

# WATER

## ACTIVITIES IN WATERS AND WETLANDS

### WHO MUST COMPLY?

All landowners and operators and USDA program participants must comply. Permits for fill, excavation, or similar alterations in waterways and wetlands are issued by the Corps of Engineers (Corps) under section 404 of the Clean Water Act, and by the Division of State Lands (DSL) under the state removal-fill law. The Natural Resource Conservation Service NRCS (formerly the Soil Conservation Service) administers the Swampbuster provisions of the 1985 Food Security Act, as amended in 1990, 1996, 2002, and 2008. All landowners and operators are responsible for obtaining any necessary federal and state permits or clearances for Swampbuster provisions.

### REGULATED ACTIVITIES

Placement of fill material, excavation, alteration of stream banks or stream course, ditching, draining, stump removal (large clearing projects), and plowing or disking wetlands not previously farmed (conversion to agricultural use) are all regulated activities in the areas described below.

### AREAS REGULATED

Regulated areas where alteration permits or clearances may be required include rivers, streams, lakes, ponds, and wetlands.

- Streams and creeks include all perennial and some intermittent creeks, including ones that have been ditched.
- Lakes include the permanent water area and any seasonally saturated wetlands that surround the permanent water body.
- Wetlands include areas known as swamps, sloughs, marshes, ponds, and wet meadows. They may be forested, shrubby, prairie-like, or have no vegetation if they have been altered. Wetlands that are being farmed may be supporting crops or pasture plants.

Caution: Many wetlands are only seasonally wet and may not look like wetlands during certain times of the year. Typically, seasonal wetlands are very wet areas in the winter and spring but dry by early-to-mid summer. If an area is difficult to farm because it is too wet, the site may be a regulated wetland that should be evaluated

prior to conducting regulated activities. Wetlands subject to regulation are identified in the field, based upon soils, vegetation, and hydrology.

### EXEMPTIONS

Some wetland types and some activities are exempt from permit requirements and from Swampbuster provisions. Exempt activities include established ongoing farming activities, such as plowing, seeding, and cultivation; routine maintenance of ditches (to original capacity); replacement of malfunctioning drainage systems or water control structures (to original capacity); and some minor projects involving small amounts of fill or excavation. You may not perform maintenance activities that increase the original scope and design of the drainage system without a permit.

However, there is not an exact correspondence between the Swampbuster provisions, Clean Water Act, or the state removal-fill law. If you are planning to conduct any of the activities listed above (regulated activities), you should contact NRCS, Corps, and DSL for information regarding any restrictions, regulations, or exemptions that may apply. The information in this handbook is intended only as a guide.

### TECHNICAL ASSISTANCE

#### Programs and permits

For USDA program participants, the first point-of-contact is NRCS. There is a field office in most counties. The local Soil and Water Conservation District (SWCD) can help you locate the nearest office, or you may phone the state office in Portland. In addition to administering Swampbuster, NRCS provides landowner technical and financial assistance with natural resource conservation, including wetland restoration.

#### US DEPARTMENT OF AGRICULTURE

##### Natural Resources Conservation Service (NRCS)

1201 NE Lloyd Blvd, Suite 900

Portland, OR 97232

Phone \_\_\_\_\_ 503-414-3200

Web \_\_\_\_\_ [www.or.nrcs.usda.gov](http://www.or.nrcs.usda.gov)

##### State Habitat Biologist

Jeremy Maestas

625 SE Salmon Ave., Suite 4

Redmond, OR 97756

Phone \_\_\_\_\_ 541-923-4358 ext. 109

For non-USDA program participants, the first point-of-contact is the Corps and DSL. Corps and DSL have a joint permit application and procedure for alteration of waterways and wetlands. The landowner will generally need to have a wetland determination from a private consultant (determination subject to review and approval) prior to applying for a permit to alter a wetland area. Permits may be approved (usually with conditions) or denied. The Corps and DSL also provide assistance to landowners regarding wetlands and permits.

#### US ARMY CORPS OF ENGINEERS

##### **Regulatory and Resource Branch**

Jim Goudzwaard, wetlands specialist

PO Box 2946

Portland, OR 97208-2946

Phone \_\_\_\_\_ 503-808-4376

#### OREGON DIVISION OF STATE LANDS (DSL)

##### **Nancy Pustis, Western region manager**

775 Summer St NE

Salem, OR 97310-1337

Phone \_\_\_\_\_ 503-378-5308

##### **Lanny Quackenbush, Eastern region manager**

20310 Empire Ave., #B-1

Bend, OR 97701

Phone \_\_\_\_\_ 541-388-6112

ODFW provides technical and financial assistance to landowners who want to improve conservation practices (wetland or upland) on their lands. They also provide information to the regulatory agencies (through the permit process) and to landowners on the best timing of in-stream work to minimize effects on fish.

#### OREGON DEPARTMENT OF FISH AND WILDLIFE

##### **Habitat Conservation Division**

3406 Cherry Ave. NE

Salem, OR 97303-4924

Phone \_\_\_\_\_ 503-947-6000

Web \_\_\_\_\_ [www.dfw.state.or.us](http://www.dfw.state.or.us)

The US Fish and Wildlife Service provides financial and technical assistance through such programs as Partners for Wildlife.

#### US FISH AND WILDLIFE SERVICE

##### **Portland Field Office**

2600 SE 98th St, Suite 100

Portland, OR 97266

Phone \_\_\_\_\_ 503-231-6179

Web \_\_\_\_\_ [www.fws.gov](http://www.fws.gov)

## FISH PASSAGE AT ARTIFICIAL IN-CHANNEL OBSTRUCTIONS AND DAMS

### WHO MUST COMPLY?

Owners/operators that construct, abandon, enlarge, or replace major parts of an in-channel artificial obstruction (i.e., dam, culvert, dike, levee, tidegate, etc.) to the upstream and downstream movement of native migratory fish must provide adequate fish passage at the obstruction unless granted a waiver or exemption [ORS 509.580 through 509.645, and OAR 635-412-0005 through 0040]. Waivers are for situations where passage at the artificial obstruction would benefit fish, and mitigation is required that provides a net benefit for native migratory fish. Exemptions are generally for situations where passage would provide no appreciable benefit to fish. Passage plans, waivers, or exemptions must be approved by the Oregon Department of Fish and Wildlife (ODFW) prior to construction, abandonment, enlargement, or major replacement of the artificial obstruction.

Fish passage facilities must be operated and maintained by the owner or operator of the artificial obstruction to

provide adequate passage of native migratory fish at all times.

### DEFINITIONS

Fish passage facilities at dams usually involve a fishway of some type for upstream passage and other measures for downstream passage.

#### **Artificial obstruction**

An artificial obstruction is any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

#### **Fishway**

A fishway is the set of human-built and/or operated facilities, structures, devices, and measures that together constitute, are critical to the success of, and were created for the sole purpose of providing upstream fish passage at artificial or natural obstructions which create a

discontinuity between upstream and downstream water or bed surface elevations. A fishway generally takes the form of a series of stair-stepped pools (fish ladder) through which fish can migrate upstream.

### **Native migratory fish**

Those native fish that migrate during their life cycle. A fish species list can be obtained from the ODFW statewide fish passage coordinator.

### **Net benefit**

An increase in the overall, proximate habitat quality or quantity, as determined by ODFW, that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measure have been completed.

### **WAIVER**

An owner/operator with an artificial obstruction may apply for a waiver of the requirement to provide fish passage if mitigation will be provided that creates a net benefit to fish [ORS 509.585(7)(a)].

### **EXEMPTION**

An owner/operator with an artificial obstruction may apply for an exemption to the requirement to provide fish passage if

- a lack of fish passage was mitigated.
- a waiver was granted for the artificial obstruction.
- no appreciable benefit exists for providing fish passage [ORS 509.585(9)(a)].

### **COST SHARING PROGRAM**

ODFW administers a cost share program that provides assistance to owners/operators for fishway construction. If an owner/operator is selected for the program, the State of Oregon covers 60 percent of the costs of each fish passage device (not to exceed \$75,000) and the owner/operator covers 40 percent. An ODFW cost share grant application may be obtained on the Web at [http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/screen\\_passage\\_grants.htm](http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/screen_passage_grants.htm). In most cases, owners/operators are also eligible for a tax credit.

### **TAX CREDIT**

An owner/operator may be eligible for a state income tax or corporate excise tax credit of 50 percent, not to exceed \$5,000, per fishway. The owner/operator must apply for preliminary certification from ODFW prior to construction [ORS 315.138].

### **TECHNICAL ASSISTANCE**

Technical assistance for providing fish passage may be obtained from ODFW's field coordinators (listed in the application), local field offices, the statewide fish passage coordinator, or <http://www.dfw.state.or.us/fish/passage>.

### **OREGON DEPARTMENT OF FISH AND WILDLIFE**

#### **Greg Apke, Statewide Fish Passage Program Leader**

3406 Cherry Ave NE  
Salem, Oregon 97303

Phone \_\_\_\_\_ 503-947-6228

E-mail \_\_\_\_\_ [greg.d.apke@state.or.us](mailto:greg.d.apke@state.or.us)

#### **Ken Loffink, Assistant Fish Passage Coordinator**

Phone \_\_\_\_\_ 503-947-6256

Fax \_\_\_\_\_ 503-947-6203

E-mail \_\_\_\_\_ [ken.j.loffink@state.or.us](mailto:ken.j.loffink@state.or.us)

## FISH SCREENING AND BY-PASS DEVICES AT WATER DIVERSIONS AND DAMS

### WHO MUST COMPLY?

Fish screening and by-pass devices prevent the loss of fish when diverting water for human use. These devices are an important element in protecting or restoring fish populations throughout Oregon and are a critical tool in preventing additional endangered species act listing. A number of fish screen designs are available that work in conjunction with gravity and pumped water diversions.

The installation of a fish screen may be required under the following circumstances [ORS 498.306]:

- The water diversion is 30 cfs or more.
- A new water right is issued for the diversion.
- The point of diversion is transferred.
- Less than 150 persons per biennium volunteer for a screen installation.
- The Fish Screening Task Force has reviewed and approved a request to require screening.

### COST SHARE PROGRAM

Oregon Department of Fish and Wildlife (ODFW) encourages the installation of fish screening or by-pass devices in water diversions of any size. As an additional incentive for water users to install fish screens, ODFW administers a cost-share program to assist with fish screen installation. Approved projects are eligible to receive up to 60 percent of the projects costs of each device with a \$75,000 per project cap. The water user or ODFW can construct and install the devices. The cost share cap of \$75,000 may be exceeded under certain circumstances. A tax credit is also available to qualified applicants for 50 percent (up to \$5,000) of their costs to install a fish screen. An ODFW cost share grant application and additional information may be obtained from ODFW's field coordinators:

- Marty Olsin, Northwest Oregon 541-296-8026
- Adam Wulf, Eastern Oregon 541-575-0561
- Rich Kilbane, Southwest Oregon 541-826-8774

The ODFW Fish Screening Program website:

<http://www.dfw.state.or.us/fish/screening>

Fish screening and by-pass plans should be approved by ODFW prior to construction and installation of the fish screening or by-pass devices. Projects completed as part of the cost share program must receive approval as part of the application process.

### TAX CREDIT

A water user may be eligible for a state income tax credit of 50 percent not to exceed \$5,000 per fish screening or by-pass device. The water user must apply for preliminary certification from ODFW prior to construction [ORS 315.138].

For additional assistance or questions, please contact one of the coordinators listed above or the statewide fish screening coordinator.

### DEFINITIONS

#### **Fish screen**

A fish screen is a screen, bar, rack or other physical barrier, including related improvements necessary to ensure its effective operation, and to provide adequate protection for fish populations present at a water diversion.

#### **By-pass**

A by-pass is a pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted, but does not include fishways or other passages around a dam.

### TECHNICAL ASSISTANCE

#### OREGON DEPARTMENT OF FISH & WILDLIFE

Pete Baki, Statewide Fish Screening Coordinator

3406 Cherry Ave. NE

Salem, OR 97303

Phone \_\_\_\_\_ 503-947-6217

E-mail \_\_\_\_\_ Pete.A.Baki@state.or.us

Web \_\_\_\_\_ [www.dfw.state.or.us/fish/screening](http://www.dfw.state.or.us/fish/screening)

## GROUNDWATER

### BACKGROUND

The 1989 Oregon Legislature established a law intended to prevent contamination of Oregon's groundwater resources. The Oregon Department of Environmental Quality (DEQ) has lead responsibility to evaluate and implement strategies for preventing and correcting contamination of groundwater. Contamination sources might include residential, commercial or farm sources such as fertilizers, pesticides, or other farm wastes.

### WELL WATER

If a residence is served by a well, Oregon law requires that the well be tested for nitrates and total coliform bacteria before any sale or exchange of the property. The seller must submit the test results to the Drinking Water Program of the Public Health Division. The division may also require additional tests for specific contaminants in an area of groundwater concern or groundwater management. For more information on well water testing, contact the Drinking Water Program.

Drinking Water/Domestic Wells  
PO Box 14350  
Portland, Oregon, 97293-0350  
Phone \_\_\_\_\_ 971-673-0405

### WELL CONSTRUCTION

To secure a groundwater supply, you will need to estimate your water needs, locate a groundwater source, obtain a water right (in some cases), select and contract with a licensed and bonded well constructor or get the needed Oregon Water Resources Department (OWRD) authorization to drill the well yourself. The OWRD recommends against drilling your own well. Standards on well depth, casing, sealing, development and yield testing,

and developing a well log require specialized knowledge and equipment. Names of local well constructors are available from the OWRD Web page <http://www.wrd.state.or.us/OWRD/GW>, the classified section of the local telephone directory, the Oregon Groundwater Association, or at any OWRD office.

If a water right permit is required, OWRD recommends that you obtain a permit prior to drilling a well; otherwise, you may spend money on a well that you cannot use. If a water right permit is not required, an exempt use recording fee and map requirement still apply.

### FINDING GROUNDWATER

You can learn about the quantity and quality of well water in your area from local water well constructors and neighbors. Water well reports are required by Oregon water law and are a basic tool used in checking for groundwater availability. You may examine water well reports in your local watermaster's office or at the Water Resources Department's central office in Salem. You can also review water well logs through the department's home page (<http://www.wrd.state.or.us>) or more directly at: [http://apps2.wrd.state.or.us/apps/gw/well\\_log/Default.aspx](http://apps2.wrd.state.or.us/apps/gw/well_log/Default.aspx).

The US Geological Survey and National Water Well Association advise against employing a waterwitch to search for groundwater.

### TECHNICAL ASSISTANCE

#### OREGON WATER RESOURCES DEPARTMENT

725 NE Summer St, Suite A  
Salem, OR 97301-2430

Phone \_\_\_\_\_ 503-986-0900

Web \_\_\_\_\_ [www.wrd.state.or.us](http://www.wrd.state.or.us)

## WATER QUALITY MANAGEMENT AREA PLANS

### BACKGROUND

In 1993, the State Legislature approved the Agricultural Water Quality Management (AgWQM) Act, which requires the Oregon Department of Agriculture (ODA) to prevent and control water pollution and soil erosion from agricultural activities. The AgWQM Act directs ODA to work with farmers and ranchers to develop and implement AgWQM area plans for when a plan is required by state or federal law. AgWQM area plans and rules have been adopted for all 38 management areas in Oregon.

### WHO MUST COMPLY?

Landowners and operators who conduct agricultural activities, within areas where AgWQM area plans and rules are in place, are required to comply with the rules designed to ensure the plans are successful. The goal of a plan is to achieve water quality standards designed to protect beneficial uses. Specific practices will not be prescribed to landowners as long as they are in compliance with area rules. However, landowners who are not in compliance, and who will not voluntarily take steps to address

problems, may be subject to specific compliance orders and/or enforcement action.

Samples of practices protecting water quality:

- rotational grazing
- streamside vegetation for shade and other functions
- conservation tillage
- irrigation water management.

### COST SHARING ASSISTANCE

Federal or state cost sharing assistance may be available for landowner installation of conservation and water quality protection measures. Contact your local water quality specialists. They can direct you to the best source of financial assistance.

### TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

#### Natural Resources Division

635 Capitol St NE

Salem OR 97301-2532

Phone \_\_\_\_\_ 503-986-4700

Fax \_\_\_\_\_ 503-986-4730

Web \_\_\_\_\_ [oregon.gov/ODA/NRD/water\\_agplans.shtml](http://oregon.gov/ODA/NRD/water_agplans.shtml)

ODA REGIONAL WATER QUALITY SPECIALISTS

#### North coast and north Willamette region

Sheila Marcoe 503-986-4707

#### Mid-coast and south Willamette region

Kevin Fenn 503-986-6486

#### Central and southeast region

Ellen Hammond 541-617-0017

#### Southwest region

Eric Nusbaum 541-302-3043

#### Northeast region

Tom Straughan 541-278-6721

## WATER RIGHTS

### WHO MUST COMPLY?

Under Oregon law, all water is publicly owned. With some exceptions, water users must first obtain authorization, or a water right, from the Oregon Water Resources Department (OWRD) before using water from any source—under ground, lakes or streams. A water right is a type of property right and is attached to the land where it was established.

As a general matter, if the land is sold, the water right goes with the land to the new owner. Landowners with water flowing through or past their property do not automatically have the right to divert the water without state authorization. State authorization takes the form of water right permits, certificates, and licenses.

Currently, surface water in the state is generally not available for new appropriations during summer months. Additionally, many areas of the state have restrictions on further groundwater appropriation. Some areas of the state may have restriction on future appropriation through legislative action or administrative order of the Water Resources Commission. Check with the Oregon Water Resources Department for restrictions in your area.

### WELL CONSTRUCTION

To secure a groundwater supply, you will need to estimate your water needs, locate a groundwater source, obtain a water right (in some cases), select and contract with a licensed and bonded well constructor or get the needed Oregon Water Resources Department (OWRD) authorization to drill the well yourself. The OWRD

recommends against drilling your own well. Standards on well depth, casing, sealing, development and yield testing, and developing a well log require specialized knowledge and equipment. Names of local well constructors are available from the OWRD Web page <http://www.wrd.state.or.us/OWRD/GW>, the classified section of the local telephone directory, the Oregon Groundwater Association, or at any OWRD office.

If a water right permit is required, OWRD recommends that you obtain a permit prior to drilling a well; otherwise, you may spend money on a well that you cannot use. If a water right permit is not required, an exempt use recording fee and map requirement still apply.

### FINDING GROUNDWATER

You can learn about the quantity and quality of well water in your area from local water well constructors. Water well reports are required by Oregon water law and are a basic tool used in checking for groundwater availability. You may examine water well reports in your local watermaster's office or at the Water Resources Department's central office in Salem. You can also review water well logs through the department's home page (<http://www.wrd.state.or.us>) or more directly at: [http://apps2.wrd.state.or.us/apps/gw/well\\_log/Default.aspx](http://apps2.wrd.state.or.us/apps/gw/well_log/Default.aspx).

The US Geological Survey and National Water Well Association advise against employing a waterwitch to search for groundwater.

## Exemptions

Exempt uses of water are those that do not require water right permits. Exempt uses of surface water include the landowner's use of a spring which, under natural conditions at any time of the year, does not form a natural channel and flow off the property where it originates. Some stock watering and forest management water uses are also exempt under certain conditions. Groundwater exempt uses include domestic use up to 15,000 gallons per day, industrial or commercial use not to exceed 5,000 gallons per day, irrigation of lawn and/or non-commercial garden of ½ acre or less, and stock water. There is an exempt use recording fee and mapping requirement for groundwater. Be sure to consult with OWRD before assuming any water use is exempt.

## APPLICATIONS AND PERMITS

Applicants with complex requests, or applicants who are unfamiliar with the application process, are encouraged to contact the department to schedule a "pre-application conference." The department's Water Rights Section staff are available to meet with applicants about their proposed project.

## APPLICATION REVIEW

During the application review stage, applications are examined by the department to ensure that allowing the proposed use will not cause injury to other users or public resources. The department also determines if water is likely to be available for use and considers many other factors in its analysis of the application. These factors can include basin plan restrictions that might prohibit certain uses or further appropriations, local land use restrictions, water quality, and other state and federal rules.

For example, when considering a water right application in or above a state scenic waterway, the department is required by law to find that the proposed use will not impair the recreational, fish, and wildlife values in the scenic waterway. The department has prepared estimates of the streamflow levels needed to satisfy these uses. These flows may be used in determining whether new water rights in or above a scenic waterway should be authorized.

Also during the application review stage, other water right holders, government agencies, and the public may comment on, or under certain conditions, may protest the application. For example, the department consults with the Oregon Department of Fish and Wildlife to evaluate impacts on sensitive, threatened or endangered species, and ensure instream values are protected.

When applicants seek to use stored water only, the application will receive an expedited review leading directly

to a final order, unless public interest issues are identified following the public notice of filing. If such issues are raised adequately, the application will undergo the standard review process to allow thorough public participation.

Large dams (10 feet or more in height and storing more than 3 million gallons) must have plans and specifications that are prepared by a professional engineer licensed in Oregon and are approved by the Water Resources Department before construction begins. Construction must be supervised by an engineer licensed in Oregon. There is an annual dam safety fee.

## INSTREAM

The Water Resources Commission is authorized to issue instream water rights for fish protection, to minimize the effects of pollution, or for maintaining recreational uses. Instream water rights have a priority date and are regulated in the same way as other water rights. Water users with junior priority dates may be required to stop diverting water to protect senior water rights including senior instream water rights. However, water users with a senior priority date are not affected by junior instream rights. Water right holders are allowed to sell, lease, or donate water rights to be converted into instream uses, provided there is no injury to other water rights.

## GROUNDWATER RESTRICTED AREAS

Due to groundwater level declines, several areas in Oregon are restricted from developing new groundwater permits. The restrictions are either enacted by order or adopted in rule by the Oregon Water Resources Commission (WRC). Classified Areas are areas where the allowable uses of groundwater have been restricted and groundwater permits may not be available or available only as a time-limited permit. Classified areas have been adopted in Clackamas, Deschutes, Gilliam, Lake, Linn, Klamath, Marion, Morrow, Polk, Washington, and Yamhill counties. Critical Groundwater Areas are areas that are closed to any further permitted development and where the WRC sets an allowable amount of withdrawal from existing permitted wells (known as a sustainable annual yield). This is undertaken in order to stabilize groundwater declines. In order to meet the sustainable annual yield, existing permit holders may be restricted from exercising their groundwater rights. Critical Groundwater Areas exist in Malheur, Morrow, Umatilla, Wasco, and Washington counties. Groundwater Withdrawal Areas are areas where the WRC has withdrawn an aquifer from any further appropriation. Withdrawal Areas exist in Marion and Wasco counties. Groundwater use that is exempt from the permitting process may be allowed in the restricted areas.

Contact Oregon Water Resources Department for details on allowable uses and groundwater permitting options in these areas.

### TRANSFERRING WATER RIGHTS

A water right exists only for the amount of water, type of use, and place of use described in the water right. If an appropriator establishes the right to irrigate a particular tract of land, the water cannot later be diverted to other land or used for another purpose unless a transfer is authorized by OWRD. A water right transfer application must be filed with OWRD to change a point of diversion, the type of use, the place of use, or a combination of these. When a transfer of water right is completed, the date of priority is not changed. The water user is required to have a report and map prepared by a certified water right examiner after a successful transfer and use. When the use is confirmed, OWRD will issue a new certificate. Temporary transfers are also available, allowing the

transfer of the place of use for a period not to exceed five years. A temporary point of diversion transfer is allowed if it is necessary to convey water to the temporary place of use. The water right automatically goes back to the original place of use when the term of the temporary transfer expires. A water right holder may, under certain conditions, transfer the point of diversion from a surface water source to a groundwater source.

### FEES

Check with the Water Resources Department for correct fees. [http://www1.wrd.state.or.us/pdfs/OWRD\\_fee\\_schedule.pdf](http://www1.wrd.state.or.us/pdfs/OWRD_fee_schedule.pdf)

### TECHNICAL ASSISTANCE

#### OREGON WATER RESOURCES DEPARTMENT

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Salem, OR 97301-1271

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