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Oregon Flood Control Law

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Presented by

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Why Flood Control?

- Keeping up with the change
- Increased water levels; frequent flooding
- Public safety
- Urban areas with economic assets affected



Why Flood Control?

The “Great Flood” (Mississippi 1993) = \$15 - \$20 billion



Hurricane Katrina =
Over 1,800 deaths; \$200 billion

Super Storm Sandy = 268 deaths; \$70 - \$100 billion

Why Flood Control?



1996 Willamette Valley = 8 deaths; \$500 million

Flood Control Law

- Common Law
- Public Drainage Law
- Federal Flood Control
 - Flood Control Act
 - National Flood Insurance Program

Common Law on Drainage

1. Common Enemy Rule = Water is common enemy; each property may drain at will
2. Civil Law Rule = Upper landowner has natural easement over lower land to drain natural flow
3. Reasonable Use Rule = Each property owner can alter flow, but not “unreasonably”

Common Law

Oregon = *Modified* Civil Law Rule

Upper landowner has natural easement to drain
+ limited alteration and acceleration
+ due regard observed



Common Law

Permissible—*Garbarino v. Van Cleave*, 214 Or. 554 (1958)

- Defendants' clay tiles drained stormwater that followed natural flow to plaintiffs' property
- No evidence that tiles caused flooding and erosion

Common Law

Impermissible—*Levene v. City of Salem*, 191 Or. 182 (1951)

- City's flooding of nearby property, a private nuisance
- New increased, concentrated flow onto watercourse
- Tiles laid by City to facilitate increase were insufficient
- No outlet for new water; overflowed watercourse onto plaintiff's property

Public Drainage Law

A matter of public safety, public convenience,
and healthy community

Flood control is
a localized effort

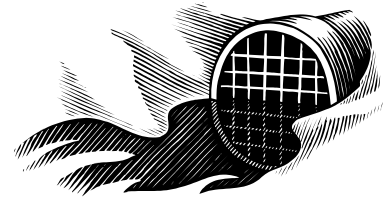


Public Drainage Law

- Diking Districts - ORS 551
- Water Improvement Districts - ORS 552
- Water Control Districts - ORS 553
- Drainage Districts - ORS 547
- Corporations for Drainage Improvement - ORS 554
- General Drainage and Flood Control - ORS 549

Public Drainage Law

ORS 547; ORS 549: Flow in district's system must be authorized; civil and criminal penalties (ORS 547.315; ORS 549.180; 549.990)



General Drainage and Flood Control - ORS 549: Gives county and state authority to operate flood control projects

Federal Flood Control (USACE)

1936 Flood Control Acts



- Federal government's foray into local flood control
- Federal funding and construction
- Locally O&M

Federal Flood Control

1936 Federally-Authorized Projects

Multnomah County—Multnomah Drainage District No. 1; Peninsula Drainage District Nos. 1 and 2; Sandy Drainage District; Sauvie Island

Columbia County—Scappoose Drainage District; Rainier Drainage District; Beaver Drainage District; McGruder Drainage District; Midland Drainage District; Marshland Drainage District; Webb Drainage District; Woodson Drainage District; Deer Island area; Prescott area; Westland area

Federal Flood Control

1936 Federally-Authorized Projects

Clatsop County—Westport District; Tenashillahe Island; Blind Slough; Drainage District No. 1; Knappa Area; Karlson Island; John Day River dikes; Walluskia River dikes; Youngs River dikes; Diking District Nos. 2, 3, 5,; Lewis and Clark River dikes; Warrenton Diking District; Warrenton Diking District Nos. 2 and 3.

Flood control works in Pendleton

Federal Flood Control

1936/1950 FCAs

Local sponsors must O&M to federal flood control standards

- Achieve “maximum benefits”
- Be subject to inspections by USACE
- No unauthorized encroachment

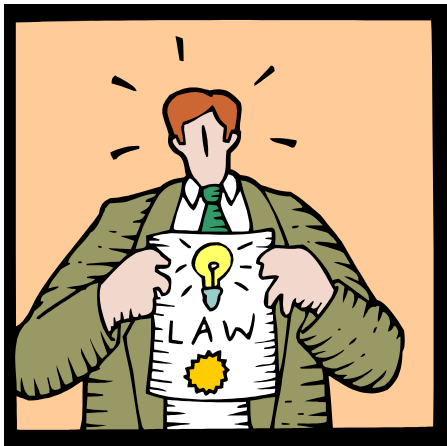
33 CFR § 208.10, 209.220

Federal Flood Control

Section 408 Permitting

“It shall not be lawful for any person or persons to *** build upon [or] alter *** injure, *** or in any manner whatever impair the usefulness of *** dike, levee, *** or other work built by the United States ***; [USACE] may grant permission [where] such occupation or use will not be injurious to the public interest and will not impair the usefulness such work ” (33 USC § 408)

Civil & criminal liability (33 USC § 411)



Federal Flood Control

USACE Rehabilitation and Inspection Program

- Regulate flood management through emergency management programs
 - disaster preparedness, advance measures, emergency operations, emergency dredging, and flood-related rescue operations
- USACE pay to repair damages to participating flood control structures

National Flood Insurance Program (FEMA)

- Federal control over state issue—local land use
- Insurance program—provides coverage of property damage caused by flood events



- Voluntary participation by the “community” = land use and zoning authority

National Flood Insurance

NFIP “benefits” available to participating communities

- Flood Insurance Rating Map—map SFHAs
- Must participate in NFIP to access federal aid and federally-backed loans
(Fannie Mae; Freddie Mac)
- Subsidized premium
- Federal \$ to help flood mitigation projects



National Flood Insurance

NFIP Community Obligations



- Adopt certain land use control to reduce risk of damage from flooding

City of Portland, City of Gresham, Multnomah County

- Restrict development in floodplains
- Adopt building standards

National Flood Insurance

An “Accredited” Levee

- A tool to reduce flooding risk
- Land behind an “accredited” levee is NOT mapped as a SFHA
- Avoids NFIP land use requirements

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