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Background Brief on ...

Water Management

Prior Appropriation Doctrine

Water is allocated in Oregon under the doctrine of prior appropriation – often expressed as “first in time, first in right.” 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. The date of application for a permit to use water usually becomes the priority date of a right.

The 1909 water code codified two water right principles: 1) all water within the state belongs to the public; and 2) waters of the state may be appropriated for beneficial use under permit by the Water Resources Department (WRD). 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 permit requirements; although they must comply with well construction standards, pay a recording fee, and submit well information as required by WRD. Oregon law pertaining to water appropriation is found in ORS chapters 537 and 540.

What is a Water Right?

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, wildlife, industrial, municipal, recreation, hydropower, storage, and pollution control.

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.

In 1987, the Legislative Assembly added instream water rights as a beneficial use to support instream flows for fish and wildlife, 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 is a leader in flow restoration, with more than 320 current instream leases, instream transfers, and allocations of conserved water that restore about 2,400 cubic feet per second (cfs) of streamflow.

Adjudication

Adjudication is the process by which pre-1909 vested water rights are quantified and documented through an administrative and judicial procedure. Approximately 67 percent of the state has been adjudicated. The only general adjudication presently underway is in the Klamath Basin, which began in 1975. The administrative phase of the process recently concluded with the Adjudicator's findings of fact and final order of determination filed with the Klamath County Circuit Court on March 7, 2013. The judicial phase of the process is the review of the final order by the courts.

Adjudication claimants or contestants who dispute the Department's determination of their claims or contests will have an opportunity to file exceptions with the Klamath County Circuit Court. The Court will then review these exceptions, and will ultimately issue a water rights decree affirming or modifying the Final Order of Determination. The Department will issue water right certificates in accordance with the court's decree.

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 an application to the WRD. 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 from a water body if, 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, the combined appropriations 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 flow, 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 in-stream uses. Ground water resources are showing signs of overuse and are becoming unstable in many areas. Conflicts between in-stream 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 to help the agency to more effectively manage and plan Oregon's water resources. 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 to meet instream and out-of-stream water needs.

The 2009 Legislative Assembly enacted House Bill 3369 directing WRD, in cooperation with the Departments of Environmental Quality and Fish and Wildlife, to develop a state integrated water resources strategy. Adopted by the Water Resources Commission on August 2, 2012, the [Strategy](#) contains policy and funding recommendations in 13 issue areas designed to address water quantity, water quality, and ecosystem needs across the state. The Legislature has directed WRD to review and to update the Strategy every five years, providing policy and funding recommendations as appropriate.

In 2013, the Legislature passed Senate Bill 839 establishing a Water Supply Development Account to provide loans and grants for water resource projects that have economic, environmental, and community benefits. The legislature authorized funding of \$10.2 million in lottery revenue bonds to be issued in spring of 2015. The bill requires several workgroups to be convened before rules can be developed and grants and loans issued.

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