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Background Brief on ...

# Water Management

## 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 a period 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, 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 ground water were established in 1927 for eastern Oregon and in 1955 for western Oregon. Many small uses of ground water are exempt from the permit requirements. Oregon law pertaining to water appropriation is found in ORS chapters 537 and 540.

## 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 irrigation, fish and aquatic life, industrial and municipal uses, recreation, storage, and pollution control. In 1987, the Legislative Assembly added instream water rights as a beneficial use to support instream flows, fish and wildlife habitat, recreation, and pollution abatement. 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. Oregon leads the nation in the flow restoration, with more than 300 current instream leases, instream transfers, and allocations of conserved water that restore about 1,700 cubic feet per second (**cfs**) of streamflow for fish and wildlife, recreation and pollution abatement.

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, 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 or enlargement of the original right.

## **Adjudication**

Adjudication is the process by which pre-1909 vested water rights are quantified and documented through an adjudication procedure in circuit court. Approximately 67 percent of the state has been adjudicated. The only general adjudication presently underway is in the Klamath, which has been ongoing since 1975. To date, 97 percent of contests and 92 percent of the contested claims in the Klamath have been resolved.

The 1995 Oregon Ground Water Act required existing water users to register their use in anticipation of a ground water adjudication. The Department has completed one such adjudication in the Willamette Valley, and has not yet initiated adjudication in the rest of the state.

## **New Water Rights**

New water rights are created through a request to the WRD. With the exception of small reservoirs and uses of stored water, proposed water uses are generally approved if they are consistent with the following criteria:

- Water is available from the source,
- The use will not injure senior water rights,
- The use conforms with applicable basin plans, and
- The use complies with rules of the Water Resources Commission.

Surface water availability for a new right is determined by an 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 ground water uses, the combined water right appropriation must not exceed the average annual recharge to a ground water source or result in the further depletion of over-appropriated and hydraulically 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 irrigation, instream flows, industrial, municipal uses, and flood control.

## **Water Supply and Management**

In 2000, the Oregon Progress Board's *State of the Environment Report* noted that one of the state's major environmental challenges is inadequate water supply. Surface waters in most of Oregon, during non-winter months, are fully appropriated by existing out-of-stream and instream uses. Ground water resources are showing signs of overuse and are becoming unstable in many areas. Conflicts between instream and out-of-stream needs, exacerbated by listings of aquatic species under the federal Endangered Species Act, have also become increasingly divisive and expensive to resolve.

The 2007 Legislative Assembly provided funding to WRD to begin data collection efforts that will help the agency to more effectively manage and plan Oregon's water resources. This initiative, known as the Oregon Water Supply and Conservation Initiative (OWSCI), had five components:

- a statewide water demand assessment,
- an inventory of potential conservation projects,
- an inventory of potential above- and below-ground storage projects,
- grant funding for community and regional planning efforts, and
- continuation of the department's basin yield analyses (this portion of the OWSCI was not funded).

In 2008, the Legislative Assembly enacted Senate Bill 1069 directing WRD to set up a

statewide grant program to help communities pay for feasibility studies for water conservation, re-use, and storage projects. These feasibility studies are required as a first step in the construction of new water supply projects and are often the most difficult step for communities to fund.

House Bill 3369 was enacted by the 2009 Legislative Assembly and directs WRD, in cooperation with the Departments of Environmental Quality and Fish and Wildlife, to develop an integrated state water resources strategy to meet in-stream and out-of-stream water needs, and to update the strategy every five years. The bill also establishes required criteria for the approval of loan and grant applications for water supply projects.

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*The Water Resources Department assisted with the development of this document.*