

# Post-Fire Water Right Considerations

## Water Use Following Wildfire

**This handout provides information for water right holders to consider following wildfire damage and information related to temporarily diverting water to establish vegetation for soil stabilization.**

Most uses of water that do not require a water right are identified in ORS 537.141 and ORS 537.545. For example, a water right is not required for certain land management practices to save soil and improve water quality by temporarily impeding or changing the flow of diffuse surface water across agricultural lands when storage is not the purpose. For groundwater, uses not requiring a water right include domestic or group domestic use up to 15,000 gallons per day; stockwatering; and ½ acre of lawn or garden. These are the most common exemptions; however, other uses may be exempt as identified in statute. Contact your watermaster for more information.

## What is a Water Right

Use of water in Oregon generally requires a water right. A water right identifies where the water will be used (place of use), what the water will be used for (the character of use), and the location where water is withdrawn from a stream, lake or well (point of diversion or appropriation). The Oregon Water Resources Department (OWRD) implements Oregon's water right laws.

**Surface or groundwater right**

A water right is the right to divert water and put it to beneficial use without waste, including uses such as irrigation, municipal and industrial uses, mining, power generation, etc. Surface and groundwater rights authorize how much, when, where and from what source water can be diverted/pumped and applied.

**Surface or groundwater registrations**

A registration is a statement of a surface water use that began prior to February 24, 1909, or a groundwater use that began prior to August 3, 1955. Registrations must go through the formal adjudication process, prior to becoming a water right.

**Stored water right**

Storing water in a reservoir or pond of any size requires a water right. A right for a reservoir with the sole purpose of storing water is considered the primary right. Permittees intending to use stored water will need an additional water use right (commonly referred to as a secondary right.)

**Drought permits**

Drought permits are issued in Governor declared drought emergencies, and authorize water use to replace water not available under an existing right because of the drought.

**Instream water right**

The Instream Water Rights Act of 1987 provides the authority to establish instream water rights for the purposes of protecting fish, minimizing the effects of pollution, or maintaining recreational uses. The Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation apply for instream water rights. The law gives instream water rights the same status as other water rights. Instream water rights are held in trust by the Oregon Water Resources Department.

**Limited license**

A limited license for water provides a short-term authorization for temporary use. Limited licenses are typically for a fixed duration and cannot be issued for more than five (5) consecutive years. A limited license allows for water use that does not require a permanent water right, such as crop establishment, aquifer storage and recovery testing, artificial groundwater recharge and recovery, road construction, and emergency use.

## Restoring Water Use Under a Water Right After Wildfire

If the water system is rebuilt at the same point of diversion or well and the use of water occurs exactly as it had prior to the fire damage, no approval from OWRD is needed. Water use can begin again consistent with the existing water right. If water will be used differently than how it was previously used under an existing water right, a water right holder may need to apply and receive approval for a transfer or a permit amendment prior to making the change. Examples of actions typically needing approval include moving the point where water is diverted from a stream, using water for a different purpose than what is authorized on the existing water right, or using water on lands not identified on the existing water right.

## Temporary Change in Water Use

If water temporarily needs to be used differently than it had been previously – temporarily diverting water from a different location, for a different use, or applying water in a different location – consult with OWRD staff. The water user may need to apply for a temporary transfer or a limited water use license from OWRD. Less than five years is considered temporary. Contact your watermaster for assistance.

## Temporary Water Uses – Limited Licenses

A limited license authorizes water use for a specified time period up to five years. Applications for limited licenses can typically be processed within three weeks of filing. An emergency limited license can be processed faster but can only be used for 60 days. If drinking water infrastructure has been damaged due to the recent wildfires, the Department will waive the application fees associated with filing a limited license application. A limited license may be appropriate to address an immediate need to use water while a permanent transfer application is being processed. In addition, a limited license may be needed where there are new but temporary needs for water use following a fire, such as construction or temporarily irrigating to reestablish vegetation for erosion and sediment control.

## Permanent Transfers

Permanent changes in how water is used under a water right include long-term or permanent changes in the place of use, character of use, and point of diversion. Permanent transfers take longer to process and approve, so a limited license may also be necessary if water use needs to begin immediately.

## Permit Amendments and Extending Timeframes to Develop Existing Water Permits

Water rights that are still water use permits cannot be transferred; however, changes in the place of use or the location of the point of diversion may be approved through a permit amendment. A water use permit holder with a non-expired permit completion date may apply for a permit amendment.

A water use permit specifies certain timelines and conditions for putting water to use. If water use cannot be completed within the time authorized by a water right permit and certain conditions are met, a holder of a water use permit may apply for an extension to allow additional time to perfect the use of water.

## Protecting Water Rights from Forfeiture

With some exceptions, not using water for more than five consecutive years may result in forfeiture and cancellation of the water right. If use will not occur within five years, but the holder wants to preserve that water right for future use, contact OWRD about strategies to prevent forfeiture.

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# Oregon Water Resources Department Contact Information

Staff Directory: [owrd.info/contactus](http://owrd.info/contactus)

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### WEBPAGE

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[owrd.info/transfers](http://owrd.info/transfers)

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