



An Introduction to
Oregon's Water Laws

WATER RIGHTS in OREGON

Oregon Water Resources Department
March 2008

Water Quantity Conversion Table

Water measurements are generally described using one of three terms. When applying for a permit to use water, an applicant is required to submit all measurements in one of the following terms.

Generally, when referring to a rate to be diverted, the terms used are cubic feet per second (cfs) or gallons per minute (gpm). When discussing volumes of water, such as amount applied to land, reservoir storage capacity, or yearly consumption, the term used is acre-feet (af). Applications for water use specify the appropriate measurement to use when filing information with the Department.

Rates of Flow

One (1) cubic foot per second (cfs) is a rate of water flow that will supply one cubic foot of water in one second and is equivalent to flow rates of:

1 cfs =

7.48 gallons per second

448.8 gallons per minute

646,272 gallons per day

1.98 acre-feet per day

Volume Measurement

One (1) acre-foot is the volume of water that will cover one acre to a depth of one foot and is equal to:

1 af =

43,560 cubic feet

325,851 gallons

Land Subdivision

6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

-----Township 6 miles-----

NW NW	NE NW	NW NE	NE NE
SW NW	SE NW	SW NE	SE NE
NW SW	NE SW	NW SE	NE SE
SW SW	SE SW	SW SE	SE SE

Section

1 Mile
640 acres

160 acres	80 acres	10
		20
		40 acres
320 acres		

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THE WATER RESOURCES COMMISSION AND DEPARTMENT

“To serve the public by practicing and promoting responsible water management.”

The Water Resources Commission is a seven-member citizen body established by statute to set water policy for the state and oversee activities of the Water Resources Department in accordance with state law. Members are appointed by the Governor, subject to confirmation by the Oregon Senate, for four-year terms. One member is appointed from each of five regional river basin management areas, and two “at large” members from east and west of the Cascades.

The Water Resources Department is the state agency charged with administration of the laws governing surface and ground water resources. The Department is organized into five divisions— Field Services, Technical Services, Water Rights and Adjudications, Administrative Services, and the Director’s Office—all operating under the immediate authority of the Director.

The Director is appointed by the Governor to serve a four-year term, subject to confirmation by the Oregon Senate. The Director is charged with applying the Commission’s adopted policies and rules through Department programs. In addition, the Director has independent responsibility for general stream adjudications.



1. OREGON WATER LAWS

water management in Oregon

The Water Code

Under Oregon law, all water is publicly owned. With some exceptions, cities, farmers, factory owners, and other water users must obtain a permit or water right from the Water Resources Department to use water from any source— whether it is underground, or from lakes or streams. Generally speaking, landowners with water flowing past, through, or under their property do not automatically have the right to use that water without a permit from the Department.

For more information refer to ORS 537.110

Prior Appropriation

Oregon's water laws are based on the principle of prior appropriation. This means the first person to obtain a water right on a stream is the last to be shut off in times of low streamflows. In water-short times, the water right holder with the oldest date of priority can demand the water specified in their water right regardless of the needs of junior users. If there is a surplus beyond the needs of the senior right holder, the water right holder with the next oldest priority date can take as much as necessary to satisfy needs under their right and so on down the line until there is no surplus or until all rights are satisfied. The date of application for a permit to use water usually becomes the priority date of the right.

With some exceptions, in order to take and use the waters of Oregon, a citizen must first obtain a permit from the Water Resources Department. The water must be used for a beneficial purpose, without waste.

The prior appropriation doctrine is the basis of water law for most of the states west of the Mississippi River. East of the Mississippi, the riparian doctrine usually applies. Under the riparian doctrine, only landowners with water flowing through their property have claims to the water. In Oregon, the prior appropriation doctrine has been law since February 24, 1909, when passage of the first unified water code introduced state control over the right to use water. Before then, water users had to depend on themselves or local courts to defend their rights to water.

OREGON'S WATER CODE

four fundamental provisions

- **Beneficial purpose without waste**

Surface or ground water may be legally diverted for use only if it is used for a beneficial purpose without waste.

- **Priority**

The water right priority date determines who gets water in a time of shortage. The more senior the water right, the longer water is available in a time of shortage.

- **Appurtenancy**

Generally, a water right is attached to the land described in the right, as long as the water is used. If the land is sold, the water right goes with the land to the new owner.

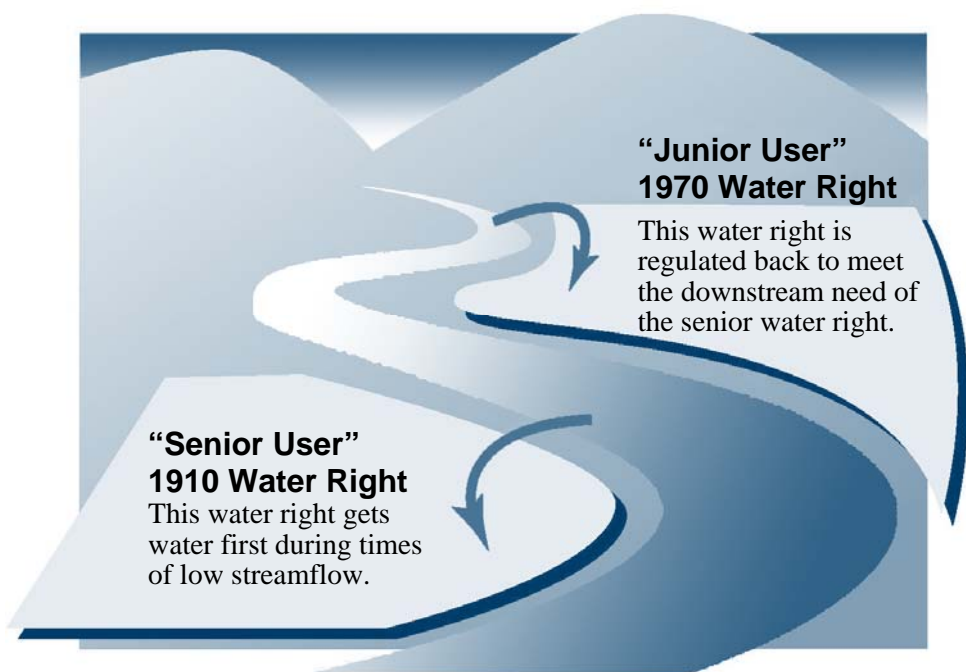
- **Must be used**

Once established, a water right must be used as provided in the right at least once every five years. With some exceptions established in law, after five consecutive years of non-use, the right is considered forfeited and is subject to cancellation.

Generally, Oregon law does not provide a preference for one kind of use over another. If there is a conflict between users, the date of priority determines who may use the available water. If the rights in conflict have the same date of priority, then the law indicates domestic use and livestock watering have preference over all other uses. However, if a drought is declared by the Governor, the Department can give preference to stock watering and household consumptive purposes, regardless of the priority dates of the other users. Ground water rights for

Prior Appropriation: an example

“First in time, first in right”



An example of prior appropriation at work

Prior appropriation ensures that the first water user to obtain water rights has first access to water in times of shortage. If a “downstream” landowner has the earlier priority date (they initiated their water right in 1910) the “upstream” landowner may have to let the water pass unused to meet the needs of the senior, downstream water right holder.

geothermal uses, such as heating or air conditioning, are always junior in priority to other uses of water unless the water is also used for another purpose, such as irrigation, or injected back into the ground water reservoir.

Some uses of water are exempt from the requirement to obtain a permit. These are called “exempt uses.”

Exempt uses of surface water include:

1. Natural springs: use of a spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of the year.

2. Stock watering: where stock drink directly from a surface water source and there is no diversion or other modification to the source. Also, use of water for stock watering from a permitted reservoir to a tank or trough, and, under certain conditions, use of water piped from a surface source to an off-stream livestock watering tank or trough.

3. Salmon: egg incubation projects under the Salmon and Trout Enhancement Program (STEP) are exempt. Also, water used for fish screens, fishways, and bypass structures.

4. Fire control: the withdrawal of water for emergency fire fighting or certain non-emergency fire fighting training.

5. Forest management: certain activities such as slash burning and mixing pesticides. To be eligible, a user must notify the Department and the Oregon Department of Fish and Wildlife and must comply with any restrictions imposed by the Department relating to the source of water that may be used.

6. Certain land management practices: where water use is not the primary intended activity.

7. Rainwater: collection and use of rainwater from an artificial impervious surface (like a parking lot or a building's roof).

For more information, refer to ORS 537.141.

Ground water exempt uses include:

1. Stock watering.

2. Lawn or noncommercial garden: watering of not more than one-half acre in area.

For more information, refer to ORS 537.545.

3. Single or group domestic purposes: not exceeding 15,000 gallons per day.

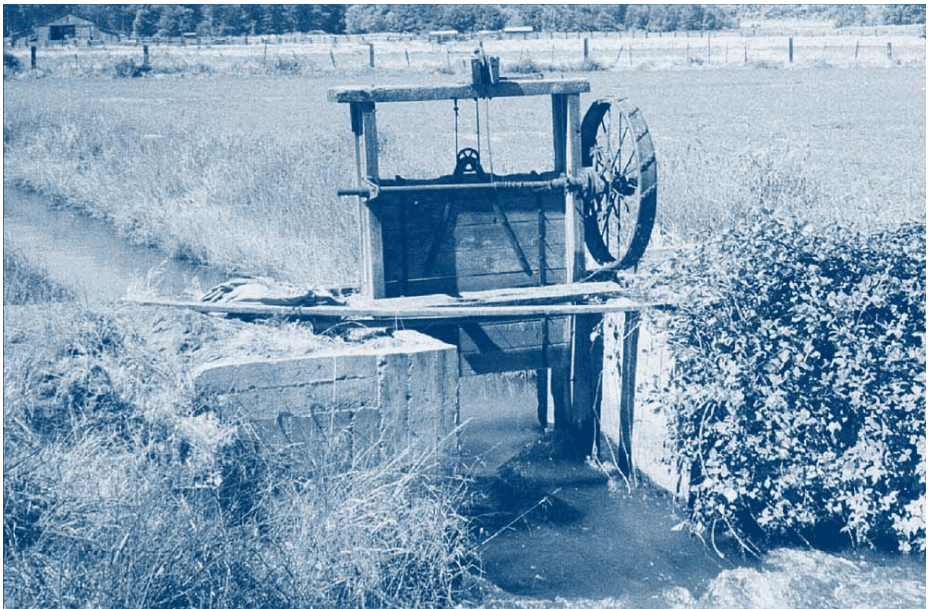
4. Single industrial or commercial purposes: not exceeding 5,000 gallons per day.

5. Down-hole heat exchange uses.

6. Watering school grounds: ten acres or less, of schools located within a critical ground water area.

Note: While these water uses do not require a permit, the use is only allowed if the water is used for a “beneficial purpose without waste” and may be subject to regulation in times of water shortage.

Wells supplying water for exempt ground water uses must comply with Oregon’s minimum well construction standards for the construction, maintenance, and abandonment of any well.





2. WATER PROTECTIONS AND RESTRICTIONS

managing water appropriations

Basin-by-Basin Water Use Restrictions

Some waters within the state may be closed to new appropriation by legislative action or restricted by an administrative rule or order of the Water Resources Commission. These restrictions on new uses from streams and ground water aquifers are adopted to assure sustained supplies for existing water users and to protect important natural resources. Except in very severe situations (e.g., critical ground water areas), these restrictions do not affect existing water uses, only the Department's ability to authorize new uses in these basins.

Basin Programs

The Water Resources Commission adopts basin programs to set policies for managing river basins. A river basin includes all the land area, surface water bodies, aquifers, and tributary streams that drain into the major namesake river. A map of the state's river basins is on the last page of this booklet.

Basin programs include water use "classifications" that describe the types of new water right applications that may be considered by the Department. Applicants should check with the Department before submitting an application to determine what classifications have been adopted on the proposed source of water.

The Commission has adopted basin programs for all but two of the state's 20 major river basins. Although the Commission has not adopted comprehensive basin programs for the Klamath and Malheur Lake basins, use of water in those basins is still subject to other administrative rules. The Commission may revise classifications in basin programs when the lack of available water or other factors indicate that new appropriations should not be allowed. Any change in the classification of a stream or

Water measurement is an essential component of distributing water to senior rights during low stream-flows.

These measurements help the Department monitor the state's water resources and plan for future needs in each basin.

aquifer restricts only new uses of water.

Critical Ground Water Areas

The law requires that when pumping of ground water exceeds the long-term natural replenishment of the underground water reservoir, the Water Resources Commission must act to declare the source a critical ground water area and restrict water use. The law is designed to prevent excessive declines in ground water levels. The order setting the limits of the critical area may also provide for certain users of water to have preference over other users, regardless of established water right priority dates. Critical ground water areas also can be declared if there is interference between wells and senior surface water users or deterioration of ground water quality.

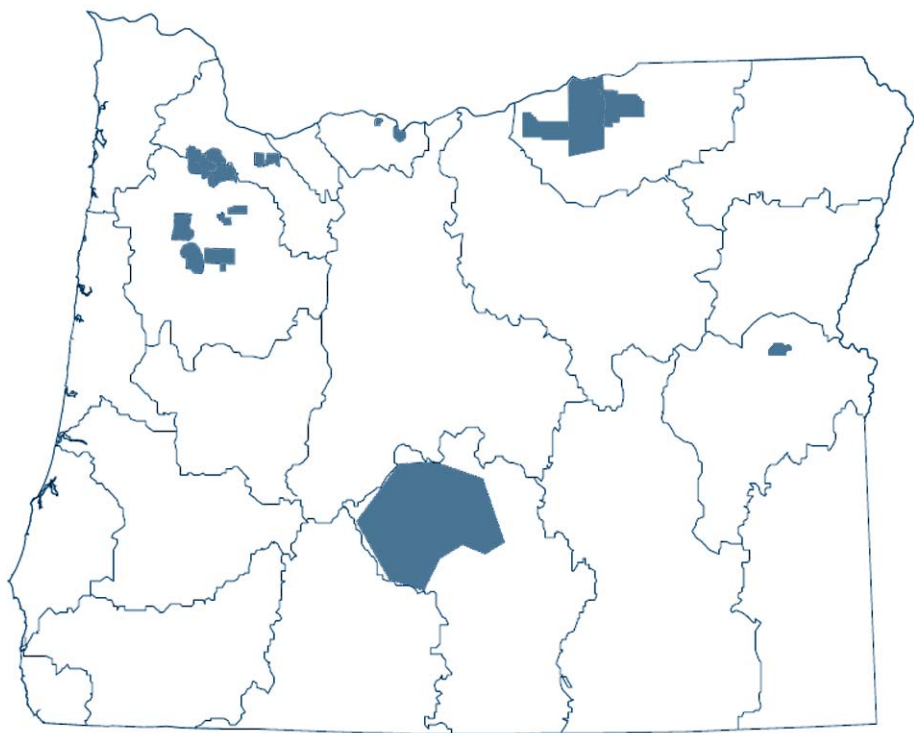
Once a critical ground water proceeding is initiated by the Commission, no new well permits are issued during the course of the proceeding. The final order may restrict both existing and future uses in order to stabilize the resource.

To date, Oregon has declared seven critical ground water areas. The critical areas are Cow Valley near Vale; The Dalles in Wasco County; Cooper Mountain-Bull Mountain southwest of Beaverton and Tigard; and the Butter Creek, Ordinance (alluvial and basalt) and Stage Gulch areas in Morrow and Umatilla Counties.

Ground Water Limited Areas

The northern Willamette Valley and much of the Columbia River plateau contain many sources of ground water that are isolated in volcanic rock. These aquifers are in the Columbia River Basalt group, or basalt for short. Heavy pumping from the basalt and another geologic unit, the Troutdale Formation, have caused declines in these areas.

The Commission has established 12 “ground water limited areas” in the northern Willamette Valley. These areas are in the following approximate locations: Sandy-Boring, Damascus, Glad Tidings, Kingston, Mt. Angel, Sherwood-Damascus-Wilsonville, Stayton-Sublimity, Parrett



■ **MANAGEMENT AREA** Restricted Classification, Limited Areas, Critical Areas

Mountain, Chehalem Mountain, Eola Hills, South Salem Hills, and Amity Hills-Walnut Hill. The Willamette and Sandy Basin programs list the limitations. Outside the Willamette Valley are the Fort Rock and Ella Butte limited areas. Through changes to the basin programs, new water rights in these areas are restricted to a few designated uses.

For more information, refer to OAR 690-502.

The Department's role is to protect existing water rights by preventing excessive ground water declines, restoring aquifer stability, and preserving aquifers with limited storage capacity for designated high public value uses. As more wells are drilled, the Department may find other areas where use from basalt and other aquifers must be limited. Such limitation applies to the specific aquifer that a well is tapping. In some cases, water may still be available at a different depth from a different geologic formation.



3. OBTAINING NEW WATER RIGHTS

gaining authorization to use water

Water rights are obtained in a three-step process. The applicant first must apply to the Department for a permit to use water. Once a permit is granted, the applicant must construct a water system and begin using water. When water is applied the permit holder must hire a certified water right examiner to complete a survey of water use and submit to the Department a map and a report detailing how and where water is being applied. If water has been used according to the provisions of the permit, a water right certificate is issued based upon the report findings.

In order to divert and use the waters of Oregon, a citizen must first obtain a permit from the Water Resources Department. The water must be used for beneficial purpose, without waste.

In most areas of the state, surface water is no longer available for new uses on a year-round basis. Ground water supplies may also be limited in some areas. Allowing new uses of water is done carefully to preserve the investments already made in the state, whether in farms, factories, or improvement of fish habitat.

Water rights are not automatically granted. Opportunities are provided for other water right holders and the public to protest the issuance of a permit. Water users can assert that a new permit may injure or interfere with their water use, and the public can claim that issuing a new permit may be detrimental to the public interest. This provides protection for both existing water users and public resources.

Water-Use Permits

The First Step: requesting a water-use permit

For more information, refer to ORS 537.130 and ORS 537.535.

A permit is the authorization from the Department necessary to begin constructing a water system and begin using water. Once the Department issues a permit, if the user complies with the conditions of the permit and develops their water right, the Department cannot later decide to revoke or change the permit or impose new standards for the use.

Applications and more detailed instructions are available at all Department offices and on the Department's website at www.wrd.state.or.us.

For an application to be considered, an applicant must submit a completed application to the Department along with other information and maps, as required by statute.

Types of information that may be required:

1. A legal description of the property involved (may be found on a deed, land sales contract, or title insurance policy).
2. A map showing the features of the proposed use and proposed source located according to township, range, and section including any roads or other right of ways crossed by proposed diversion works.
3. In most cases, a statement declaring whether the applicant has written authorization permitting access to land not owned by the applicant (including land crossed by proposed diversion works).
4. The names and addresses of any other property owners that may be affected by the proposed development.
5. Land use information obtained from the affected local government planning agency.
6. Supplemental Form (if necessary) such as Form I for irrigation or Form M for a municipal right.

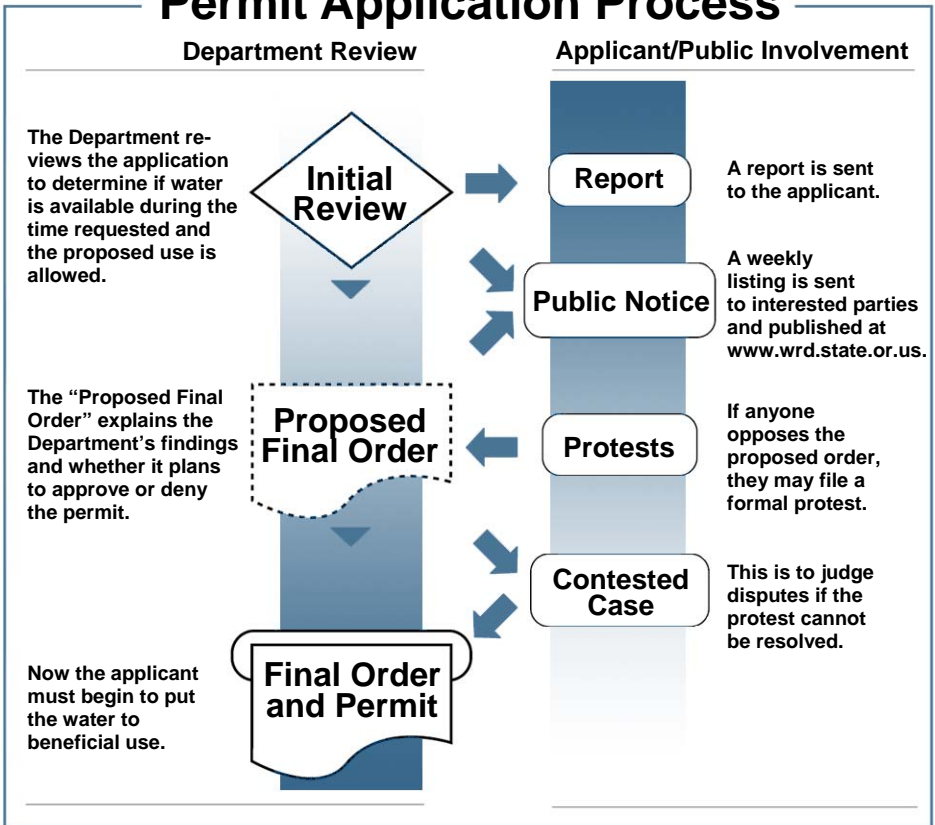
Oregon law also requires that the applicant pay a fee set by statute. This fee contributes to the costs of reviewing and handling the application. A fee schedule is available from the Department on request and can be found online at www.wrd.state.or.us.

It is important that application instructions are carefully followed. If application materials are incomplete, they will be returned to the applicant.

The requirements outlined in the Oregon statutes and the Department's administrative rules generally require the Department to issue a final order approving or denying the application within eight months.

However, if protests are filed, the Department may schedule a contested case hearing to resolve issues raised

Permit Application Process



in the protest(s). A contested case hearing often extends the process beyond eight months.

Pre-application consultation

Applicants with complex requests, or applicants who are unfamiliar with the application process, are encouraged to contact the Department to schedule a "pre-application conference." The Department's Water Rights Section staff are available to meet with applicants about their proposed project.

Application review

During the application review stage, applications are examined by the Department to ensure that allowing the proposed use will not cause injury to other users or public resources. The Department also determines if water is likely to be available for use and considers many other

To inquire about a pre-application conference, please contact the Salem office at: (503) 986-0900.

factors in its analysis of the application. These factors include basin plan restrictions that might prohibit certain uses or further appropriations, local land use restrictions, impacts on sensitive, threatened or endangered species, water quality, and other state and federal rules.

For example, when considering a water right application in or above a state scenic waterway, the Department is required by law to find that the proposed use will not impair the recreational, fish, and wildlife values in the scenic waterway. The Department has prepared estimates of the streamflow levels needed to satisfy these uses. These flows may be used in determining whether new water rights in or above a scenic waterway should be authorized.

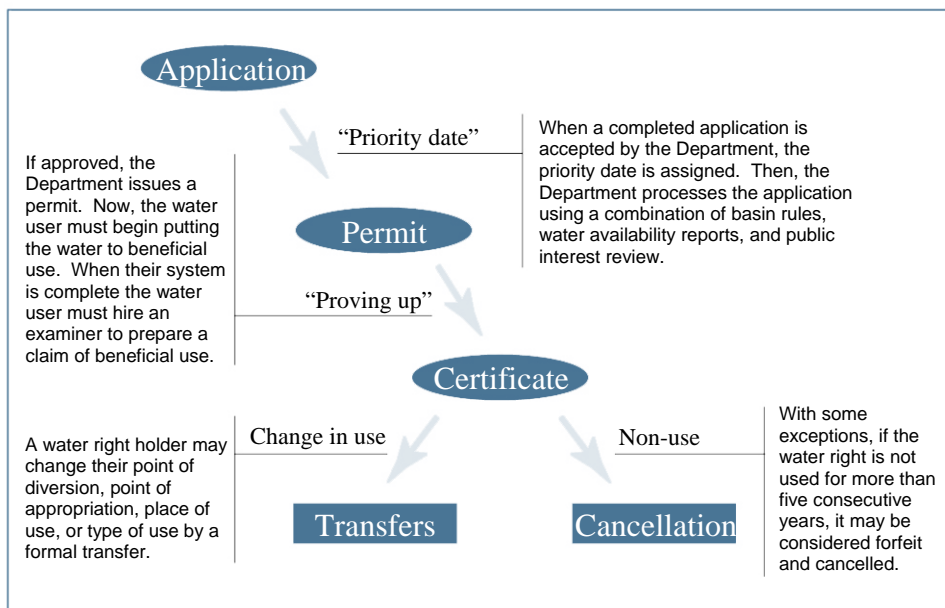
Also during the application review stage, other water right holders, government agencies, and the public may comment on or protest the application.

When applicants seek to use stored water only, the application will receive an expedited review leading directly to a final order, unless public interest issues are identified following the public notice of filing. If such issues are raised adequately, the application will undergo the standard review process to allow thorough public participation.

The Second Step: constructing the system and using water

Once the Department determines that a new water use can be allowed, a permit is issued. The permit will contain time limits to develop the water use. Other conditions may also be placed on the permit, such as a requirement for metering the water use, reporting water use, or installing and maintaining fish screens.

Permits generally require the water user to develop the water use within four or five years. The permit holder may apply for an extension of time to fully develop the water use. The Department considers each request for an extension of time on a case-by-case basis. If there is good



cause for not completing the water use in a timely manner and the permit holder has shown diligence in trying to meet the requirements of the permit, an extension may be granted.

Changing or modifying a permit

The point of diversion or the place of water use under a permit may be changed by submitting an application to the Department. The application is similar to a transfer application (discussed on pages 29-33), except the required map does not have to be prepared by a certified water right examiner. The change in the permit will be allowed only if it will not cause injury to other water rights. Under certain, limited circumstances, permit holders may also change a surface water point of diversion to a nearby ground water source. The other terms and conditions in the permit cannot be changed.

The Third Step: “proving up” the water use

Once the water project is completed, the permit holder must send notice to the Department that work has been completed. The permit holder is then required to submit proof of water use to the Department.

Except for certain small ponds, as described on pages 22-23, a water user must hire a certified water right examiner (CWRE) to survey the extent of water use and within one year of completion (or the completion date, whichever is sooner) submit a map and claim of beneficial use to the Water Resources Department. This allows the Department to evaluate the extent of water use developed within the terms and conditions of the permit. Certified water right examiners are registered, professional surveyors, geologists, or engineers who have passed a test given by the Oregon State Board of Examiners for Engineering and Land Surveying. For a list of CWREs, call the Department in Salem at (503) 986-0900 or your local watermaster listed on pages 40-41.

In some instances, personnel from the Department may conduct a brief field inspection of the completed appropriation to check the accuracy of the survey supplied by the CWRE. The inspector may want to check the size and type of equipment or verify that the amount of water requested has been put to use according to the permit. If necessary, water measurements may be taken. In some cases, applicants inadvertently ask for too much water or simply use less water than originally intended. Oregon's water law provides that a certificate may be issued only for the quantity of water that is beneficially used: the quantity of water that can be applied without waste or the amount allowed by the permit, whichever is less.

Final Certificates: the “perfected” water right

With the final proof survey map and water-use report, the Department will determine if the permit holder has met the conditions of the permit. If so, a water right certificate is issued. The water right certificate will continue to be valid as long as the water is used according to the provisions of the water right at least once every five years. (For exceptions to this requirement, see pages 33-34 on cancellation of water rights.)

The amount of water allowed in the certificate will be an instantaneous rate and/or an annual amount. The appropriator may divert a certain maximum rate but may not exceed the total amount allowed for the year. The instantaneous rate is usually expressed in cubic feet per second (cfs) or gallons per minute (gpm) and the annual amount in acre-feet (af). A conversion table for cfs, gpm, and af is located on the inside cover of this booklet.

A water right permit or certificate will not guarantee water for the appropriator. Under the prior appropriation doctrine, the water right authorizes diversion of water only to the extent water is available. The amount of water available to a water right holder depends on the water supply and the needs of senior priority date water rights, including water rights for instream use.

Water Dedicated to Instream Uses

The Department also approves water rights for protecting fish, minimizing the effects of pollution, or maintaining recreational uses. These water rights are called “instream water rights”. Instream water rights establish flow levels to remain in a stream on a month-by-month basis and are usually set for a certain stream reach and measured at a specific point on the stream. Instream water rights have a priority date and are regulated in the same way as other water rights.

For more information, refer to ORS 537.336.

Instream water rights were established by the 1987 Legislature. This law allows the Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation to apply for instream water rights. The law gives instream water rights the same status as other water rights. However, in a Governor-declared drought, Oregon law allows the Department to give preference to human consumption and livestock watering over other uses including instream uses.

Instream water rights are not guarantees that a certain quantity of water will be present in the stream. When the quantity of water in a stream is less than the instream

water right, the Department will require junior water right holders to stop diverting water. However, under Oregon law, an instream water right cannot affect a use of water with a senior priority date.

For more information, refer to ORS 537.348 and OAR 690-077 & OAR 690.380.

Oregon law also allows water right holders to sell, lease, or donate water rights to be converted to instream water rights. This is done through a short-term lease agreement or by a formal transfer of the existing right from the current use to a new type of use. Instream leases and transfers are discussed on pages 29-33.

Rights to Store Water

Reservoirs and Ponds

The construction of a reservoir or pond of any size to store water requires a permit from the Department. A permit to construct a reservoir allows storage of streamflow and is usually filled from higher streamflows that occur during the winter months.

For more information, refer to ORS 537.400.

A permit for a reservoir with the sole purpose of storing water is considered the primary permit. Permittees intending to divert and use or maintain water stored in the reservoir or pond, will need an additional, or secondary, water use permit.



A holder of a water right to the natural flow of a stream has no right to water stored in the reservoir of another water right holder. A reservoir water right holder usually does not have to release stored water to satisfy the needs of senior, natural flow rights on the same stream system. The operator of the reservoir must, however, provide some means of passing natural streamflow through or around the reservoir to satisfy downstream prior water right holders and instream water rights.

Reservoirs with a dam 10 feet or greater in height and that store 9.2 acre-feet or more of water must submit a map prepared by a CWRE, as well as engineering plans and specifications for approval by the Department before the reservoir is constructed. Smaller reservoirs and dams do not require CWRE application maps or engineered designs and plans; however, the Department highly encourages dam builders to seek the Department's technical review of plans before beginning construction. This will help ensure a sound dam with the necessary safeguards in place for the protection of downstream property owners.

Alternate review process for smaller reservoirs

An alternative permit application process is available to persons interested in building small reservoirs storing less than 9.2 acre-feet of water or in reservoirs with dams less than 10 feet in height.

This process involves an expedited review process and requires the Department to grant a permit or deny the application within six months. Fees for this type of permit are generally lower than those required for other types of permits. For certain reservoirs or ponds filed under this process, those that store less than 9.2 acre-feet and do not have a secondary permit to use the stored water, a CWRE survey is not required to receive a water right certificate. Instead, permittees may submit information on the dimensions, capacity, and location of such reservoirs to the Department. If you have questions about which type of application process is best for you, please call the Department at (503) 986-0900 or contact your local watermaster (see pages 40-41).

For more information, refer to ORS 537.409.



4. OTHER WATER RIGHTS

authorizations for water use

Rights Through Customary Use

If water was used prior to enactment of the 1909 water code and has been used continuously since then, the property owner may have a “vested” water right. Because a water right is attached to the place of use, this is true even if the ownership of the property has changed.

A claim to a vested water right can be determined and made a matter of record only through a legal process known as an “adjudication proceeding.” The responsibility of the Department in the adjudication process is to gather information about the use of water and present its findings to the circuit court in the county where the water is used. The court then issues a decree that states who has the right to use water, the amount and location of water use, and the priority date for each right. The Water Resources Department then issues a water right certificate for each decreed right. The date of priority for a right determined through an adjudication proceeding is usually the date construction of the project began or the date when water was first used on the property.

Adjudication proceedings have been completed for most of the major stream systems in eastern and southern Oregon and a few of the larger tributaries to the Willamette River. Nearly 100 decrees have been issued on individual streams in Oregon. Water right certificates have been issued for most of the decreed rights. An adjudication proceeding is underway in the Klamath Basin, which involves private water users, the Bureau of Reclamation, other federal agencies, and the Klamath Tribes.

For more information, refer to ORS 539.240.

Legislation passed in 1987 required persons claiming pre-1909 rights in areas not yet adjudicated to file surface water registration statements before December 31, 1992. Failure to file this registration statement by the deadline created the rebuttable presumption that the person had no

claim to a water right. These statements do not automatically assure rights will be granted to those who have filed. Each vested right will be determined through the courts in an adjudication proceeding.

For more information, refer to ORS 539.300.

Adjudication proceedings are also used to determine the water rights for federal reservations of land. This includes Indian reservations and other federal reservations. Legislation passed in 1987, and amended in 1993, allows the Director of the Department to act on behalf of the State of Oregon to negotiate settlements for these rights. These negotiations allow the Director to include claimants, state and federal agencies, other water users, and public interest groups in discussions that resolve and quantify the use of the water on these reservations.

Limited Licenses

Oregon law also provides a method for obtaining permission to divert and use water for a short-term or fixed duration. Under current law, certain types of uses can be allowed using a “limited license” provided that water is available and the proposed use will not injure other water rights. These authorizations allow landowners and developers to use water for purposes that do not require a permanent water right. A limited license may be available as soon as three weeks after filing an application with the Department.

For more information, refer to ORS 537.143 & OAR 690-340.

Limited licenses are “junior” to all other uses and subject to revocation at any time. There is no guarantee that water will be available.

Uses under a limited license may include, but are not limited to, road construction, fire fighting, general construction, rangeland management, and emergency use authorization. Uses of a longer duration may also qualify for limited licenses.

Generally, irrigation uses are not allowed under a limited license. In some cases, however, a limited license may be used to establish a crop that will not require further

irrigation once established. In cases of severe drought, the Department may issue limited licenses so landowners can avoid irreparable crop damage by continuing the use of water after the close of the irrigation season. In addition, a limited license may be used for irrigation purposes in cases where the license is issued for use of stored water, provided certain criteria are met.

The Department conducts a review of an application for limited license to assess the proposed use, diversion, and location for water availability and public interest concerns such as threatened or endangered fish, water quality limited streams or scenic waterways. The Department provides an opportunity for the public to comment on a proposed limited license. If the Department finds that water is available and the proposed use will not impair the public interest, a limited license is issued with terms and conditions similar to those of a water use permit. The license includes a condition that specifies when it expires.





5. TRANSFERRING WATER RIGHTS

existing rights for new uses

The use of water under a water right is restricted to the terms and conditions described in the water right certificate: place of use, point of diversion, and type of use. For example, if a water right holder establishes the right to irrigate a particular 20-acre tract of land, the water cannot be diverted from a different point or source, nor can it be used to irrigate other land. It cannot be used for any other purpose than the type of use indicated in the water right.

The water right holder must file a transfer application with the Department to change a point of diversion, point of appropriation, type of use, place of use, or any combination of these.

Watermasters use cable cars to take stream measurements on rivers too large or unsafe to wade. Gathering streamflow information is an important part of the Department's commitment to protect water rights and Oregon's water resources.

Permanent Transfers

An application for a permanent transfer generally requires a map prepared by a certified water right examiner (CWRE). The applicant must submit an application describing the current water right, the proposed change, and provide evidence of water use, land ownership or consent by the landowner, and, in most cases, compliance with local land use plans. The water may continue to be used in accordance with the current water right until the transfer is approved. Use as proposed may only occur once the transfer order is issued.

To approve a transfer application, the Department must determine that the proposed change will not injure other water rights. The public is offered a chance to comment and protest a proposed transfer if they believe an existing water right would be injured. The Department, working with the applicant, may attach conditions to an approval order to eliminate potential injury to other water rights. If conditional approval will not eliminate injury, the application is denied.

After the transfer is approved, the applicant must make the

For more information, refer to ORS 540.510 & 540.520.

change. In the case of a change in use or place of use, any portion of the water right involved in the transfer that is not changed is lost. Following completion of the change, a CWRE must prepare a final proof map and site report to be submitted with the applicant's claim of beneficial use. The map and claim of beneficial use describe the completed change and the extent of the modified water right. A new water right certificate will be issued to confirm the modified water right.

Temporary Transfers

For more information, refer to ORS 540.523 & OAR 690-380.

A water user may temporarily change the place of use of a water right to allow a right attached to one parcel of land to be used on another parcel. A temporary transfer may not exceed a period of five years. This type of transfer is typically used for crop rotations or other rotational uses of water. The application for a temporary transfer is the same as the permanent transfer, however the required map does not have to be prepared by a CWRE.

Except under limited circumstances, Oregon law does not authorize a temporary change in the type of use of a water right. A temporary point of diversion change may be made if it is necessary to convey water for a temporary change in place of use. The Department can revoke a temporary transfer if the change results in injury to other water rights.

Other Transfers

If a government action causes a change in surface water levels that impairs the use of an authorized point of diversion, a special transfer process is available to change the point of diversion. This process is available for both certificated water rights and permits.

If an individual (not a company, government body, or other entity) has been using a diversion point for over ten years that is not the authorized point of diversion, the individual may request an abbreviated transfer process to change the certificated point of diversion to the current point of diversion. This change may only be made if there have been no complaints about the alternate point of

diversion and if the change can take place without causing injury to other water rights.

District Transfers

Irrigation districts and certain other districts that deliver water may apply for a specific kind of transfer that allows the district to make several transfers in a single annual application. Districts may take control and transfer unused water rights within the district after specific notification to the landowner. Districts may also transfer a point of diversion for one irrigation season in the event that an emergency prevents the district from diverting at the authorized point of diversion.

For more information, refer to ORS 537.570 and ORS 540.580 & OAR 690-385.

Transfers and Leases for Instream Use

Water rights may be transferred or leased for instream uses. Instream transfers and leases must show that injury will not occur and that a beneficial use will be made of the water, such as fishery habitat or flow augmentation to improve water quality. Instream transfers and leases carry the priority date of the original right. The water may not be diverted by any junior user while it is an instream right or lease.

For more information, refer to ORS 537.348.

Permanent Instream Transfers

The instream water right statutes allow a water right to be permanently transferred to instream use or transferred for a specific period of time. At the end of a time-limited instream transfer, the right automatically reverts back to its original place and type of use. Time-limited instream transfers are generally used for periods of time exceeding five years; otherwise, the instream leasing process is the preferred option.

For more information, refer to OAR 690-077 & OAR 690-380.

Instream Leasing

The instream leasing program allows water right holders a way to protect water rights that are currently unused while also providing instream benefits. Leases go through an expedited review process. The term of an instream use lease cannot exceed five years, but it may be renewed.



Split season leasing allows for both instream and existing uses to occur from the same water right, but at different times of the year with appropriate measurement and monitoring to prevent enlargement or injury.

Water rights for surface water use, storage, the use of stored water, and water saved through the conserved water program (see pages 34-37) may be leased instream.

Ground Water Registration Modifications

Ground water registrations are claims for rights to use ground water established prior to 1955 and for which the Department has issued certificates of registration. The Department may recognize a change in use, place of use, or point of appropriation for a ground water registration if the Department determines that the change will not injure other water rights.

Recognition of a modification in a ground water registration does not confirm the right, which can only be confirmed in a future adjudication proceeding. Pending that determination, the holder of a registration may use ground water as described in the certificate of registration, or as modified by the Department's recognition of changes.

6. CANCELLING WATER RIGHTS

loss of water rights through non-use

A water right remains valid as long as it is not cancelled and beneficial use of the water is continued without a lapse of five or more consecutive years. According to Oregon law, except for municipal rights and in certain other cases, if any portion of a water right is not used for five or more consecutive years, that portion of the right is presumed to have been forfeited and is subject to cancellation.

For example, if your water right is for irrigation of 40 acres and you irrigate only 20, the portion of land not irrigated for five consecutive years is subject to cancellation. However, diverting less than the full amount

For more information, refer to ORS 537.585 to 537.610 & OAR 690-382.

For more information, refer to ORS 540.610.

of water allowed under your right to irrigate the full 40 acres will not result in forfeiture, if you are ready, willing and able to use the full amount. If you have reduced the capacity of your water delivery system, you may lose any water not used beyond the capacity of your system.

Once a water right has been unused for five consecutive years or more, it is subject to cancellation even if the property owner begins to use the water again. Under the law, the right is presumed to be forfeited and reuse does not reinstate the right. This is true even if the current owner did not own the property when use was discontinued. Under certain conditions, however, such as extreme drought and federal set-aside programs, non-use may exceed five consecutive years without forfeiture of the right.

Cancellation of a forfeited water right is not automatic. Cancellation requires a legal proceeding to determine whether or not the period of non-use has occurred. If more than 15 years have passed since the period of non-use, the water right is not subject to cancellation. A legal proceeding is not necessary if the landowner voluntarily authorizes cancellation.

Administrative proceedings to determine the validity of a water right may be initiated by the Department. This usually happens when individuals with firsthand knowledge of non-use come forward and provide sworn affidavits asserting non-use.

Once a water right is cancelled, a landowner must apply for and obtain a new water right permit before using the water. A new application for a water right permit is subject to current laws and rules.

7. CONSERVATION

encouraging efficient water use

The Department encourages the efficient use of water and practices that conserve water resources. Oregon law



requires that all water that is diverted by water right holders be used beneficially and without waste. This means that a right holder is required by law to use only the amount necessary for the intended purpose and no more, up to the limits of the water right.

Allocation of Conserved Water

With improving technology and distribution methods, water users are now able to do the same work with much less water than was required in the past. However, the water saved by improved technology and efficient practices cannot automatically be put to uses beyond those specified in a water right. For example, if the installation of an improved irrigation system reduces water use from six acre-feet per year to only two acre-feet per year, the four acre-feet that is saved cannot be used on other lands or for other purposes under the existing water right.

State law does allow a water right holder to submit a conserved water application to the Department and receive authorization to use a portion of the conserved water on additional lands, apply the water to new uses, or dedicate the water to instream use. The percentage of saved water that may be applied to new uses or lands depends on the amount of state or federal funding contributed to the conservation project. The law requires that the remaining percentage of the saved water be returned to the stream for improving instream flows, if needed. The original water right is reissued to reflect the quantity of water being used with the improved technology and the priority date stays the same. Another water right certificate is issued for the new use with either the same priority date or a priority date of one minute after the original water right. This process gives a water right holder the option of extending the use of their right without applying for a new permit or transferring an existing permit.

For more information, refer to ORS 537.465 & OAR 690-018.

Water Management and Conservation Planning

Some agricultural and municipal water suppliers are required to prepare water management and conservation plans. Development of these plans involves a step-by-step

evaluation of the water supply alternatives available to the supplier and an evaluation of the role that water conservation can have in meeting the supplier's water needs. In addition, the assessments of conservation measures required for the plans helps to ensure that the supplier's use is not wasteful. Department staff provide workshops and other technical assistance to water suppliers preparing water management and conservation plans.

8. FINDING WATER RIGHTS

determining if you have a water right

All legally established water rights, whether they are under permits, undetermined claims through ground water registration or vested right statements, or certificated rights, are on record in the Salem office of the Water Resources Department. Records of water rights are also maintained in the local watermasters' offices. Contact the Department or your watermaster to determine if there are water rights of record for property you own or want to purchase. You may need to pay a fee if you want the Department to research and copy water right files. Please contact the Department to obtain a current fee schedule or look on the web at www.wrd.state.or.us.

You will need to provide a copy of the legal description or a current county assessor's tax lot map of the property. If the property lies within a platted and recorded subdivision, a copy of the recorded plat should accompany the legal description. Any maps submitted need to include the township, range, and section of the property involved and have a reference corner such as a section corner.

You might also find the Department's online interactive mapping utility to be helpful in locating water rights. It can be found at www.wrd.state.or.us.

For more information, refer to ORS 537.330.

Keep in mind that while the Department or watermaster can tell you if there is a water right on file for your tract of land, they cannot guarantee that the water has been used continuously and that the right is not subject to cancellation. If you intend to purchase property with a



water right of record, it is a good idea to check with neighbors of the property owner to see whether the water right went unused for five consecutive years over the last 15 years.

9. WATER DISTRIBUTION AND ENFORCEMENT

*watermasters and field
staff protecting rights and resources*

In order to protect the rights of water users, and to ensure that water laws are obeyed, personnel from the Water Resources Department, in cooperation with land owners, inspect wells and water diversion systems. Inspections are usually conducted by watermasters and well inspectors who are employees of the Department. Inspections are also made by the Department's hydrogeologists.

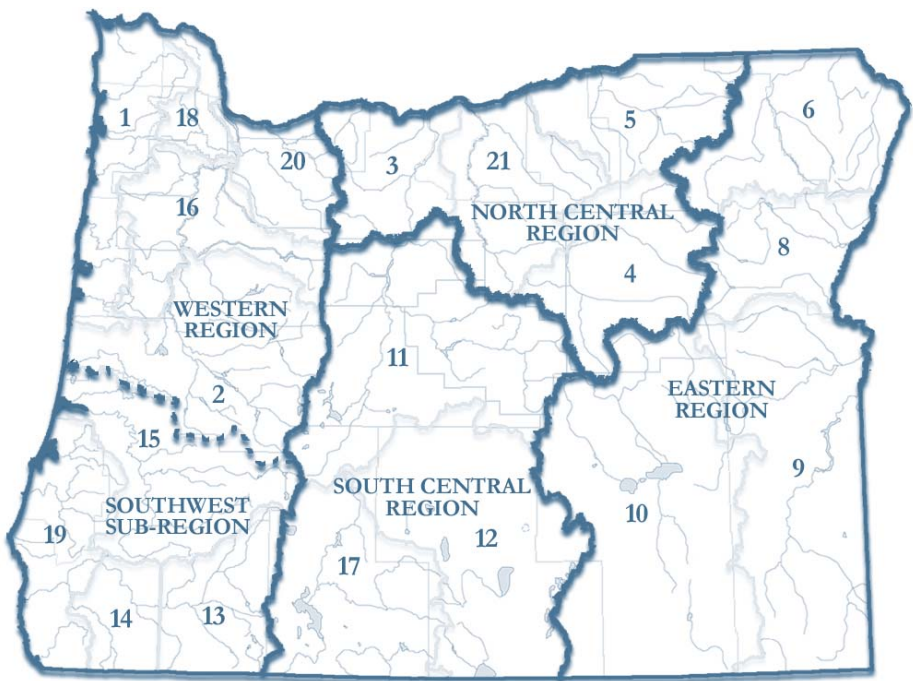
Headgates control the flow of water through ditches and canals that serve water users throughout Oregon. As new water rights are more difficult to obtain—due to lack of water availability in many Oregon streams—water will be gained by transferring older, existing rights.

Watermasters respond to complaints from water users and determine in times of water shortage, which generally occur every year, who has the right to use water. Each summer as streamflows drop, they regulate junior users to provide water to more senior users. On some streams, by the end of summer, there is only enough water to supply users with rights established in the late 1800s. All of the more recently established rights will have been regulated off by the watermaster. Watermasters work with all of the water users on a given water system to ensure that the users voluntarily comply with the needs of more senior users. Occasionally, watermasters take more formal actions to obtain the compliance of unlawful water users or those who are engaged in practices that “waste” water. The waste of water means the continued diversion of more water than is needed to satisfy the specific beneficial use for which the right was granted.

Watermasters and field staff also provide general information to the public, oversee enforcement of instream water rights, inspect wells and dams for safety violations, and measure and monitor streamflows for management and planning needs.

10. REGION OFFICES AND WATERMASTER DISTRICTS

Region Offices	Watermasters by District	
WESTERN Bill Ferber, Region Manager 725 Summer St NE, Ste A Salem, OR 97301 Phone: (503) 986-0893 Fax: (503) 986-0903	DISTRICT 1 Greg Beaman 4000 Blimp Blvd Tillamook, OR 97141 Phone: (503) 842-2413 x119 Fax: (503) 842-3680	DISTRICT 6 Shad Hattan 10507 N McAlister Rd #6 La Grande, OR 97850 Phone: (541) 963-1031 Fax: (541) 963-9637
NORTH CENTRAL Michael Ladd, Region Manager 116 SE Dorion Ave Pendleton, OR 97801 Phone: (541) 278-5456 Fax: (541) 278-0287	DISTRICT 2 Michael Mattick Central Lane Justice Court 220 N 5th St Springfield, OR 97477 Phone: (541) 682-3620 Fax: (541) 746-1861	DISTRICT 8 Rick Lusk Baker County Courthouse 1995 3rd St, Ste 180 Baker City, OR 97814 Phone: (541) 523-8224 x31 Fax: (866) 214-3493
EASTERN Ivan Gall, Region Manager Baker County Courthouse 1995 3rd St, Ste 180 Baker City, OR 97814 Phone: (541) 523-8224 x24 Fax: (866) 214-3493	DISTRICT 3 Robert Wood 2705 E 2nd St The Dalles, OR 97058 Phone: (541) 506-2650 Fax: (541) 506-2651	DISTRICT 9 Ron Jacobs Malheur County Courthouse #4 251 B St W Vale, OR 97918 Phone: (541) 473-5130 Fax: (541) 473-5522
SOUTH CENTRAL Kyle Gorman, Region Manager 1128 NW Harriman St Bend, OR 97701 Phone: (541) 388-6669 Fax: (541) 388-5101	DISTRICT 4 Eric Julsrud Grant County Courthouse 201 S Humbolt St, Ste 180 Canyon City, OR 97820 Phone: (541) 575-0119 Fax: (541) 575-0641	DISTRICT 10 Catie Owens Harney County Courthouse 450 N Buena Vista Burns, OR 97720 Phone: (541) 573-2591 Fax: (541) 573-8387
SOUTHWEST Bruce Sund, Deputy Region Manager 942 SW 6th St, Ste E Grants Pass, OR 97526 Phone: (541) 471-2886 x222 Fax: (541) 471-2876	DISTRICT 5 Tony Justus 116 SE Dorion Ave Pendleton, OR 97801 Phone: (541) 278-5456 Fax: (541) 278-0287	DISTRICT 11 Jeremy Giffin 1128 NW Harriman St Bend, OR 97701 Phone: (541) 388-6669 Fax: (541) 388-5101



DISTRICT 12

Brian Mayer

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DISTRICT 15

Dave Williams

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DISTRICT 13

Larry Menteer

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DISTRICT 16

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Kathy Smith

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DISTRICT 20

Sabrina White

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DISTRICT 21

Joel Clark

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11. FEES

The Department requires a fee for most water use transactions and some administrative services. For information regarding specific fees, please contact the Department's Customer Service Representatives at (503) 986-0900 or call your local watermaster. An explanation and schedule of fees can also be found on the Department's website at www.wrd.state.or.us.

For more
information,
refer to ORS
536.050.



APPENDIX A

other development permits

Developing a water right often entails grading, trenching, or other types of construction in waterways, riparian areas, and wetlands. In addition to a water use permit, other permits from local, state, or federal agencies may be required. Check first with your local city or county planning office.

Activities in Wetlands and Waterways are Regulated by:

- *The Department of State Lands (DSL)* under the state Removal-Fill Law (503) 378-3805
- *The U.S. Army Corps of Engineers (Corps)* under the federal Clean Water Act and Rivers and Harbors Act (503) 808-4373
- *The Oregon Department of Forestry* under the Forest Practices Act (503) 945-7470
- *The U.S. Natural Resource Conservation Service (NRCS)* under the Food, Agriculture, Conservation and Trade Act—check government listings
- Some city and county land use ordinances

What Areas are Regulated?

- Rivers, streams, and most creeks
- Estuaries and tidal marshes
- Lakes and some ponds
- Permanent and seasonal wetlands

Regulations apply to all lands, public or private. A wetland does not have to be mapped by the state or otherwise “designated” to fall under the regulations. If you are uncertain if there are regulated wetlands on your property, contact DSL for assistance.

What Activities are Regulated?

- Placement of fill material
- Alteration of stream bank or stream course
- Ditching and draining
- Plowing/disking non-farmed wetlands
- Excavation or dredging of material
- In-water construction (may also require a DSL lease)
- For some activities, joint application forms can be obtained from DSL or the Corps

What Activities are Exempt?

- Some routine maintenance activities
- Established, ongoing agricultural activities and grazing
- Some minor projects involving small amounts of fill or removal

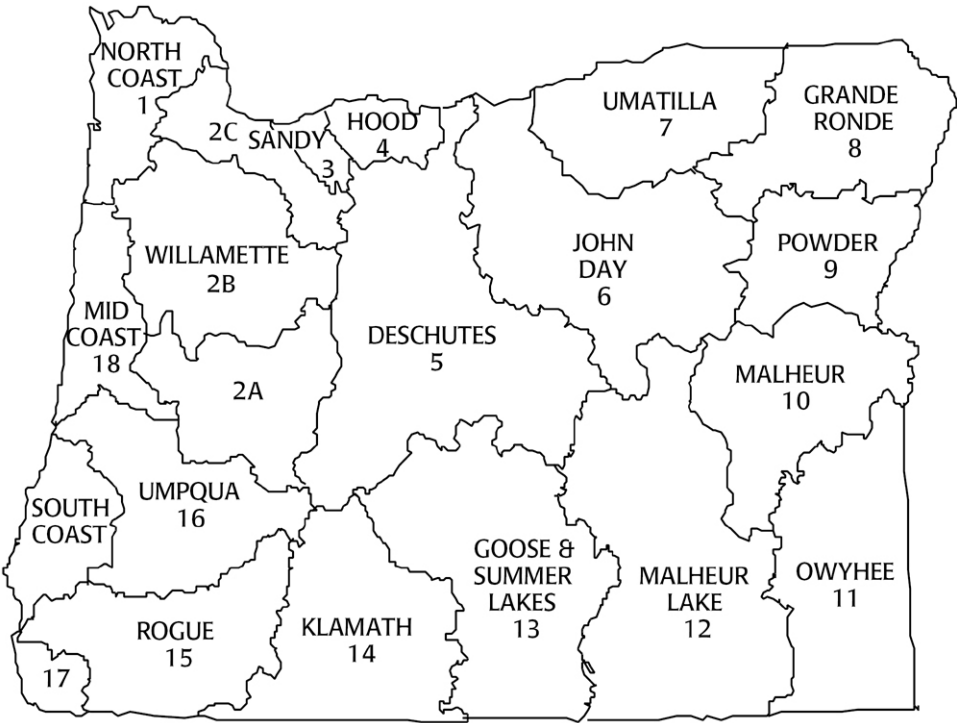
How are Laws Enforced?

The best enforcement is to prevent illegal wetland alterations through information and education. However, when violations do occur, a variety of enforcement tools may be used, including restoration orders, fines, civil and/or criminal charges.

Contact your local city or county planning office, DSL or the Corps for details and clearance to proceed with your project and to determine if you are impacting an area that is regulated.

A list of licenses, permits, and registrations in Oregon can be found on the web at *LicenseInfo.Oregon.gov*.

Oregon's Major River Basins



Oregon has 18 designated river basins that are managed by the Department under the guidance of the Commission. Oregon also shares three basins with neighboring states—the Columbia, Snake, and Klamath Rivers. A river basin generally includes all the land area, surface water bodies, aquifers, and tributary streams that drain into the namesake river.



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