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**DIVERT:** Send on a course or in a direction different from the planned or intended one.

**DIVERSION:** The act or an instance of diverting from a course, activity, or use.

A right can not be taxed.

[http://bulk.resource.org/gpo.gov/record/2000/2000\\_E01885.pdf](http://bulk.resource.org/gpo.gov/record/2000/2000_E01885.pdf)

Section 9 of the Grant Act of July 26, 1866, "acknowledged and confirmed" the right-of-way for the construction of ditches, canals, pipelines, reservoirs and other water conveyance/storage easements. Section 9 also guaranteed that water rights and associated rights of "possession" for the purpose of mining and agriculture (farming or stock grazing) would be maintained and protected.

This is the text from the Act of 1866:

[http://www.grantedright.com/The\\_Law.html](http://www.grantedright.com/The_Law.html)

1 **SEC. 9. *And be it further enacted,*** That whenever, by  
2 **priority of possession, rights to the use of water for mining,**  
3 **agricultural, manufacturing, or other purposes, have vested**  
4 **and accrued, and the same are recognized and acknowledged**  
5 **by the local customs, laws, and the decisions of courts, the**  
6 **possessors and owners of such vested rights, shall be main**  
7 **tained and protected in the same;**

612 is leasable and the Oregon law clearly says mining is a non-consumptive beneficial use. So we are back to the grant and that state law cannot interfere with the disposal of the land or property under the grant.

"APPROPRIATION OF WATER FOR MINING AND ELECTRIC POWER UNDER 1899 ACT

**541.110 Use of water to develop mineral resources and furnish power.** The use of the water of the lakes and running streams of Oregon for the purpose of developing the mineral resources of the state and to furnish electric power for all purposes, is declared to be a public and beneficial use and a public necessity. Subject to the provisions of the Water Rights Act (as defined in ORS 537.010), the right to divert un appropriated waters of any such lakes or streams for such public and beneficial use is granted."

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One of the purposes of the state's water resources program, as declared in ORS 536.310(1), is as follows:

"Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste[.]"

There is also something called the Water Appropriations Water Rights Water Doctrine that confirms "The development of the appropriations of water was contemporaneous with that of mining, because it met a mining need.". It isn't a statute but it is how the courts deal with water appropriations for mining. "The acts of 1866 and 1870 were held to be "rather the voluntary recognition of a pre-existing right of possession, constituting a valid claim to its continued use, than the establishment of a new one."; *BRODER v. NATOMA WATER & MINING CO.*, 101 U.S. 274, 23 L. Ed. 790., but they at least expressly sanctioned what before had rested only on implication."

### **From the Taylor Grazing Act:**

Citation: 43 U.S.C.A. 315 - 315r

§ 315b. Grazing permits; fees; vested water rights; permits not to create right in land

That nothing in this subchapter shall be construed or administered in any way to diminish or impair any right to the possession and use of water for mining, agriculture, manufacture, or other purposes which has heretofore vested or accrued under existing law validly affecting the public lands or which may be hereafter initiated or acquired and maintained in accordance with such law. <http://www.fs.fed.us/im/directives/fsh/5509.11/5509.11,60.txt>

62.11a - Act of July 26, 1866 (14 Stat. 254) (**43 USC 661**).

Miners are exempted under the water non-consumptive law for electric generation and mining.

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