

# Using Irrigation Water Legally

Living on  
The Land

Under Oregon law, the public owns most of the water in the state. That means that landowners with water flowing past, through, or under their property do not automatically have the right to use it; they need a permit (water right) from the Oregon Water Resources Department (OWRD). While there are some exceptions, generally speaking, anyone who wants to use the public's water needs a water right, regardless of whether the water is surface water (e.g., stream, lake, reservoir) or groundwater.

## Water rights

A water right gives a person permission to irrigate a specific piece of land with a specific amount of water during a specific period of time. Oregon keeps detailed records of which lands can be irrigated and how much water is allowed. A water right is typically attached to the land described in the right; if the land is sold, the water right stays with the land and the new owner.

Water users are legally obligated to use water beneficially, which means they cannot waste it or use it for a purpose that is inconsistent with Oregon law and the best interest of the public. For example, tailwater (excess water that drains off irrigated land) could be considered wasteful and, thus, unlawful. To keep a water right, a water right holder has to beneficially use the water at least once every five years. If not, the holder might lose the water right. Water right holders should document their usage by taking photos and dating them in the event their water right is contested.

## Priority Date

Each water right has a priority date (the date the water right was issued). The water right priority date determines who gets water in a time of shortage. The older (more senior) the water right, the longer water is available to that water right holder in a time of shortage. This means that the first person to obtain a water right on a stream is the last to have the water shut off in times of low streamflows.

When water supplies are limited, the water right holders with the oldest priority date (senior users) can request the water to which they are entitled, regardless of the needs of those with more recent priority dates (junior users). OWRD's Watermasters regulate and distribute water among the holders of surface water rights to ensure they are receiving and using their legal amount.

## Rate and Duty

Water rights generally have two components: rate and duty (Figure 1). Rate is the maximum instantaneous flow of water delivered in cubic feet per second or gallons per minute. Duty is the maximum volume allowed per acre per irrigation season. For example, 2 acre-feet is the equivalent of receiving enough water to flood each acre with 2 feet of water.



Photo: Ellen Hammond, © Oregon State University

Figure 1. In this example, water flowing from the hose is the rate and once the bucket is full, the duty has been met.

## Use

Water rights can be issued for beneficial uses, such as land irrigation, watering livestock, improving fish habitat and water quality, and municipal and commercial/industrial needs.

Certain water uses on properties with a well (groundwater) do not need a water right. These include: single or group domestic

use of up to 15,000 gallons per day; water for livestock; irrigating up to ½ acre of lawn or noncommercial garden; and commercial use of up to 5,000 gallons per day. Commercial use does not include irrigation of a for-profit crop but can include the processing of a commercial crop.

Some uses of surface water do not require a water right, but those are less common on small-acreage properties.

### **Obtaining a Water Right**

In most areas of Oregon, there is not enough surface water available in the summer for new water rights. Groundwater is also limited in some areas during the summer months. New water rights are allocated carefully to keep from harming existing water rights for cities, farms, factories, fish habitat, and other uses.

Water rights are not automatically granted; OWRD provides opportunities to protest the granting of a permit. Other water users can assert that a new permit may cause injury to their water use, and the public can claim that a new permit may harm the public interest. This process protects both existing water users and public resources.

Contact your local OWRD Watermaster ([www.oregon.gov/owrd](http://www.oregon.gov/owrd)) if you have questions about water rights.

## **Irrigation Districts**

Irrigation districts distribute water to their patrons based on their water rights of record. They also make sure their patrons use water according to the terms and conditions of those rights. Landowners in an irrigation district may not actually own the water rights; irrigation districts often hold them in trust for their patrons (Figure 2).

Property owners within an irrigation district may or may not have a water right. The title company should provide this information when property is purchased; however, it is always a good idea to check with your local Watermaster if questions arise.

Some irrigation districts are quasi-governmental entities while others are organized as private corporations. In most cases, they will have a board of directors consisting of district landowners who typically are elected by other district patrons.

Oregon landowners with an irrigation district water right do not have the authority to move that water to other places on their property, use it in excess of their water right, sell the water right to someone else, or build on top of an irrigation district easement (strips of land along their canals, ditches, and pipelines that are used to manage the delivery of irrigation water). Water-right regulations may vary between states.

The irrigation district, and in some cases OWRD, must be consulted on all matters involving changes to the water right or the activity on its easements. Irrigation districts can stop encroachments that interfere with their easements.

When in doubt, call your local irrigation district, describe your situation, and ask for their help.



Photo: Oregon Department of Agriculture

Figure 2. Irrigation districts often use a weir (a concrete or masonry structure constructed across an open channel) to measure water flow and divert water to patrons.

For more information on using irrigation water legally, contact your local Extension agent, Natural Resources Conservation Service, or Soil and Water Conservation District. Technical and financial assistance is available for landowners wishing to address resource concerns on their property. The phrase “Living on The Land” is used with permission from Living on The Land Stewardship for Small Acreage, © 2008, UNCE/WSARE.

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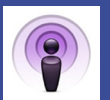
Ellen Hammond, Water Quality Specialist, Oregon Department of Agriculture

Brian Tuck, Extension Regional Administrator, Oregon State University

Robert Wood, District 3 Watermaster, The Dalles, Oregon

Shilah Olson, Conservation Planner, Wasco County Soil & Water Conservation District, Oregon

Susan Kerr, Extension Regional Livestock and Dairy Specialist, Washington State University



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