



## Options for Obtaining Water Legally: An Overview for Hemp, Medical Marijuana and Recreational Marijuana

With a few exceptions, cities, irrigators, businesses, and other water users must obtain a water right from the Water Resources Department to use water from a well, spring, stream, or other sources. Cannabis-related water use is subject to the same water-use regulations as any other crop.

New water permits are not available in many areas of Oregon, so individuals are strongly encouraged to investigate their water options before investing in a project that uses water. Violations of Oregon Water laws can result in civil penalties or prosecution for a class B misdemeanor; as of June 3, 2022, the use of water without a water right on an unregistered cannabis site may result in penalties or prosecution for a class A misdemeanor and a maximum fine of \$25,000. Visit <https://go.usa.gov/xum7h> for more information.

### What are the water-use authorization options?

The best way to identify legal options for using water is to speak with the local Watermaster. Options may include:

- A water right may already be associated with the property; however, you should confirm that the right is still valid, and that it can be used for the intended purposes.
- If available, water may be acquired by obtaining a new water right permit for surface water, groundwater, or stored water.
- Certain water uses are authorized through Oregon law as “exempt” from the need for a water right. More information about exempt uses is provided below. It is best to coordinate with the Watermaster to make sure the use qualifies for the exemption. Note that like any other crop, *the growth/irrigation of cannabis for commercial purposes* - whether medical, recreational, or hemp - is *not eligible* for groundwater exemptions.
- Water may be obtained from a water provider such as a city or a water district that delivers water under an existing municipal or quasi-municipal water right. Similarly, water may be trucked to a site if it is obtained from a municipal or quasi-municipal water source that has a water right. Individuals using trucked water should verify that it is obtained from a legal municipal or quasi-municipal source and retain all receipts of purchased water. Staff of the Water Resources Department, Oregon Liquor Control Commission, or Oregon Health Authority may ask for receipts as evidence of a legal source of water.
- There can be other options to obtain water aside from obtaining a new right to surface water or groundwater. In some cases, with Department approval, a water right from another property can be transferred to a new parcel.

### What else should you know about the use of your water right?

If you have a water right, make sure to comply with the conditions on the right. Water rights are issued for a particular source, place of use, type of use, season of use, and point of diversion. Water rights also have limits on the amount of water that can be used and may include limitations on the months or seasons of use, this information is generally noted on your water right. Some water rights have year-round use. However, these are the exception rather than the rule and a water right for irrigation does not imply year-round use. The water right may contain other conditions, such as requiring you to record and report water use. Your Watermaster can help you understand the terms and conditions of use on your water right. Water rights can be subject to forfeiture if not used for a consecutive five-year period.

If you want to change how the water is being used (for example, from field irrigation to a greenhouse), check with your Watermaster to make sure that the change fits within your existing water right. In some instances, you may need to obtain approval from the Department to change how the water is used through a process called a transfer.

In addition, there may be times when there is not enough water for every water user who holds a water right. In times of shortage, the senior user is entitled to their full authorized rate of water, before a junior user can divert water under their right. For example, a senior user with a priority date of 1910 can call for water, and users with junior priority dates (after 1910 for this example) may be regulated off in order to satisfy the senior right. Talk with your local Watermaster to understand how frequently regulation on your water source occurs so that you can plan your operations accordingly.

### **How do I obtain a water right permit in the State of Oregon?**

Most water rights are obtained in a three-step process. The applicant first applies to the Department for a permit to use water. Note that the application process can take a year or longer. If a permit is granted, the holder of the permit must construct a water system and begin using water consistent with all permit conditions. After water is applied, the permit holder must hire a certified water right examiner (CWRE) to complete a survey detailing how and where water has been applied. If water has been used according to the provisions of the permit, the Department will issue a water right certificate.

### **What sources of water are exempt from the permitting process and how can the water be used?**

Exemptions most pertinent to the growth and production of cannabis are listed below: this is not a complete list of exemptions. Note that although exempt groundwater uses do not require a permit, a well may be subject to regulation like any other water right in times of water shortage.

- **Natural springs:** Use of a spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of the year is considered exempt from the need to obtain a water right. A site visit conducted by your local Watermaster is typically required to determine if a spring is exempt.
- **Rainwater:** Collection and use of rainwater from *an artificial impervious surface*, such as a roof, is considered exempt from needing a water-right. Check with your Watermaster to make sure that your rainwater system is properly set up to meet this exemption. You may also need to check on local regulations with your county and/or city.
- **Exempt use of groundwater for non-irrigation-related commercial/industrial purposes:** Under the exemption, up to 5,000 gallons per day can be used for commercial or industrial use without a water right. The commercial/industrial use includes processing marijuana; however, this exemption *does not* include water to promote plant growth/cultivation (irrigation).
- **Exempt use of groundwater for one-half acre of non-commercial lawn and garden:** Commercial cultivation of cannabis – whether medical marijuana, recreational marijuana, or hemp – does not qualify for this exemption. Some medical cannabis sites that are under ½ acre may qualify for an exempt groundwater use if there is no commercial aspect to the operation. For example, an individual that grows cannabis and is reimbursed for the costs of the production and labor would not qualify. Growing cannabis for personal use qualifies for the exemption. If you are not growing for personal use only, contact your Watermaster to determine whether your operation qualifies for the exemption.

### **Can water be obtained from a federal water project?**

The federal government is responsible for determining whether water from their projects can be used to grow marijuana. Contact the Bureau of Reclamation or your irrigation district for more information.

### **How to contact the Department for more information?**

Contact the Department at 503-986-0900, or visit [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD). To locate and contact your watermaster, go to [www.oregon.gov/OWRD](http://www.oregon.gov/OWRD) and click on “Locate my Watermaster” at the bottom of the page, or click on the following [link](#).