

# WATER RIGHTS IN OREGON

An Introduction to  
Oregon's Water Laws



OREGON



WATER RESOURCES  
DEPARTMENT

2018

## Water Quantity Conversion Table

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

When referring to a rate to be diverted, the terms commonly used are cubic feet per second (cfs) or gallons per minute (gpm). When discussing volumes of water (duty), 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 providing information to 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:

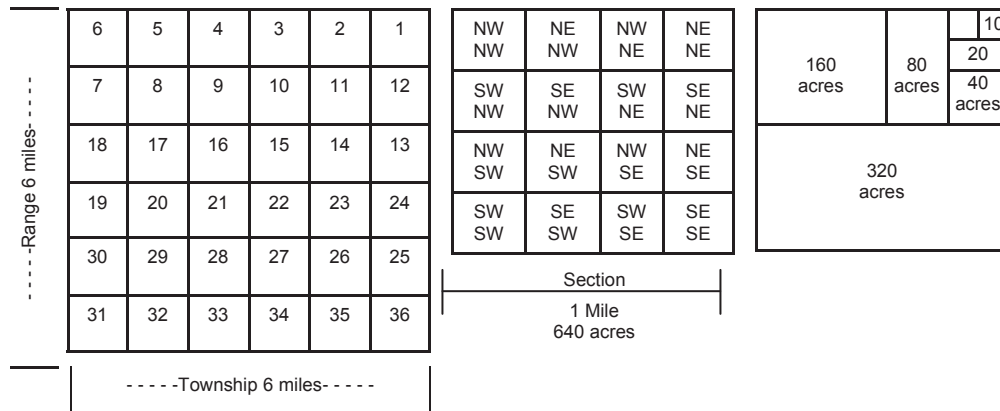
$$1 \text{ cfs} = \begin{array}{l} 7.48 \text{ gallons per second} \\ 448.8 \text{ gallons per minute} \\ 646,272 \text{ gallons per day} \\ 1.98 \text{ acre-feet per day} \end{array}$$

### 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:

$$1 \text{ af} = \begin{array}{l} 43,560 \text{ cubic feet} \\ 325,851 \text{ gallons} \end{array}$$

## Land Subdivision



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## THE WATER RESOURCES COMMISSION AND DEPARTMENT

*“To serve the public by practicing and promoting responsible water management through two key goals:*

- *to directly address Oregon's water supply needs, and*
- *to restore and protect streamflows and watersheds in order to ensure the long-term sustainability of Oregon's ecosystems, economy, and quality of life.”*

**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, to serve a four-year term. One member is appointed from each of five regional river basin management areas, and two “at large” members are appointed, one each from east and west of the Cascades.

In 2017, the Oregon Water Resources Commission updated the state's Integrated Water Resources Strategy (Strategy), which contains recommendations to help understand and meet the state's instream and out-of-stream water needs into the future. Developed with the state's other natural resources and economic development agencies, the Strategy serves as a roadmap for addressing water quantity, water quality, and ecosystem issues. The Strategy is updated every five years.

**The Water Resources Department** is the state agency charged with administration of the laws governing the allocation of surface water and groundwater resources. The Department is organized into five divisions - Field Services, Technical Services, Water Right Services, 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 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

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For more information, refer to ORS 537.110.

Under Oregon law, all water belongs to the public. With some exceptions, cities, irrigators, businesses, and other water users must obtain a permit or license 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 authorization from the Department.

### *Prior Appropriation*

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With some exceptions, a water right, permit, or license is required to use the waters of Oregon. The water must be used for a beneficial purpose, without waste.

Oregon's water laws are based on the doctrine 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 his or her water right without regard for the needs of junior users. If there is a surplus beyond what is necessary to fulfill the senior right, the water right holder with the next senior priority date can take what is available to satisfy needs under his or her right. This continues 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.

East of the Mississippi River, the riparian doctrine usually applies. Under the riparian doctrine, only landowners with water flowing through their property have claims to the water. By contrast, the prior appropriation doctrine is the basis of water law for most of the states west of the Mississippi. In Oregon, the prior appropriation doctrine was adopted into statute on February 24, 1909 and 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

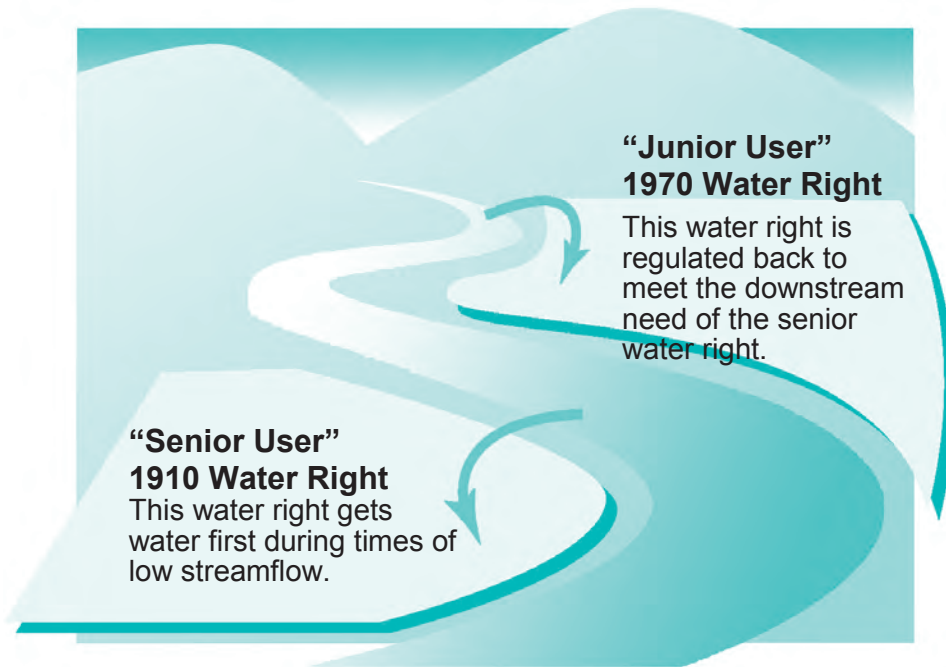
### *four fundamental provisions*

- **Beneficial purpose without waste**  
Surface or groundwater 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 may be 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 typically 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 other uses. However, if a drought is declared by the Governor, the Commission can adopt rules that give preference to stock watering and human consumptive purposes, regardless of the priority dates.



**Prior Appropriation: an example**  
“First in time, first in right”



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***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 (initiating for example, his or her water right in 1910) the “upstream” landowner (with a 1970 right in this example) may have to let the water pass unused to meet the needs of the senior, downstream water right holder.

A few uses of surface 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:** 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. Fish protection:** egg incubation projects under the Salmon and Trout Enhancement Program (STEP) are exempt. Water used for fish screens, fishways, and bypass structures are also exempt.
- 4. Fire control:** the withdrawal of water for emergency firefighting or certain non-emergency firefighting training.
- 5. Forest management:** certain activities such as slash burning and mixing pesticides. To be eligible, a user must notify the Oregon Water Resources Department and the Oregon Department of Fish and Wildlife and must comply with any restrictions 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 building’s roof).
- 8. Reuse of water:** pursuant to a registration under ORS 537.132.

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For more information, refer to ORS 537.141, 537.142, 537.800,

## Exempt uses of groundwater include:

### 1. Stock watering.

**2. Lawn or noncommercial garden:** watering of not more than one-half acre in area. Irrigation of a commercial crop requires a water use authorization and is not exempt.

**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. Does not include irrigation or watering to promote plant growth.

### 5. Down-hole heat exchange uses.

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

**7. Fire control:** In addition, the withdrawal of water for emergency firefighting or certain non-emergency firefighting training, is an exempt use of groundwater as provided under ORS 537.141.

**8. Reuse of water:** under ORS 537.141 (1) (i).

**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 groundwater uses must comply with Oregon’s minimum well construction standards for the construction, maintenance, and abandonment of any well.

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For more information, refer to ORS 537.545 and 537.141



## 2. WATER PROTECTIONS AND RESTRICTIONS

*managing water appropriations - protecting the resource*

### 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 groundwater aquifers are adopted to ensure sustained supplies for existing water users and to protect important natural resources. Except in very severe situations (e.g., critical groundwater areas), these restrictions do not affect existing water uses, only the Department's ability to authorize new uses in these basins.

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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.

#### *Basin Programs*

The Water Resources Commission adopts basin programs to set policies for managing administrative basins. A map of the state's river basins is on the last page of this booklet.

The Commission has adopted basin programs for all but one of the state's 18 administrative basins. Although the Commission has not adopted a comprehensive basin program for the Klamath basin, use of water in the basin is still subject to other administrative rules.

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 for the proposed source of water.

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 aquifer restricts only new uses of water.



### *Critical Groundwater Areas*

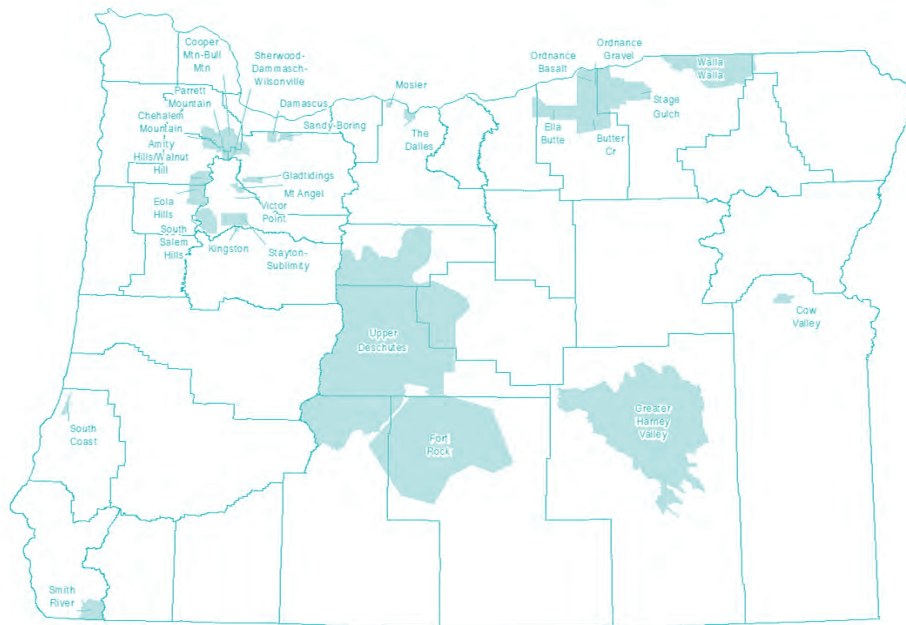
The Water Resources Commission may declare a critical groundwater area to restrict water withdrawal where the resource is overdrawn or where a pattern of interference between wells and other groundwater or surface water users exists. The law is designed to prevent excessive declines in groundwater levels and protect the right of senior users. The order setting the limits of the critical area may restrict both existing and future uses in order to stabilize the resource and may also provide for certain uses of water to have preference over other uses, regardless of established water right priority dates. Critical groundwater areas also can be declared if there is deterioration of groundwater quality, although this has not been the reason for any critical groundwater area to date.

Oregon has declared seven critical groundwater areas. The critical areas are Cow Valley near Vale; The Dalles in Wasco County; Cooper Mountain-Bull Mountain in Washington County; and the Butter Creek, Ordnanee (alluvial and basalt) and Stage Gulch areas in Morrow and Umatilla Counties.

### *Groundwater Classified Areas*

The Commission has established 12 “groundwater classified areas” (also referred to as limited areas) in the northern Willamette Valley. The classified areas generally allow for new exempt groundwater uses but place restrictions on new uses that require a permit. These areas are in the following approximate locations: Sandy-Boring, Damascus, Glad Tidings, Kingston, Mt. Angel, Sherwood-Damascus-Wilsonville, Stayton-Sublimity, Parrett Mountain, Chehalem Mountain, Eola Hills, South Salem Hills, and Amity Hills-Walnut Hill. The Willamette and Sandy Basin programs list the limitations in these classified areas. Outside the Willamette Valley are the South Coast, Fort Rock, Ella Butte, Harney Valley, Walla Walla, and Smith River classified areas. Through changes to the basin programs, new water rights in these areas are restricted to a few designated uses.

The Department’s role is to protect existing water rights by preventing excessive groundwater declines, restoring aquifer stability, and preserving aquifers with limited storage capacity for designated high public value uses. The Department may find other areas where use from basalt and other aquifers must be limited. Such limitation may apply to a specific aquifer or geologic formation. In some cases, water may still be available at a different depth from a different geologic formation.



**Groundwater Management Areas**

*Groundwater Withdrawal Areas*

The Commission may withdraw aquifers from new appropriations where additional use is not sustainable. Victor Point near Silverton in Marion County and an area around Mosier in Wasco County are the only groundwater areas withdrawn at this time.

*Serious Water Management Problem Areas*

The Commission may require installation of a measuring device if it finds water use information is necessary because of serious water management problems caused by groundwater level decline, unresolved user disputes, or frequent water shortages. The basalt aquifer system of the Walla Walla Subbasin near Milton-Freewater in Umatilla County is a designated serious water management problem area.

*Groundwater Mitigation Problem Areas*

The Commission created rules defining a program to mitigate groundwater impacts to state Scenic Waterways in a portion of the Upper Deschutes Basin and Deschutes County. This is the only area with a defined mitigation program.



### 3. OBTAINING NEW WATER RIGHTS

*gaining authorization to use water*

Most 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. After 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 has been applied. If water has been used according to the provisions of the permit, a water right certificate is issued after evaluation of the report findings.

In most areas of the state, surface water is no longer available for new uses in summer months. Groundwater supplies are also limited in some areas. Allocation of new uses of water is done carefully to preserve the investments already made in the state, whether in cities, 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*

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For more  
information,  
refer to  
ORS 537.130  
and  
ORS 537.615

A permit is the authorization from the Department 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 his or her water right, the Department cannot later decide to revoke or change the permit or impose new standards for use.

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 rights-of-way crossed by proposed diversion and conveyance 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 and conveyance 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. A supplemental form (if necessary) such as Form I for irrigation or Form M for a municipal right.

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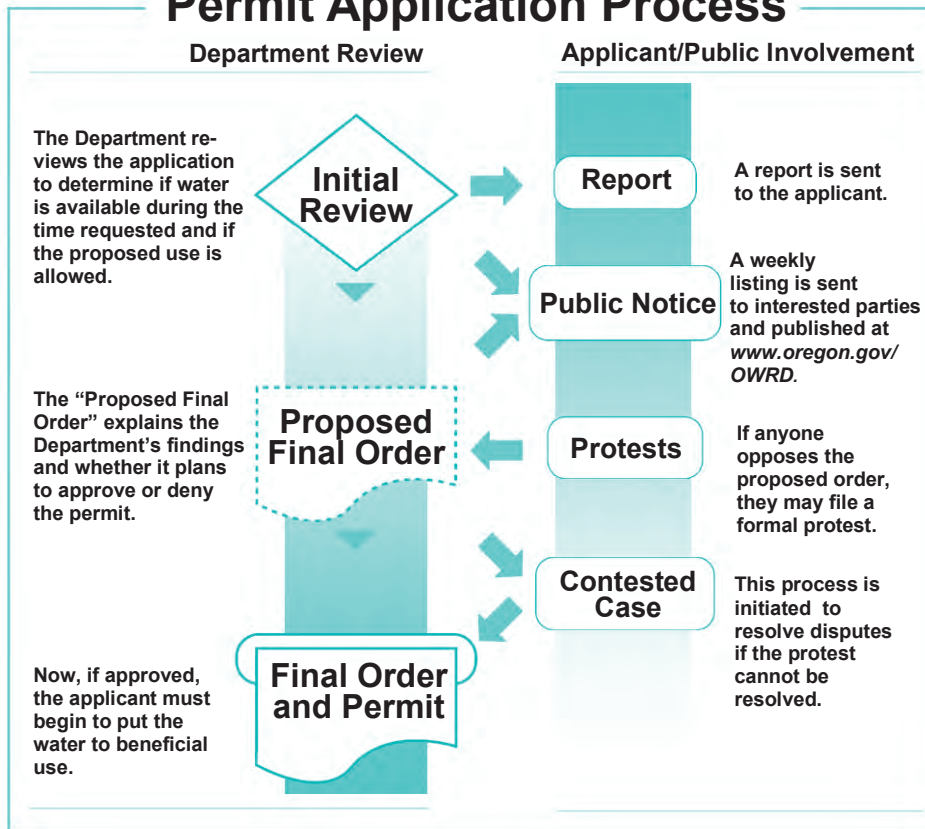
Applications and more detailed instructions are available at all Department offices and on the Department's website at [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)

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.oregon.gov/OWRD](http://www.oregon.gov/OWRD).

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



# Permit Application Process



## Pre-application consultation

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

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 harm public resources. The Department also determines if water is likely to be available for use and considers many other 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, water quality, and

other state and federal rules. For example, if approving 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. For example, the Department consults with the Oregon Department of Fish and Wildlife to evaluate impacts on sensitive, threatened, or endangered species, and to ensure instream values are protected.

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.

If protests are filed the Department may schedule a contested case hearing to resolve issues raised in the protest (s) which extends the process.

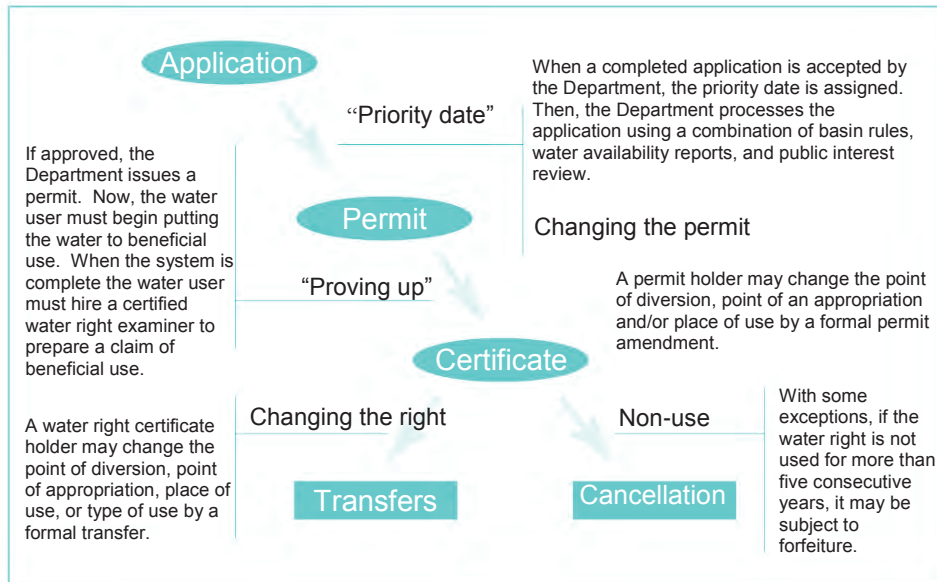
### *The Second Step: constructing the system and using water*

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. Many water right permits include conditions requiring water meters or measuring devices to be installed, and water use or water level reports to be submitted to the Department. Other conditions may also be placed on the permit, such as installing and maintaining fish screens.

Permits generally require the water user to develop the water use within 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 (Permit Amendment)**

The point of diversion or appropriation and the place of water use under a permit may be changed by submitting an application to the Department. It should be noted that the type of use cannot be changed in a permit amendment. 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 enlarge the



permit and 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 groundwater 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 demonstrate to the Department that work has been completed. Except for certain smaller reservoirs, as described on pages 22-23, the water user must hire a certified water right examiner (CWRE) to survey the extent of water use. This survey, which is called a “claim of beneficial use” and includes a map, must be submitted within one year of completion (making full beneficial use of the water) or before the “C” date (completion date specified in the permit), whichever is sooner. This allows the Department to evaluate the extent of water use developed within the terms and conditions of the permit. CWREs 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, see the Department website [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD).

In some instances, personnel from the Department may conduct a brief field inspection 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.

Oregon's water law provides that a certificate may be issued only for the quantity of water that is used beneficially: the quantity of water that can be applied without waste or the amount allowed by the permit, whichever is less.

### *Water Use Measurement And Reporting*

Good water management decisions are made possible when they are based on reliable information about water resources. Water-use data is a fundamental tool to ensure efficient water management, effective water distribution, and to help plan for future water needs. The information is also used to ground truth demand projections or modeling efforts by state and local entities. Water users who keep track of their use are better able to demonstrate the validity of their water rights. Oregon requires governmental entities such as irrigation districts and public water providers to measure and report water use. Certain types of water use are also required to be measured and reported, in accordance with the conditions of a water right or permit.

### *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 page 35 on cancellation of water rights.)

The amount of water allowed in the certificate will be an instantaneous rate and/or an annual volume. 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 front 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 water rights, including water rights for instream use.

## Water Dedicated to Instream Uses

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For more information, refer to ORS 537.336.

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.

The authority to establish instream water rights was passed 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 more 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.

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For more information, refer to ORS 537.348 and OAR 690-077 and 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 instream use. Instream leases and transfers are discussed on pages 31-32.



## Rights to Store Water

### *Reservoirs and Ponds*

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For more information, refer to ORS 537.400.

The construction of a reservoir or pond of any size to store water requires a water right permit from the Department. A water right permit allows storage of streamflow typically during the winter months.

A permit for a reservoir with the sole purpose of storing water is considered the primary permit. Permittees intending to use stored water will need an additional water use permit (commonly referred to as a secondary 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 water rights and pass live flow outside the storage season.

### *Standard Water Right Permit and Safety Review for Dams*

Reservoirs with a dam 10 feet or greater in height and that store 9.2 acre-feet or more must be designed by and constructed under the supervision of a registered professional engineer. Design, construction, and operation of dams for these reservoirs must comply with the dam safety regulations in Oregon Administrative Rules (OAR) 690-020-0000 through 690-020-0500. The engineered drawings and specifications must be approved by the Department prior to construction of such dam.

### **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. The process involves review of the project by the watermaster and the Oregon Department of

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For more information, refer to ORS 537.409.

Fish and Wildlife prior to application, which allows an expedited review (less than six months). 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 42-43).

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For more information about Dam Safety please refer to Appendix B on page 48.

### *Storing groundwater*

If allowed by a groundwater right, groundwater may be stored in a reservoir prior to beneficial use. If such reservoirs interact with surface water, the Department may require a separate reservoir application.





## 4. OTHER WATER RIGHTS

*authorizations for water use*

### Rights Through Customary Use

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For more information, refer to ORS 539.240.

If water was used prior to enactment of Oregon's 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.

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.

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For more information, refer to ORS 539.300.

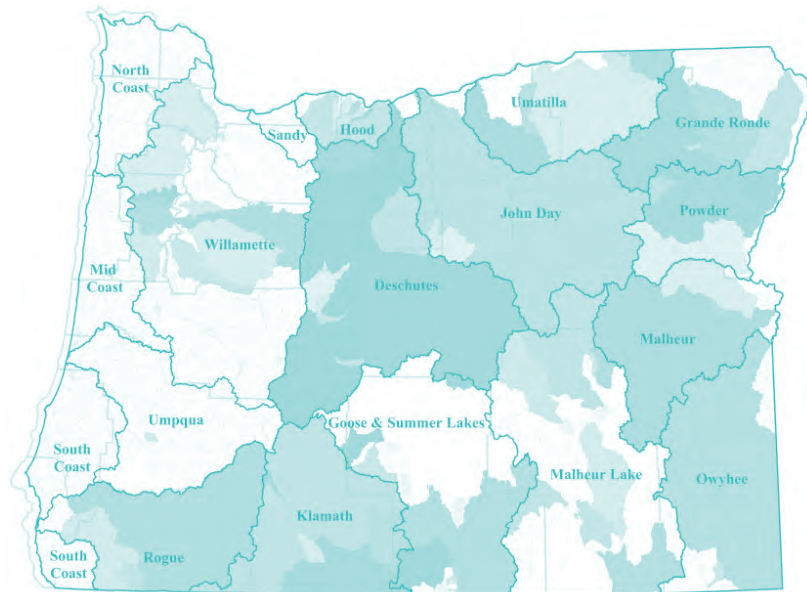
Failure to file this registration statement by the deadline created the rebuttable presumption that the person had no claim to a water right. These statements do not automatically guarantee rights will be granted to those who have filed. Each vested right will be determined through the courts in an adjudication proceeding.

Adjudication proceedings are also used to determine the water rights for federal reservations of land. This includes American Indian reservations and other federal land 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 federal reserved water rights of federally recognized rights.

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, although these adjudications may not have included federal reserved claims. Nearly 100 decrees have been issued on individual streams in Oregon, and water right certificates have been issued for most of the decrees. An adjudication proceeding is in process in the Klamath Basin.

### Adjudicated Areas Within Oregon





## Limited Licenses

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

Oregon law also provides a method for obtaining permission to divert and use water for a short-term or fixed duration not to exceed five years. 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.

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 training, 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 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

### *Changes to existing rights*

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 or appropriation, and type of use. For example, if a water right holder establishes the right to irrigate a particular 20-acre tract of land from a specified water source, the water cannot be diverted from a different point or source, nor can it be used to irrigate other land without permission. 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.

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Gathering streamflow data is an important part of the Department's commitment to protect water rights and Oregon's water

### *Permanent Transfers*

An application for a permanent transfer generally requires a map prepared by a certified water right examiner (CWRE). The applicant must submit a transfer application describing: the current water right, the proposed changes, 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. The proposed use may only occur once the transfer order approving the change is issued.

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

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For more information, refer to ORS 540.510 and ORS 540.520.

After the transfer is approved, the applicant must make the change. In the case of a change in the type of 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 beneficial water use under the modified water right. A new water right certificate will be issued to confirm the modified water right.

### *Temporary Transfers*

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For more information, refer to ORS 540.523 and 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 required application map for a temporary transfer does not have to be prepared by a CWRE.

A temporary change in point of diversion or appropriation may be made if it is necessary to convey water to the temporary place of use. The Department can revoke a temporary transfer if the change results in injury to other water rights.

### *Historic Point of Diversion*

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For more information, refer to ORS 540.532 and OAR 690.380.

If an individual (not a company, government body, or other entity) has been using a diversion point for more than 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.

### *Drought Transfers*

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For more information, refer to ORS 536.710 and OAR 690.019.

Upon the Governor's issuance of an Executive Order declaring a drought emergency, the Department is allowed to offer certain tools to water right holders in a drought declared County.

These tools have an expedited review process, reduced fee schedule, and are intended to be short-term emergency authorizations, not permanent solutions to deal with water supply challenges. Water right holders seeking long-term solutions should contact their Watermaster to help identify what options may exist.

### *Permanent and Temporary District Transfers*

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

Districts organized under ORS Chapter 545, 547, 522, 553, or 554 have the option of applying for a district permanent transfer. Only a place of use within district boundaries may be transferred. In certain circumstances, water use at the proposed place of use may begin when a notice is filed. All noticed lands must be included in a (single) district transfer application due at the end of the year. If certain criteria are met, a district may use the district transfer process to take control and transfer their unused water rights within the district. Districts also have the option of applying for a temporary transfer for one season. Water use may begin as soon as the application is filed. In addition to place of use changes, under temporary district transfers, points of diversion may be transferred to facilitate a place of use change or in emergency situations.

### *Transfers and Leases for Instream Use*

Water rights may be transferred or leased for instream uses. Instream transfers and leases must show that enlargement of the right or injury to other water rights will not occur and that a beneficial use will be made of the water, such as providing flows for fish and wildlife, scenic values, or improved water quality. Instream transfers and leases carry the priority date of the original right.

The water may not be diverted by a junior user while it is an instream right or lease.

### *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; for five years or less, the instream leasing process is the preferred option.

### *Instream Leasing*

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For more information, refer to ORS 537.348, OAR 690-077 and OAR 690-380

The instream leasing program offers 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 page 36) may be leased instream.





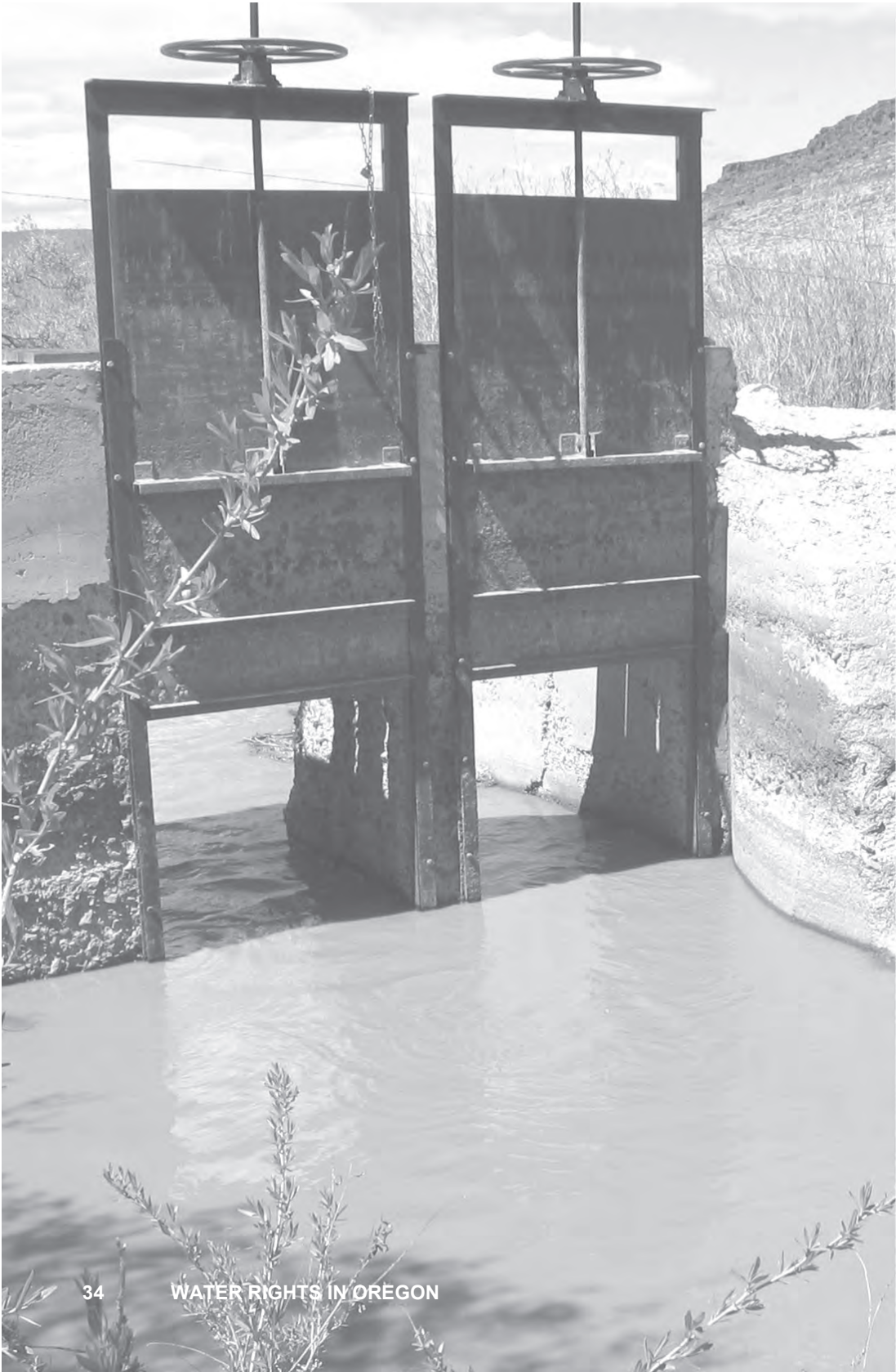
### *Groundwater Registration Modifications*

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

Groundwater registrations are claims for rights to use groundwater 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 groundwater registration if the Department determines that the change will not injure other water rights, will not result in enlargement and will not state scenic waterway flows.

Recognition of a modification in a groundwater 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 groundwater 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 may be subject to cancellation.

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Headgates control the flow of water through ditches and canals that serve water users throughout Oregon.

For example, if a water right is for the irrigation of 40 acres and the water right holder irrigates only 20, the portion of land not irrigated for five consecutive years is subject to cancellation. Diverting less than the full amount of water allowed under the right will not result in forfeiture, as long as the water right holder is ready, willing and able to use the full amount and has a water system capable of handling the entire rate and duty as described in the water right.

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, unless the non-use occurred more than 15 years prior. 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, such non-use may exceed five consecutive years without forfeiture of the right. See ORS 540.610 for more information.

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. A legal proceeding is not necessary if the landowner voluntarily authorizes cancellation.

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For more information, refer to ORS 540.610.

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 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 improved technology and distribution methods, water users are now able to do the same work with much less water than was required in the past. Oregon law provides an opportunity for a water right holder to save water and utilize it on new lands or for other purposes beyond those specified in the water right. For example, if the installation of an improved irrigation system reduces the water use from six acre-feet per year to only two acre-feet per year, under the Allocation of Conserved Water program, the remaining four acre-feet of saved water may be used for a new purpose or on new lands with approval.

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

State law allows a water right holder who conserves water to submit an application and receive authorization to use a portion of the saved water on additional lands, lease or sell the water, 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 a minimum of 25 percent of the saved water be returned to the stream for improving streamflows. The Department will issue an order allocating the saved water for use by the water right holder and for the required instream use. In addition, the Department will issue a superseding certificate for the original water right to reflect the reduced quantity of water now being used with improved technology. The priority date stays the same.

The Department will also issue a certificate for the instream flow. The saved water allocated for the instream flow and new uses will have the same priority date or a priority date of one minute after the original water right.

### *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. Department staff provide workshops and other technical assistance to water suppliers preparing water management and conservation plans.

### *Funding Feasibility Studies*

Local communities often find it difficult to secure feasibility study funding as part of their project development. Such studies help determine the environmental, engineering, economic, and social implications of proposed water supply projects. One way Oregon helps with costs is to bridge the existing funding gap for feasibility studies of water conservation, reuse, and storage projects. From 2008 to 2017, the Water Resources Commission awarded 84 grants totalling approximately \$4.9 million. The Department continues to offer Feasibility Study Grants with applications typically due in the fall of each year. For more information please visit the Department's website: [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD).

### *Funding Water Supply Projects*

The Water Resources Department also offers funding to implement water supply projects. Water Project Grants and Loans provides funding for water projects that meet instream and out-of-stream water needs, while producing economic, environmental, and social/cultural benefits. In its first two years awarding funds, the Water Resources Commission awarded more than \$15 million to thirteen projects. The Department continues to offer this competitive funding opportunity with applications generally due in the spring of each year. For more information please visit our website: [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD).





## 8. FINDING WATER RIGHTS

### *determining if you have a water right*

All legally established water 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.oregon.gov/OWRD](http://www.oregon.gov/OWRD).

To find out if a water right exists, 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.

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For more information, refer to ORS 537.330.

You might also find the Department's online interactive mapping utility to be helpful in locating water rights. Step by step instructions detailing how to determine whether a water right exists on a particular piece of property are also available. Both can be found at [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD).

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.

## 9. WATER DISTRIBUTION AND ENFORCEMENT

*Watermasters and Field Staff protect rights and resources*

In order to protect the rights of water users, and to ensure compliance with water laws, personnel from the Water Resources Department, in cooperation with landowners, inspect wells and water diversion systems. Inspections are usually conducted by watermasters and well inspectors who are employees of the Department.

Watermasters respond to calls 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, watermasters 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 1800s. 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 compliance from 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.

In order to protect the groundwater resources of the state, the Department also regulates the construction, maintenance, and abandonment of wells. In order to accomplish this, the Department tests, licenses, and provides continuing education credit to well constructors. The Department also has well inspectors stationed around the state to inspect wells and ensure that they are constructed, maintained, or formally abandoned (i.e. decommissioned) in a manner that is consistent with Oregon's minimum well construction standards. Wells that do not meet the minimum requirements are normally addressed through voluntary compliance, but there are also other formal actions available if necessary.

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

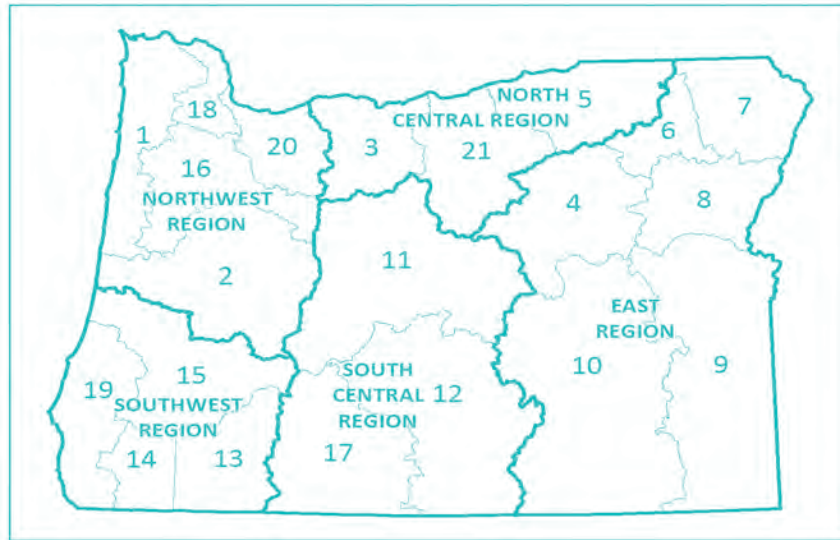
See the Water Well Owners' Handbook:  
*A Guide to Water Wells in Oregon*  
for more information.



## 10. REGION OFFICES AND WATERMASTER DISTRICTS

Region Offices	Watermasters by District	
<p><b>NORTHWEST Region Office</b> 725 Summer St NE Suite A Salem, OR 97301 Phone: (503) 986-0893 Email: region_manager_w@ wrд.state.or.us</p> <p><b>NORTH CENTRAL Region Office</b> 116 SE Dorion Ave Pendleton, OR 97801 Phone: (541) 278-5456 Email: region_manager_nc@ wrд.state.or.us</p> <p><b>EASTERN Region Office</b> Baker County Courthouse 1995 3rd St, Ste 180 Baker City, OR 97814 Phone: (541) 523-8224 x224 Email: region_manager_e@ wrд.state.or.us</p> <p><b>SOUTH CENTRAL Region Office</b> 231 Scalehouse Loop Suite 103 Bend, OR 97702 Phone: (541) 306-6885 Email: region_manager_sc@ wrд.state.or.us</p> <p><b>SOUTHWEST Region Office</b> 10 S Oakdale, Rm 309A Medford, Oregon 97501 Phone: 541-774-6884 Email: region_manager_swr@ wrд.state.or.us</p>	<p><b>DISTRICT 1 Watermaster Office</b> OWRD 4000 Blimp Blvd Ste 400 Tillamook, OR 97141 Phone: (503) 815-1967 Email: watermaster_district1@ wrд.state.or.us</p> <p><b>DISTRICT 2 Watermaster Office</b> Lane County Courthouse 125 East 8th Avenue Eugene, OR 97401-2926 Phone: 541-682-3620 Email: watermaster_district2@ wrд.state.or.us</p> <p><b>DISTRICT 3 Watermaster Office</b> 2705 E 2nd St The Dalles, OR 97058 Phone: (541) 506-2652 Email: watermaster_district3@ wrд.state.or.us</p> <p><b>DISTRICT 4 Watermaster Office</b> Grant County Courthouse 201 S Humbolt St, Ste 180 Canyon City, OR 97820 Phone: (541) 575-0119 Email: watermaster_district4@ wrд.state.or.us</p> <p><b>DISTRICT 5 Watermaster Office</b> 116 SE Dorion Ave Pendleton, OR 97801 Phone: (541) 278-5456 Email: watermaster_district5@ wrд.state.or.us</p>	<p><b>DISTRICT 6 Watermaster Office</b> 10507 N McAlister Rd #6 La Grande, OR 97850 Phone: (541) 963-1031 Email: watermaster_district6@ wrд.state.or.us</p> <p><b>DISTRICT 7 Watermaster Office</b> 401 NE First St., Ste 11 Enterprise, OR 97828 Phone: (541) 398-8172 Email: watermaster_district7@ wrд.state.or.us</p> <p><b>DISTRICT 8 Watermaster Office</b> Baker County Courthouse 1995 3rd St, Ste 180 Baker City, OR 97814 Phone: (541) 523-8224 x231 Email: watermaster_district8@ wrд.state.or.us</p> <p><b>DISTRICT 9 Watermaster Office</b> Malheur County Courthouse #4 251 B St W Vale, OR 97918 Phone: (541) 473-5130 Email: watermaster_district9@ wrд.state.or.us</p> <p><b>DISTRICT 10 Watermaster Office</b> Harney County Courthouse 450 N Buena Vista #3 Burns, OR 97720 Phone: (541) 573-2764 Email: watermaster_district10@ wrд.state.or.us</p>





**DISTRICT 11**  
**Watermaster Office**  
 231 Scalehouse Loop, Ste 103  
 Bend, OR 97702  
 Phone: (541) 306-4808  
 Email: watermaster\_district11@wrd.state.or.us

**DISTRICT 12**  
**Watermaster Office**  
 513 Center St  
 Lakeview, OR 97630  
 Phone: (541) 947-6038  
 Email: watermaster\_district12@wrd.state.or.us

**DISTRICT 13**  
**Watermaster Office**  
 10 S Oakdale, Rm 309  
 Medford, OR 97501  
 Phone: (541) 774-6883  
 Email: watermaster\_district13@wrd.state.or.us

**DISTRICT 14**  
**Watermaster Office**  
 700 NW Dimmick St  
 Grants Pass, OR 97526  
 Phone: (541) 261-2213  
 Email: watermaster\_district14@wrd.state.or.us

**DISTRICT 15**  
**Watermaster Office**  
 Douglas County Courthouse  
 1036 SE Douglas, Rm 306  
 Roseburg, OR 97470  
 Phone: (541) 440-4255  
 Email: watermaster\_district15@wrd.state.or.us

**DISTRICT 16**  
**Watermaster Office**  
 725 Summer St NE, Ste. A  
 Salem, OR 97301  
 Phone: (503) 986-0889  
 Email: watermaster\_district16@wrd.state.or.us

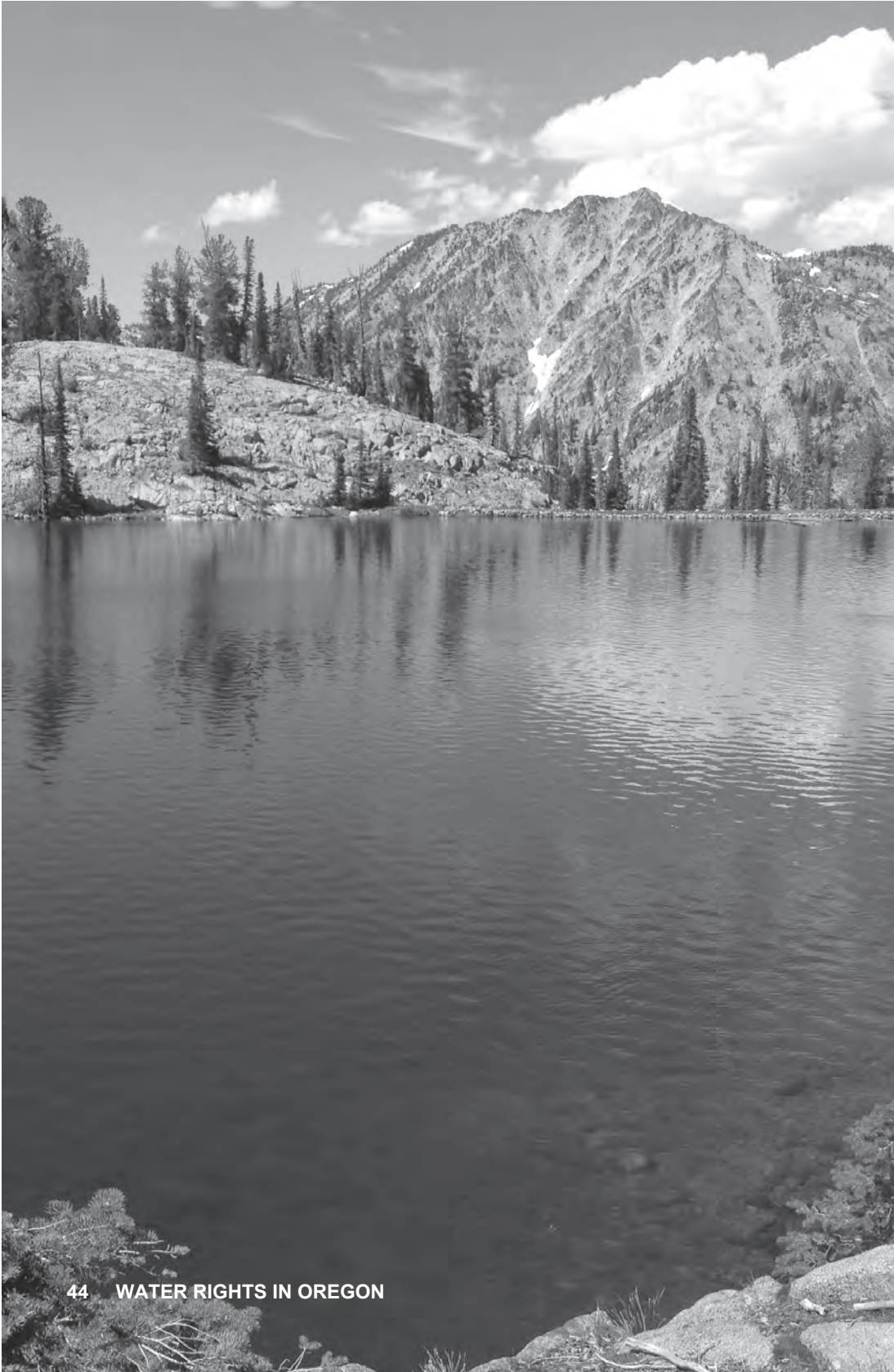
**DISTRICT 17**  
**Watermaster Office**  
 305 Main Street, First Floor  
 Klamath Falls, OR 97601  
 Phone: (541) 883-4182  
 Email: watermaster\_district17@wrd.state.or.us

**DISTRICT 18**  
**Watermaster Office**  
 1400 SW Walnut St, Ste 240,  
 MS 49  
 Hillsboro, OR 97123  
 Phone: (503) 846-7780  
 Email: watermaster\_district18@wrd.state.or.us

**DISTRICT 19**  
**Watermaster Office**  
 Coos Co. Courthouse Annex  
 225 N Adams  
 Coquille, OR 97423  
 Phone: (541) 297-6157  
 Email: watermaster\_district19@wrd.state.or.us

**DISTRICT 20**  
**Watermaster Office**  
 10722 SE Highway 212  
 Clackamas, OR 97015  
 Phone: (503) 722-1410  
 Email: watermaster\_district20@wrd.state.or.us

**DISTRICT 21**  
**Watermaster Office**  
 221 S Oregon St  
 PO Box 427  
 Condon, OR 97823  
 Phone: (541) 384-4207  
 Email: watermaster\_district21@wrd.state.or.us



## 11. FEES

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For more information, refer to ORS 536.050.

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, schedule of fees, and online calculator can also be found on the Department's website at [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD).



## 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:*

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See  
*An Introduction to Water Related Permits And Reviews* issued by Oregon State Agencies (2012) for more information

- *Department of State Lands (DSL)*  
<https://www.oregon.gov/dsl/WW/Pages/WetlandConservation.aspx>
- *U.S. Army Corps of Engineers (Corps)* under the federal Clean Water Act and Rivers and Harbors Act  
<https://www.epa.gov/cwa-404/section-404-clean-water-act-how-wetlands-are-defined-and-identified>
- *Oregon Department of Forestry* under the Forest Practices Act  
<https://www.oregon.gov/ODF/Working/Pages/FPA.aspx>
- *U.S.D.A. 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 Department of State Lands (DLS) 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, Department of State Lands or the Corps for details and clearance to proceed with your project and to determine if you are affecting an area that is regulated.

A list of licenses, permits, and registrations in Oregon can be found on the web at <https://apps.oregon.gov/SOS/LicenseDirectory/>.

You can also access the state's water permit guide at <http://www.oregon.gov/dsl/WW/Pages/Permits.aspx>.



## APPENDIX B

### *Dam Safety in Oregon*

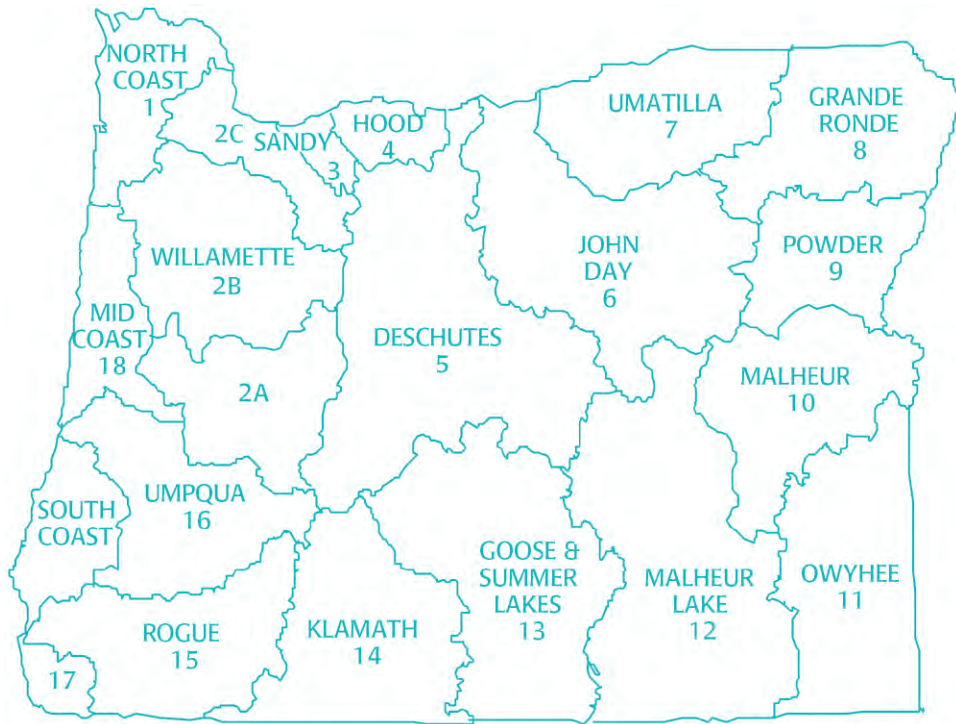
Oregon's Dam Safety Program was established in 1929 to protect lives, property, and infrastructure below dams. The program provides construction standards and inspection protocols for dams 10 or more feet in height and storing 3,000,000 or more gallons (9.2 acre feet). Dam owners have responsibility to maintain their structures, and the Department can provide information and technical support to help.

For more information you can access the Department's Dam Safety website at: [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD).



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## Oregon's Administrative Basins



Oregon has 18 designated administrative basins that are managed by the Department under the guidance of the Water Resources Commission. These are noted on the map above. Bordering Oregon are the Columbia River and Middle Snake River, which are shared with other states.



State of Oregon  
Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301-1266  
(503) 986-0900  
[www.oregon.gov/OWRD](http://www.oregon.gov/OWRD)