

Surface Water Right Application Guidebook

Why do I need a water right?

Under Oregon Law, all water belongs to the public. With few exceptions, any person wishing to take and use surface water or ground water must first obtain a permit from the Water Resources Department. The water right, once developed, is a type of property right and is attached to the land where it was established. Land with an attached water right may be several miles from the actual source of water. In Oregon, landowners with water flowing past, through, or below their property do not automatically have a right to use that water.

Oregon's water laws are based on the principle of "prior appropriation." That is, the first person to obtain a water right to a water source is the last to be shut off in times of low water availability. In water-short times, water users with the oldest water right can demand the amount specified in their right regardless of the needs of junior users. If there is a surplus beyond the specified amount of the senior right holder, the person with the next oldest priority date can take their specified amount as necessary to satisfy their appropriation under their right and so on down the line until there is no surplus. The date of application for a permit usually becomes the priority date of the right.

Oregon's water code contains four basic provisions:

- Surface or ground water may be legally diverted only if it is used under the terms of a valid water right for a beneficial purpose.
- The more senior the water right, the longer water is available in a time of shortage.
- A water right certificate is attached to the land where it was established. If the land is sold, the water right goes with the land to the new owner. (This does not apply to water rights still in permit status.)
- A water right is valid as long as it is used at least once every five years, for its intended purpose. If the right is unused for five consecutive years, it is legally forfeited and subject to cancellation, with few exceptions.

By law, the land use associated with water use must comply with the statewide land-use goals and local land-use plans. If state goals or local comprehensive plans prohibit the land use the water-use permit may not be exercised until land-use approval is obtained. City or county planning agencies can provide information about local land-use plans and requirements. *See Appendix A.*

The Water Right:

Applying for a Permit to Use Water

Obtaining your permit is a critical hurdle in obtaining a water right. A permit is the authorization necessary from the Water Resources Department to begin constructing a water delivery system and begin using water. During the review stage, your application is examined by the Department to ensure that allowing your use will not have the potential to cause injury to existing water rights or to the public interest. It is also during this step in the process that Oregon law allows other water right holders, government agencies and the public to object to issuing the permit. However, once the Department issues the permit, and if you comply with the conditions of the permit, the Department cannot revoke your permit later or decide to impose new standards on the use when a final water right certificate is issued.

The standards by which applications are judged are explained in the administrative rules, Chapter 690, Division 310. Oregon law requires all state agencies to put policies into rule so the public knows in advance what is required, and to discourage arbitrary decisions by agencies.

An application is a request to use water. Each application receives a careful analysis by the Department. Small uses upstream could have impacts downstream, and new water uses can interfere with more senior uses. For example, a large, new well can dry up an older well nearby. Adding new users to the system must be done carefully to preserve investments made by existing water right holders.

Instructions:

Completing the Application Form

Note: All information should be typewritten or neatly printed with dark ink. All items must be completed even if parts or all of the required information appears on supplemental maps or drawings. Applications must be submitted on original forms that are provided by the Department or watermaster. Sign the forms in INK.

SECTION 1: Applicant Information and Signature

If you are an individual, corporation, association, firm, or partnership applying for a water right include your name, mailing address and phone numbers. You may include a fax number, if you have one, and/or an e-mail address. These numbers are not required but they may assist the Department in contacting you.

SECTION 2: Property Ownership

If the water you plan to use will be transported by ditch, canal or other work, you must own the property that it crosses or have legal access.

- If you own all the land that includes the source, diversion, and use of the water, mark YES and identify if encumbrances are or are not present.
- If not, attach a list of the names and addresses of the affected property owners. If there are more than 25 landowners, you will be required to file a public notice in a newspaper that circulates in the area of the water use. Contact the Department for more information.

SECTION 3: Source of Water

The Proposed Source of the Water: Provide the commonly used name of the body of water from which the water will be diverted, and the name of the stream or lake it flows into. If it has no common name, list it as “unnamed.” For example: If you will be diverting water from *Willow Creek* in the *Malheur Basin*, indicate it as Source: Willow Creek, Tributary to: Malheur River.

For Applications to Use Stored Water: If you are using stored water, check the appropriate box to indicate whether you own or will own the reservoir where water will be stored.

If you are proposing to use *exclusively* stored water, the Department will review your application using the expedited process provided in ORS 537.147 unless you check the box indicating that you would prefer your application to be processed using the standard process provided in ORS 537.150 and 537.153.

The standard process usually requires about six to nine months, and provides an opportunity to protest the Department’s recommendation. The expedited process allows the Department to process an application within several weeks in cases where no public interest concerns are identified. It does not provide an opportunity to protest the Department’s recommendation unless public interest issues are identified, in which case the Department will then evaluate the application using the standard process and a protest opportunity will be available.

If you wish to ensure that you have the ability to protest permit restrictions or conditions that the Department may recommend, you can choose the standard (longer) processing option by checking the appropriate box on the application form.

SECTION 4: Water Use

- A. Type(s) of Use(s):** In order to receive a water right you must show that you will be using the water beneficially and without waste. Use an entry from the following list to indicate what the beneficial use of your water will be. **Note:** *The description provided for each use is intended to provide a brief listing of examples. The uses indicated may include, but are not limited to, the brief list of examples.*

Beneficial Uses of Water Under Oregon Law

1. Agricultural or Land Management

A. General agricultural use:

Water used for the production of agricultural products including construction, operation and maintenance of agricultural facilities, and livestock sanitation at farms, ranches, dairies and nurseries. Examples: dust control, temperature control, animal waste

management, barn or farm sanitation, dairy operation, and fire control. Agricultural use does not include irrigation.

B. Irrigation:

Water that is applied artificially to crops or plants to promote growth or to nourish. Examples: watering any agricultural crop, commercial garden, tree farm, orchard, park, golf course, play field or vineyard and alkali abatement.

C. Cranberry use:

Use of water for growing, protecting and harvesting cranberries. Examples: irrigation of cranberries or other crops in rotation, using water for chemical application to crops, flooding for harvesting or to control pests, and temperature control.

D. Nursery operations:

Use of water for operating a commercial nursery. Examples: temperature control, watering of containerized stock, soil preparation, application of chemicals or fertilizers, watering within greenhouses and uses to construct, operate and maintain nursery facilities. The use of water within plant nursery operations constitutes a different use from field irrigation, although that maybe part of nursery use. If used for field irrigation for nursery stock, such use is not restricted to the agricultural irrigation season that may be defined for your area.

E. Stockwater:

Use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit.

F. Temperature control:

Use of water to protect a growing crop from damage caused by extreme temperatures.

G. Forest and range management:

Water use for operations conducted on or pertaining to forest lands and range lands. Examples: reforestation, road construction and maintenance, harvesting, vegetation management, and disposal of slash. Such use shall not include irrigation.

2. Industrial/Commercial uses:

A. Industrial:

Water use associated with the processing or manufacture of a product. Examples: construction, operation and maintenance of an industrial site, facilities and buildings. Related uses: general construction, road construction, non-hydroelectric power production, including down-hole heat exchange and geothermal, agricultural or forest products processing, and fire protection. Such uses shall not include irrigation or landscape maintenance of more than 1/2 acre.

B. Commercial:

Use of water for the production, sale or delivery of goods, services or commodities by a public or private entity. Examples: construction, operation and maintenance of commercial facilities. Examples of commercial facilities include an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility and

veterinary hospital. Examples of water uses within such facilities include human consumption, sanitation, food processing, and fire protection. Such uses shall not include irrigation or landscape maintenance of more than 1/2 acre.

C. Fire protection:

Use and storage of water for the purpose of extinguishing fires or reducing the potential outbreak of fires.

D. Mining:

Use of water for extraction, preliminary grading, or processing of minerals or aggregate at a mining site or construction, operation and maintenance of a mining site. These uses include, but are not limited to, general construction, road construction, and dust control.

E. Power development:

Use of water for developing electrical or mechanical power. Examples: water for the operation of a hydraulic ram or water wheel and hydroelectric power generation.

3. Drinking water supply:

Note: If using water for domestic purposes (drinking, cooking, cleaning) you must indicate the number of households that will be supplied.

A. Human consumption:

Use of water for the purposes of drinking, cooking, and sanitation.

B. Domestic use:

Use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses.

C. Domestic use expanded:

Use of water in addition to that allowed for domestic use, for watering up to 1/2 acre of lawn or noncommercial garden.

4. Community water supply:

A. Municipal:

Delivery and use of water through the water service system of a municipal corporation for all water uses usual and ordinary to such systems. Examples: domestic water use, irrigation of lawns and gardens, commercial water use, industrial water use, fire protection, irrigation and other water uses in park and recreation facilities and street washing. Such uses shall not include generation of hydroelectric power.

B. Quasi-municipal:

Use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system and for uses usual and ordinary to municipal water use.

C. Group domestic:

Use of water for domestic water use by more than one residence or dwelling unit.

D. Storm water management:

Use or storage of water in any structure or drainageway that is designed, constructed and maintained to collect and filter, retain or detain surface water runoff during and after a storm event for the purpose of water quality improvements, flood control or property protection. Other examples: existing features such as wetlands, water quality swales and ponds which are maintained as storm water quality facilities.

5. Environmental benefit:

A. Aquatic life:

Use of water to support natural or artificial propagation and sustenance of fish and other aquatic life.

B. Pollution abatement:

Use of water to dilute, transport or prevent pollution.

C. Recreation:

Use of water for play, relaxation or amusement. Examples: boating, fishing, wading, swimming and scenic values.

D. Wetland enhancement:

Use of water to restore, create, or enhance or maintain wetland resources.

E. Wildlife:

Use of water by or for sustaining wildlife species and their habitat.

B. Amount of water needed: To process your application, the Department must determine whether the amount of water you are requesting will be available without injuring the supply of senior water right holders. You must indicate the source (river, stream, lake or reservoir) of the water, what it will be used for and the amount you intend to divert and use. If you are diverting water directly, you may select one of two ways to express the amount of water you will be using: gallons-per-minute **or** cubic-feet-per-second. If your use is for storage in a pond or reservoir, you must provide the volume in acre-feet.

C. Season of Use: Water sources in Oregon have varying flows and levels depending on the time of year. Some types of uses, such as irrigation, are allowed only during certain months or seasons. For example, in Western Oregon the irrigation season is generally March 1 to October 31. In order to examine your application it is important for the Department to know which months you are requesting to use the water. If you will be using it year-round, indicate "year-round." If you will be using it seasonally (i.e. irrigation seasons) give the beginning date and ending date.

D. If applying for irrigation use: If you will be using the water for primary or supplemental irrigation, or applying it to land for another reason, indicate the total number of acres of primary irrigation and supplemental irrigation (if applicable) where the water will be applied. If you are proposing supplemental irrigation, include the Permit or Certificate number of the underlying

primary water right. Indicate the maximum total number of acre-feet you expect to use in an irrigation season.

E. If applying for municipal or quasi-municipal use: Attach completed Form M.

F. If applying for domestic use: Indicate the number of households.

G. If applying for mining use: Describe what is being mined and the method(s) of extraction.

SECTION 5: Water Management

- A. Method of Diversion and Conveyance:** Please describe the methods you will use to divert the proposed water from its source and the method you will use to bring the water from the source to the place of use. For example: size and length of pipelines or ditches. You may attach a diagram or drawing of the assembly if it will help in your description.
- B. Application and Distribution Methods:** Please describe the methods you will use, individually or in combination, to apply water to the place of use. If you are not applying water to land, leave it blank.
- C. Conservation:** Explain any methods you will employ to conserve water. For example: special irrigation systems, soil moisture measurements, lined irrigation canals, water audits, or retrofitting more efficient fixtures. To stay within the limits of your water right you should consider some way to measure the amount of water you are taking on a daily basis during the period of use allowed in your permit. Indicate how you will measure the water you have diverted. Note: your permit, when issued, may require and specify the type of measurement you will need.

SECTION 6: Resource Protection

In granting permission to use water from a stream or lake, the state encourages, or in some instances requires, careful control of activities that may affect the waterway or streamside area. For example, the Department may place a condition on your permit that requires fish screening at your diversion site. Other state or federal agencies may have permit requirements that you need to satisfy. For example, a removal/fill permit from the Division of State Lands may be required for excavating material from the bed or banks of rivers. *See Appendix A for a list of additional permit requirements.*

Indicate the listed practices that will protect water resources and describe any circumstances or situations you will be addressing. Provide methods, dimensions and timelines if applicable. If you need additional space, attach a sheet to your application form and label it at the top “Resource Protection.”

SECTION 7: Project Schedule

List the projected dates of your intended progress for construction of the water system and actual use of the water. If the Department issues a permit to use water, it will include time limits to complete construction and begin water use, generally within five years from the date of the permit. A substantial portion of the development must occur within one year of issuance of the permit.

SECTION 8: Within a District

Indicate if the point of diversion or place of use are located within or served by an irrigation or other water district.

SECTION 9: Remarks

You may want to elaborate on circumstances, methods, or systems for your proposed water use. If you need additional space, attach a sheet to your application form and indicate the specific item you are addressing.

Map Requirements

In order to properly examine your application, the Department must have an accurate map that shows the location of the proposed water source and area(s) of use.

The maps submitted shall meet the following criteria:

- The map shall be of permanent quality and drawn clearly in ink on good quality paper.
- Maps should be submitted on 8.5 x 11 inch paper. If a map is larger than 11 x 17 inches, submit four copies or draw on tracing vellum or mylar.
- The map must be drawn to a standard, even scale of not less than 4 inches = 1 mile. Standard scales include 1"-400'; 1"-1320". Use only whole numbers. U.S.G.S Quad maps, title company maps or aerial photo maps will not be accepted.

Each copy of the map must clearly show the elements of the proposed appropriation:

- The location of the dam or water diversion. The location may be further described by distance and bearing or by coordinates (distance from corner).
- The location of main canals, ditches, pipelines or flumes. Place of use should be indicated if appropriate. Example: cross-hatching or shading. Maps for irrigation use must indicate the number of acres and include shading or cross-hatching of the place of use.
- The section number, township, range, tax lot lines and numbers, nearest quarter-quarter section, and a north directional symbol.

A platted and recorded subdivision map, deed description survey map or a county assessor tax lot map may be submitted as the application map if all the required information is clearly shown on each print.

County: Indicate the county where the water will be used and, if different, the county where the water will be diverted for use. For example: you plan to draw water from a river in *Crook* county to irrigate property in *Wasco* county.

Minimum Application Requirements Checklist: Include checklist with the application

Use the minimum application requirements checklist on page 2 of the application form to assist you in making sure that all required elements are submitted to the Department along with the application form. **Before submitting the application, be sure you include all the necessary items below:**

- **Properly completed application form.** Completed application form signed and dated in ink by all applicants. If there is more than one applicant, be sure that all applicants sign the application (page 3).
- **Land Use Information Form:** Include a Land Use Information Form approved and signed (*must be original*) or a Land Use Information Form receipt signed by a representative of the local planning agency having jurisdiction (ie, county or city planning).
- **Property description:** A legal description of (1) the property from which water is to be diverted, (2) any property crossed by the proposed ditch, canal, or other work, and (3), any property on which the surface water is to be used, must accompany the application. Photocopies of the legal description in the deed, title insurance, or land sales contract would fulfill this requirement.
- **Payment:** Examination Fees are due when you submit your application. See the Department's Fee Schedule at www.oregon.gov/owrd or call 503.986.0900 for assistance in determining your examination fees. Submit a check or money order made out to WRD for the examination fee. Recording fees may be paid later, if you wish. **Your application will be returned if all necessary examination fees are not received.**
- **Legible and accurate application map:** A map of the proposed development must accompany each application for a permit. See Minimum Requirements Checklist on page 2 for map requirements.
- **Additional materials:** For municipal or quasi-municipal use, submit Form M.

Appendix A

Developing your water right often entails grading, trenching or other types of construction in waterways, riparian areas, and wetlands. Permits from local, state or federal agencies may be required. A good first step is to check with your local city or county planning office. The following information was provided by the Oregon Division of State Lands.

Activities in Wetlands and Waterways are Regulated by:

- ◆ The Division of State Lands (DSL) under the State Removal-Fill Law
- ◆ The U.S. Army Corps of Engineers (Corps) under the Federal Clean Water Act and Rivers and Harbors Act
- ◆ The State Department of Forestry under the Forest Practices Act
- ◆ The U.S. Natural Resource Conservation Service (NRCS) under the Food, Agriculture, Conservation and Trade Act
- ◆ Some City and County land use ordinances

What Areas are Regulated?

- ◆ Rivers streams and most creeks
- ◆ Estuaries and tidal marshes
- ◆ Lakes and some ponds
- ◆ Permanent and seasonal wetlands
- ◆ Regulations apply to all lands, public or private
- ◆ A wetland does not have to be mapped by the state or otherwise ‘designated’ to fall under the regulations
- ◆ If you are uncertain if there are regulated wetlands on your property, contact DSL for assistance.

What Activities are Regulated?

- ◆ Placement of fill material
- ◆ Alteration of stream bank or stream course
- ◆ Ditching and draining
- ◆ Plowing/disking non-farmed wetlands
- ◆ Excavation or dredging of material
- ◆ In-water construction (may also require a lease from DSL)
- ◆ For some activities, joint application forms can be obtained from DSL or the Corps

What Activities are Exempt?

- ◆ Some routine maintenance activities
- ◆ Established, ongoing agricultural activities and grazing
- ◆ Some minor projects involving small amounts of fill or removal

How are Laws Enforced?

The best enforcement is to prevent illegal wetland alterations through information and education. However, when violations do occur, a variety of enforcement tools may be used, including restoration orders, fines of up to \$10,000 per day (DSL), civil and/or criminal charges.

Contact your local city or county planning office, DSL or the Corps for details and clearance to proceed with your project and to determine if you are impacting an area regulated.

Oregon Division of State Lands (503) 986-5200

U.S. Army Corps of Engineers (503) 808-4510

Natural Resource Conservation Service (agricultural activities). Check government listings for telephone number.

Oregon Department of Forestry (commercial forest operations) (503) 945-7470