



Wheat field irrigation at Tygh Valley, Oregon.

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# WATER RIGHTS AND WATER LAW:

## Using Your Irrigation Water Legally

### IRRIGATION TECHNOLOGY AND MANAGEMENT PROGRAM

MANAGEMENT  
TECHNICAL GUIDE

**Todd M. Peplin and María Isabel Zamora Re**

**U**nder Oregon law, all water is publicly owned. A water right is required before anyone (including municipalities, businesses, or any other entity) may divert water from its natural course (whether it is groundwater or surface water) and put it to “beneficial use.” This means that landowners with water flowing past, through or under their properties do not automatically have the right to use that water without authorization from the Oregon Water Resources Department. There are some limited exceptions to the rule. Understanding your water right is the first step in using and managing your irrigation water legally.

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## Beneficial use

Water rights are issued only for beneficial use, without waste. Each water right includes a designated type of “use” and is limited to that purpose. General categories of beneficial use include, but are not limited to: irrigation, municipal, industrial, commercial and domestic. Since 1987, the law has specifically included in-stream flow protection as a beneficial use for improving fish habitat and water quality.

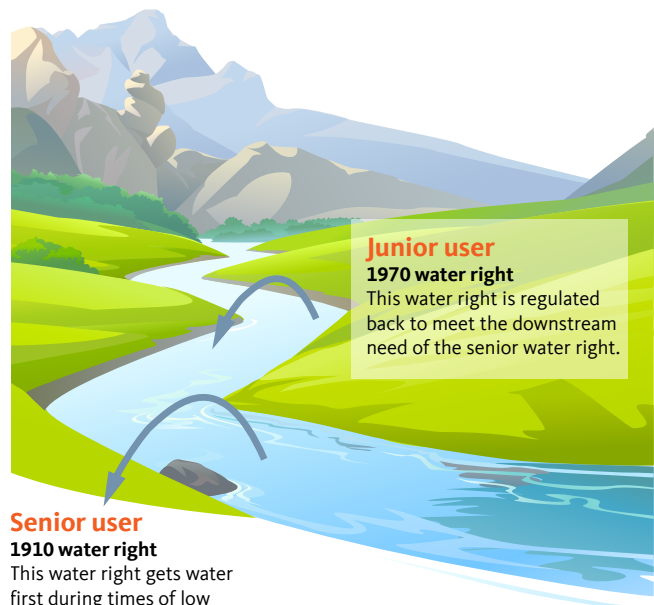
Prior appropriation refers to the general principles of water law adopted in Oregon and throughout the western United States. The doctrine of prior appropriation evolved in the law to promote settlement and development of the West. The basic concept is that people are encouraged to put water to “beneficial use” by diverting it from a water source and applying it to the land. The system is first come, first served (Figure 1). The first person to obtain a water right on any given stream will be the last person to be shut off in times of shortage. The “senior” water right holder is entitled to take all the water needed and allowed under their water right before the next junior water right holder is served. No water rights user (senior or junior) has authority to use the water for any purpose.

Their surface or groundwater right must specify a “beneficial use.” If the water right is not used at least one time every five years, it can be forfeited.

Knowing a parcel of land has water rights attached isn’t enough to guarantee that the allocation will be reliable or sufficient. For example, specific areas in the state may have restrictions on water use and limits on new appropriations because they are designated as Critical Groundwater Areas or Groundwater Limited Areas. Senior priority dates also vary greatly from stream to stream. A date that is senior on one stream may not be senior on another. To determine if you are in one of these limited areas or if the water right is considered senior, consult your local watermaster.

## Water rights

A water right permit is an authorization from the state to make use of water, either surface water or groundwater. Since 1909, state law has required a water right permit before someone can use surface water. Groundwater has been subject to the permit requirements statewide since 1955. The Oregon Water Resources Department issues water rights permits. 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 certificate is attached to the land described in the water right and must be used within the mapped footprint.



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An example of the concept of prior appropriation: first in time, first in right. Senior water rights holders are entitled to all the water needed before the next junior water right holder is served.

### Oregon’s water code

#### 4 FUNDAMENTAL PROVISIONS

- 1. Beneficial purpose without waste.** Surface or groundwater may be legally diverted for use only if it is used for a beneficial purpose without waste.
- 2. Priority.** The water right priority date determines who gets water in a time of shortage. The more senior the water right, the longer water may be available in a time of shortage.
- 3. Appurtenancy.** Generally, a water right is attached to the land described in the right, as long as the water is used. If the land is sold, the water right typically goes with the land to the new owner.
- 4. Must be used.** Once established, a water right must be used as provided in the right at least once every five years. With some exceptions established in law, after five consecutive years of non-use, the right is considered forfeited and is subject to cancellation.

— From **Water Rights in Oregon: An Introduction to Oregon’s Water Laws**, Oregon Water Resources Department

If the land is sold, the water right certificate stays with the land and is assumed by the new owner. A water rights certificate can be separated from the land listed on the certificate and moved to another place of use with a water right transfer filed with the OWRD.

## Use it or lose it

The phrase “use it or lose it” refers to the use of the water right. It is the basic element of water law that the water right must be regularly exercised to remain valid. A certificated water right remains valid forever, so long as it is used beneficially. If the water right certificate is not used for a period of five or more years, it then becomes subject to forfeiture and may be canceled. Cancellation would not apply if the water right-holder demonstrates the non-use was “excused” for reasons listed in Oregon statutes, such as economic hardship, government regulations that prevent water use or participation in a conservation program.

## Exempt water use

Oregon water law includes limited exceptions to the general rule that a prospective water user must obtain a permit before appropriating surface water or groundwater. Some exempt uses of surface water include:

- Stock watering, certain small ponds and reservoirs that were constructed and registered with the state before January 31, 1997.
- Firefighting, certain forest management practices and certain land management practices such as erosion control, where the primary purpose is not to make use of the water.
- Use of small natural springs that do not flow off the property where the spring originates.
- Certain types of fish enhancement projects.

Check with your local watermaster to determine valid exempted uses.

Exemptions to groundwater uses are domestic and group domestic use of up to 15,000 gallons per day, and commercial and industrial uses 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.). Other exemptions are for stock watering, noncommercial lawn and garden up to one-half acre, and down-hole heat exchange uses (ORS 537.545).

Prior to 2009 it was not necessary for a landowner to notify OWRD or register a well that is used only for exempt purposes. For wells completed after July 22, 2009, landowners are required to notify OWRD and register wells regardless of exempt status.

## Duty and rate

Water rights generally have two components, “duty” and “rate.” Duty is the maximum volume of water you can receive during the irrigation season. The duty is measured in either cubic feet per second or acre-feet and is stipulated by Oregon court decree and subsequent water right certificates. The duty is not guaranteed, and the actual amount of water received during the irrigation season may vary from year to year depending on snowpack and natural stream flow.

Rate is the amount of water that flows to your property, measured in either gallons per minute or cubic feet per second, during the irrigation season. The water right stipulates this rate and can vary during the irrigation season.

Irrigation districts distribute water to their patrons based on the district’s water rights of record. (Patrons are property owners with water rights within their irrigation district boundary.) Irrigation districts also ensure their patrons use water according to the terms and conditions of those rights. Patrons in an irrigation district do not actually own their individual water rights. Patrons have the right to use the water, and the irrigation district holds the water right in trust for them. Property owners within an irrigation district boundary may or may not have a water right. To find out if your property has a water right, contact the irrigation district that services your area, OWRD or the title company.

Oregon landowners with an irrigation district water right *do not* have the authority to:

- Irrigate land on a property that does not have a water right.
- Transfer the water right to another property.
- Use a duty/rate of water more than their certificated water right.
- Sell or transfer the water right to someone else.
- Lease or transfer water back for in-stream use.
- Change the point of diversion to the property.
- Construct permanent structures such as buildings on the irrigation district easement.

Any transfer of water rights must be approved by the irrigation district and concurred and filed with OWRD. To be a good manager of your irrigation water, you should have a water right map that identifies areas you can and cannot legally irrigate on your property.

Irrigation districts may offer an in-stream lease option to preserve the landowner’s water right and maintain beneficial use of the water. An in-stream lease is an agreement between a water right holder, the irrigation district (if applicable) and the state of



Photo: Lynn Ketchum, © Oregon State University

An irrigation canal in Madras. Irrigation district canals have an easement and right-of-way for operations and maintenance.

Oregon to allow the water right to be used for in-stream purposes for a specified period. Leases may be issued for up to five years at a time and may be renewed. During the term of the lease, the water must be used only for the in-stream purpose.

Canals and ditches owned and managed by the irrigation district have an easement and right-of-way for the district to conduct operations and maintenance. These easements and rights-of-way were conveyed by the federal government under the terms of several acts of Congress at the time of the irrigation district's formation. These easements are reserved and protected for the operations and maintenance of the irrigation district's distribution system (canals and ditches) and cannot be blocked or encroached upon with permanent structures. The easements' legal descriptions (width, length, depth and height) vary within each irrigation district. Check with your irrigation district to find out more about allowable uses on their easements. Private ditches are not maintained by the irrigation district beyond the point of delivery. It is the landowners' responsibility to maintain and ensure the operation of the ditch.

## Ponds and reservoirs

The construction of a reservoir or pond of any size to store water requires a water right permit from OWRD. A permit for a reservoir with the sole purpose of storing water is considered the primary permit. Permittees intending to use stored water will need an additional water use permit, commonly referred to as a secondary permit.

There are two types of permitting through the OWRD. The first is the standard permitting process for ponds or reservoirs that will hold more than 9.2 acre-feet of water and have a dam height of 10 feet or greater. This water storage facility requires engineered

plans and specifications that must be approved by the dam safety section of OWRD prior to construction.

The second is the alternative permitting process for ponds or reservoirs that will hold 9.2 acre-feet or less and have a dam height of 10 feet or less. The process involves a review of the project by the watermaster and the Oregon Department Fish and Wildlife. When installing a pond or reservoir on your property, contact OWRD or the irrigation company to determine if adjustments to the existing water right are warranted.

## Water rights tools for drought

Oregon and most Western states face continual drought conditions. State water rights laws offer several tools to help landowners. Consult your irrigation district or OWRD to see if they apply to your property.

- **Drought transfer:** If the governor issues a drought declaration for a county, water users in that county can access emergency water-use tools, one of which is a drought transfer. This is a short-term transfer of a water right to change its type of use, place of use or location of the point of diversion.
- **Temporary emergency water-use permit:** This tool is only available to drought-declared counties. If an existing surface water right doesn't have enough water during a drought period, a water user can apply for an emergency permit to temporarily tap into groundwater. These permits are limited to one year and may not be available in groundwater limited areas.
- **Temporary transfers:** A temporary transfer allows the water user to move water to areas of critical need. The water user can change the place of use, point of diversion or type of use of a certified water right. They can move water on their own

property to areas of critical need or temporarily transfer it to another farmer.

- **Conserved water right:** A conserved water right allows the water user to apply for funding to support water efficiency projects and reduce water use. Allocations of “conserved water” allow a landowner to move the saved portion of the water right permanently in-stream to benefit aquatic species. This tool is available anytime, not just in times of declared drought.
- **Limited license:** A limited license is a temporary water use authorization for short-term or fixed duration not to exceed five years. Generally, irrigation uses are not allowed. However, a limited license may be used to establish a crop that will not require further irrigation once established. In addition, a limited license may be issued for use of stored water, providing certain criteria are met. Consult OWRD or your irrigation district about this option.

## Resources and references

Central Oregon Irrigation District Patron Handbook Services, [https://www.coid.org/wp-content/uploads/2021/02/COID\\_PATRON-HANDBOOK\\_PROD\\_singles2021.pdf](https://www.coid.org/wp-content/uploads/2021/02/COID_PATRON-HANDBOOK_PROD_singles2021.pdf)

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Hammond, E., B. Tuck, R. Wood, S. Olson, S. Kerr. 2017. *Using Irrigation Water Legally*, EM 1650, <https://catalog.extension.oregonstate.edu/ec1650>

Oregon Water Resources Department. 2018. *Water Rights in Oregon: An introduction to Oregon’s Water Laws*. <https://www.oregon.gov/owrd/WRDPublications1/aquabook.pdf>

Schwabe, Williamson and Wyatt, 2023. *Oregon Water Law Questions and Answers*. <https://www.schwabe.com/publication/oregon-water-law-questions-and-answers/>

Tumalo Irrigation District, Handbook for Water Users <https://www.tumalo.org/files/dd8a94474/Water+User%27s+Handbook.pdf>

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## Assessment worksheet for water rights and water law

<i>Use this worksheet to assesses your property and knowledge regarding water rights and water law. Information from this worksheet will be needed to complete the water rights and water law section in your irrigation water management plan.</i>	Yes	No	Not sure	N/A
<b>Irrigation water source</b>				
Well (groundwater)				
Stream diversion				
Spring				
Irrigation district delivery				
Municipal water				
Other (list):				
<b>Well</b>				
Is your well permitted for irrigation use?				
Do you have a recorded water right for the use of the groundwater?				
Do you know how many gallons per minute are on your recorded water right?				
<b>Stream diversion and springs</b>				
Is your access to the stream or spring for irrigation use permitted?				
Do you have a recorded water right for the use of the surface water?				
Do you know how many gallons per minute are on your recorded water right?				
<b>Irrigation district</b>				
Is your water right held by an irrigation district?				
Do you know the name of your irrigation company or district and a point of contact?				
Do you get your irrigation water on a set schedule rotation with your neighbors)?				
Do you need to schedule or order your irrigation water in advance to water your crop?				
<b>Irrigation water restrictions</b>				
Do you live in a Critical Groundwater Area or a Groundwater Limited Area?				
Are there any other limitations to the use of your water?				
<b>Water rights</b>				
Do you have a documented water right on your property?				
Do you know how many acres on your property have the water right?				
Do you have a map identifying where your water right acres are on your property?				
Are the water rights on your property in good standing?				
Have you irrigated your property one out of every five years?				
Is your water right or part of your water right in an in-stream lease?				

Use this worksheet to assess your property and knowledge regarding water rights and water law. Information from this worksheet will be needed to complete the water rights and water law section in your irrigation water management plan.

Yes	No	Not sure	N/A
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**Priority date**

Do you know the priority date of your water right?

Do you know if your priority date is considered a senior or junior water right?

**Canals and ditches**

Do you know if your irrigation ditch is owned by the irrigation company? Or is it private?

Do you share a private ditch with other water users?

Do you know who maintains the irrigation ditch that services your property?

Are there any obstructions on the ditch easement owned by the irrigation company?

**Ponds**

Is there a permit for your irrigation pond?

Do you know the capacity of your pond (how many gallons it holds)?

**Given your responses above, how would you assess your current knowledge and awareness of Oregon water rights and water law? (Check one)**

Excellent    Fair    Poor    Not sure

For answers you checked “No” or “Not sure,” list potential follow-up actions below. Enter this information in your irrigation water management plan.

1.

2.

3.

4.

5.