill*, 57 Or. 109, 109 Pac. 579.

These cases, however, are inconsistent with *Beers v. Sharp*, 44 Or. 386, 75 Pac. 717. See also on this point dissenting opinion in *Shaw v. Proffitt*, 57 Or. 192, 109 Pac. 589.

#### § 6626. Applications, Nature of.

Each application for permit to appropriate water shall set forth the name and postoffice address of the applicant, the source of water supply, the nature and amount of the proposed use, the location and description of the proposed ditch, canal, or other work, the time within which it is proposed to begin construction, the time required for completion of the construction, and the time for the complete application of the water to the proposed use. If for agricultural purposes, it shall give the legal subdivisions of the land and the acreage to be irrigated, as near as may be. If for power purposes, it shall give the nature of the works by means of which the power is to be developed, the head and amount of water to be utilized, and the uses to which the power is to be applied. If for the construction of a reservoir, it shall give the height of dam, the capacity of the reservoir, and the uses to be made of the impounded waters. If for municipal water supply, it shall give the present population to be served, and, as near as may be, the future requirements of the city. If for mining purposes, it shall give the nature of the mines to be served, the methods of supplying and utilizing the water. All applications shall be accompanied by such maps and drawings, in duplicate, and such other data as may hereafter be prescribed by the Board of Control, and such accompanying data shall be considered as a part of the application. [L. 1909, c. 216, p. 332, § 46.]

#### § 6627. Applications, Approval of.

Upon receipt of an application, it shall be the duty of the State Engineer to make an indorsement thereon of the date of its receipt and to keep a record of the same. If upon examination the application is found to be defective, it shall be returned for correction or completion, and the date of, and reasons for the return thereof, shall be indorsed thereon and made a record in his office. No application shall lose its priority of filing on account of such defects, provided acceptable maps and drawings are filed in the office of the State Engineer within thirty days from the date of said return to the applicant. All applications which shall comply with the provisions of this act shall be recorded in a suitable book kept for that purpose, and it shall be the duty of the State Engineer to approve all applications made in proper form which contemplate the application of water to a beneficial use, but when the proposed use conflicts with determined rights, or is a menace to the safety