

# LORD'S OREGON LAWS

SHOWING

All the Laws of a General Nature in Force in the  
State of Oregon

Including the Sessions of 1909, and the Laws and Constitutional  
Amendments Adopted at the General Election of 1910

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Compiled and Annotated

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## CHAPTER II.

### OF THE APPROPRIATION OF WATER FOR MINING AND ELECTRICAL POWER.

#### **§ 6551. Use of Water for Mining and Electrical Power a Public One.**

The use of the water of the lakes and running streams of the state of Oregon for the purpose of developing the mineral resources of the state and to furnish electrical power for all purposes, is declared to be a public and bene-  
( §§ 6548-6551 )

ficial use and a public necessity, and the right to divert unappropriated waters of any such lakes or streams for such public and beneficial use is hereby granted; 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. [L. 1899, p. 172, § 1; B. & C. § 5022; L. 1907, c. 145, p. 288.]

See notes to §§ 6594, 6624.

This section and § 6552, authorize corporations engaged in furnishing electrical power for all purposes to use the surplus water of the streams of the state for water power, and to condemn the rights of riparian proprietors, and also rights of way for ditches. Section 6555 declares that when the point of diversion shall have been selected the appropriator shall post a certain notice thereat, and § 6556 requires the filing for record within ten days thereafter of a similar notice, and a map showing the general route of the ditch. Section 6557 provides that when such corporation shall have acquired the right to appropriate water in the manner provided, it may condemn lands necessary for the right of way for its ditch; and it was held that where a corporation organized for furnishing electrical power for all purposes has selected a point for the diversion of the water of a stream, and has surveyed and located the line of its ditch, and has posted the required notice, and filed the notice and map, its right to appropriate the water is thereby acquired. Thereafter the corporation may maintain an action of condemnation without showing that it is the sole owner of the banks of the stream in question from the point of the proposed diversion to the mouth thereof, or that it has secured from the riparian proprietors below the proposed point of diversion the right to divert the surplus water in such stream: *Grande Ronde Elec. Co. v. Drake*, 46 Or. 243, 78 Pac. 1031.

The provision in § 18, Art. I, Const. Or., that private property shall not be taken for public use without just compensation first assessed and tendered, impliedly prohibits the taking of private property for private use, even though just compensation be made therefor: *Grande Ronde Elec. Co. v. Drake*, *supra*.

The necessity of exercising the right of eminent domain in general classes of cases is a legislative question, but whether the use in a particular instance is public or private,

and the extent of the use necessary, are to be determined by the courts as questions of fact; for example, the legislature may determine that corporations furnishing electricity for sale shall be allowed to condemn private property for their use, yet as to the nature of the use to which a particular piece of property is to be put and the extent of the needs of the condemnor, there may be a question, which the courts must decide: *Grande Ronde Elec. Co. v. Drake*, *supra*.

Sections 6551-6556 declare the use of water of the streams of the state for furnishing electric power for all purposes a public use, and authorize corporations created for such purpose to use such streams therefor, so that the use may not materially impair the rights of prior appropriators, on the corporation complying with certain prescribed conditions. Section 6557 declares that when such corporation shall have acquired the right to appropriate the water "in the manner hereinbefore provided it may proceed to condemn lands and premises necessary for right of way for its ditch"; and §§ 6558 and 6559 authorize such corporations, when authorized as so provided, to appropriate water and construct and maintain a ditch, to maintain an action to condemn a right of way for such ditch, and also for the condemnation and appropriation of the right to the flow of the water in any stream from which it is proposed to divert water below the point of diversion vested in riparian proprietors; and it was held that a corporation, having so acquired the right to appropriate water, may maintain an action either to condemn land for a ditch, or to condemn the right to have the water flow in the channel of the stream through the premises of a riparian proprietor, or it may sue for both purposes in one action when both rights are vested in the same defendant: *Grande Ronde Elec. Co. v. Drake*, *supra*.

Also bearing on this point as applies to cities or towns, see *McMinnville v. Howenstine*, ..... Or....., 109, Pac. 81.

### § 6552. Who May Use Water for Electric Power and Mining.

All persons, companies, and corporations having title or possessory right to any mineral or other land, shall be entitled to the use and enjoyment of the water of any lake or running stream within the state for mining and other purposes in the development of the mineral resources of the state, or to furnish electrical power for any purposes; and such waters may be made available to the full extent of the capacity thereof without regard to deterioration in quality or diminution in quantity, so that such use of the same does not materially affect or impair the rights of prior appropriations. [L. 1899, p. 172, § 2; B. & C. § 5023.]

### § 6553. Right of Way and Reservoir Sites May be Condemned.

All such persons, companies, and corporations may appropriate and divert  
( §§ 6552, 6553 )

such waters, and may condemn right of way for ditches, canals, flumes, and pipe lines for the carrying of same, and may condemn the rights of riparian proprietors upon the lake or stream from which such appropriation is made, upon complying with the terms of this act. Such persons, companies, and corporations shall also have the right to condemn lands for the sites of reservoirs for storing water for future use, and for rights of way for feeders carrying water to such reservoirs, and for ditches, canals, flumes, or pipe lines carrying the same away, and shall have the right to take from any lake or running stream in this state and store away any water not previously appropriated or not needed for immediate use by any person having a superior right thereto. [L. 1899, p. 172, § 3; B. & C. § 5024.]

**§ 6554. Land May be Entered Upon for Surveys and Location.**

Such persons, companies, and corporations may enter upon any land for the purpose of locating a point of diversion of the water intended to be appropriated, and upon any land lying between such point and the lower terminus of its proposed ditch, canal, flume, or pipe line for the purpose of examining the same and of locating and surveying the line of such ditch, canal, flume, or pipe line, together with the lines of necessary distributing ditches and feeders for reservoirs, and to locate and determine the site for reservoirs for storing water. [L. 1899, p. 173, § 4; B. & C. § 5025.]

**§ 6555. Appropriator Must Post Notice.**

When a point of diversion shall have been selected, such appropriator shall post in a conspicuous place thereat a notice in writing containing a statement of the name of the ditch, canal, flume, or pipe line and of the owner thereof, the point at which its head gate is proposed to be constructed, a general description of the course of said ditch, canal, flume, or pipe line, the size or dimensions of the same in width and depth, the number of cubic inches of water (by miners' measurement under a six-inch pressure) intended to be appropriated, and the number of reservoirs, if any. [L. 1899, p. 173, § 5; B. & C. § 5026.]

**§ 6556. Maps of Description and Definite Location to be Filed.**

Within ten days from the date of posting such notice, such appropriator shall file for record in the office of the county clerk or recorder of conveyances, as the case may be, of the county in which said ditch or canal or flume or pipe line, distributing ditches, reservoirs, and feeders are situated, a similar notice, and at the same time shall file a map showing the general route of said ditch or canal or flume or pipe line; and in case said ditch or canal or flume or pipe line, distributing ditches, reservoirs, and feeders shall not lie wholly in one county, such notice and map shall be filed in the office of the county clerk or recorder of conveyances of each county in which any portion of said ditch or canal, flume, pipe line, distributing ditches, reservoirs, and feeders may be situated. Within sixty days from the completion of such ditch or canal or flume or pipe line, such appropriator shall in like manner file a

( §§ 6554-6556 )