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## Inside this Brief

- **Prior Appropriation Doctrine**
- **What is a Water Right?**
- **Adjudication**
- **New Water Rights**
- **Recent Legislation**
- **Staff and Agency Contacts**

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Background Brief on...

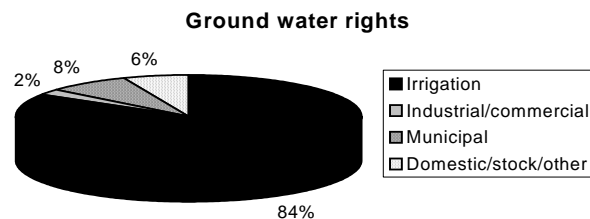
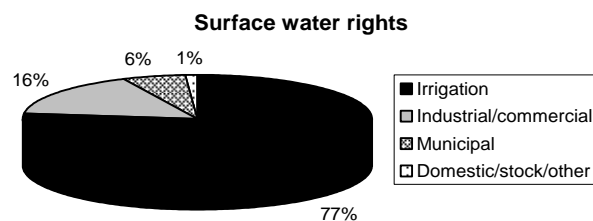
# Water Rights

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## Prior Appropriation Doctrine

Water is allocated in Oregon under the doctrine of prior appropriation – familiar as “first in time, first in right.” Any person who appropriates water for a beneficial use earlier in time has a superior claim during periods in which there is insufficient water to satisfy all rights. The 1909 water code codified two water right principles. First, all water within the state belongs to the public. Second, subject to prior rights existing at the time of passage (February 1909), waters of the state may be appropriated for beneficial use under permit by the Water Resources Department (**WRD**). Similar water rights for the use of groundwater were established in 1927 for eastern Oregon and in 1955 for western Oregon. Many small uses of groundwater are exempt from the permit requirements. Oregon law pertaining to water appropriation is found in ORS Chapter 537.

Estimated Use of Out of Stream Water Rights of Record as of  
January 2004



## What is a Water Right?

Since all waters of the state are owned by the public, a water right is the right to use water for a beneficial purpose. Beneficial use is the reasonably efficient use of water without waste for a purpose consistent with the laws, rules and best interests of the people of Oregon. Examples of types of beneficial uses include industrial

and municipal uses, irrigation, and flood control.

In 1987, the Oregon Legislature added instream water rights as a beneficial use to support instream flows, fish propagation, and wildlife habitat. Since passage of the legislation, about 1,400 instream water rights have been established. Of these instream rights, about 550 resulted from converting previously established minimum perennial stream flows.

A water right is connected to the land where it is used. The water right specifies the quantity of water, point of diversion, place of use, type of use, season of use (for irrigation uses), and priority date. A water right may be transferred from one place to another, the point of diversion may be changed, and the type of use allowed under the right may be changed by applying to the WRD. The transfer will be approved if the Department determines that the modification can be made without injury to other water rights.

## Adjudication

Adjudication is the process by which pre-1909 vested water rights are quantified and documented through an adjudication procedure in circuit court. In 1987, the Legislature required claimants in all remaining unadjudicated areas to file registration statements of their claims by December 31, 1994. The statute allowed for an additional year to register if good cause was shown. Most major river basins in Oregon have been adjudicated. The only general adjudication presently underway is in the Klamath, which has been ongoing since 1975. To date, 84% of contested claims in the Klamath have been resolved.

The 1995 Oregon Groundwater Act required existing water users to register their use in anticipation of a groundwater adjudication. However, the Department has not yet initiated adjudication of these claims.

## New Water Rights

New water rights are created through a request to the WRD. The proposed water use must meet the following conditions:

- 1) water is available from the source,
- 2) the use will not interfere with senior water rights,
- 3) the use conforms with the basin plan,
- 4) the use complies with rules of the Water Resources Commission, and
- 5) the use is determined to be in the public interest.

Surface water availability is determined by the 80 percent exceedance factor. Water may continue to be appropriated as long as, with the proposed appropriation, there is sufficient water to meet expected demands from all consumptive and instream water rights at least 80 percent of the time during each of the months of proposed use. For groundwater uses, combined water rights must not exceed the average annual recharge to a groundwater source or result in the further depletion of over-appropriated connected surface waters.

Designated beneficial uses are specific to a water body. The classified uses of water established in basin programs indicate the uses for which new permits may be issued such as industrial and municipal uses, irrigation, mining, storage and flood control. However, those classifications of use do not affect established water rights. Water quality standards [see Water Quality Background Brief] are based on support of designated uses.

The public interest review considers the following factors: water use efficiency; sensitive, threatened, or endangered species; water quality; fish and wildlife; recreation; economic development, and local comprehensive land use plans.

## Recent Legislation

House Bill 2456 (2003) codifies conserved water program provisions under which a water user may apply to spread a portion of conserved water to new uses in exchange for a portion of the conserved water being allocated for instream use. The measure clarified that any water use subject to transfer is eligible and allows the WRD to consider projects implemented up to 5 years prior to the application for the conserved water program.

House Bill 2945 (2003) allows the Department of Geology and Mineral Industries to impose conditions on surface mining operating permits necessary to mitigate off-site effects on groundwater resources caused by the removal of water from a surface mine.

## Staff and Agency Contacts

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