



LPRO: Legislative Policy and Research Office

# WATER MANAGEMENT

## BACKGROUND BRIEF

### PRIOR APPROPRIATION DOCTRINE

Water is allocated in Oregon under the Prior Appropriation Doctrine – 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). Permits for the use of groundwater were required in 1927 for eastern Oregon and in 1955 for western Oregon. Certain small uses of groundwater 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 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 WRD determines that the modification can be made without injury to other water rights or enlargement of the original right.

In 1987, the legislature added in-stream water rights as a beneficial use to support in-stream flows for fish and wildlife, recreation and pollution abatement. Since passage of the

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legislation, about 1,659 in-stream water rights have been established. Of these in-stream rights, about 550 resulted from converting previously established minimum perennial streamflows. Oregon is a leader in flow restoration, with more than 320 current in-stream leases, in-stream transfers and allocations of conserved water that restore about 1,800 cubic feet per second (cfs) of streamflow.

### ADJUDICATION

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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 WRD'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 WRD will issue water right certificates in accordance with the court's decree.

The 1955 Oregon Groundwater Act required existing water users to register their use in anticipation of a groundwater adjudication. The WRD has completed one such adjudication on the southern Coast, and has not yet initiated adjudication in the rest of the state.

### NEW WATER RIGHTS

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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.

Water availability for a new surface 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 in-stream 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 groundwater 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, fish life, industrial and municipal uses.

### WATER SUPPLY AND MANAGEMENT

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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



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and in-stream uses. Groundwater resources are showing signs of overuse and are becoming unstable. In some locations in the state, groundwater aquifers are no longer capable of sustaining additional development. 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.

In 2008, the legislature enacted Senate Bill 1069, directing the 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 in-stream and out-of-stream water needs.

The legislature in 2009 enacted House Bill 3369 directing the 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 the 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 and an additional \$6.25 million to recapitalize the Water Supply Development Account.

In 2015, Senate Bill 266 authorized the WRD to issue grants to support local, place-based, integrated water resource planning to help communities identify solutions to their current and future in-stream and out-of-stream water needs. The legislature provided \$750,000 for grants to support place-based planning pilots in a select number of areas.

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### FUTURE AVAILABILITY

Central to discussions about water management in Oregon are future projections of water supply and demand. In 2015, record low snowpack and record high temperatures resulted in drought declarations in 25 of Oregon's 36 counties. As a result, streamflows hit record-lows to near-record lows in many parts of the state, reducing supplies for irrigation, and leading some cities to implement water use restrictions. In December 2015, the WRD released an updated statewide water demand forecast which included estimates of water demand for agriculture, municipal and industrial uses by 2050. The [report](#) anticipates that increases in population and changes in rainfall, snowpack, and growing seasons will likely lead to increased demand from agricultural, commercial, residential and industrial water users. This could result in Oregon needing an additional 1.3 million acre feet of water annually, nearly 424 billion gallons, just to meet out-of-stream demands in 2050.

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