

Oregon Water Law Questions and Answers

Prepared for West Extension Irrigation District Patrons



Introduction: Pressure to improve the environment has steadily increased throughout the Western States, but more importantly in Oregon. The passage in 1997 of Oregon's Coastal Salmon Restoration Initiative reflects the trend in environmental restoration. That document directs Oregon Water Resources Department (OWRD) to augment in-stream flows for salmon-bearing streams. In response to this, OWRD has encouraged its watermasters and staff to take opportunities to cancel water rights that are no longer being used. The internet and sites such as Google Earth and Oregon Map are easily available for OWRD staff and others to identify potential areas of non-use. The OWRD uses such aerial imagery sites to confirm use of water. Thus, the "use it or lose it" phrase is becoming more and more a concern for those who struggle with using their full water right annually. This document is prepared for our water users to better understand their responsibility as an irrigator within the WEID.

Who owns the water? Oregon law provides that the water is publicly owned. A water right is required before any entity or person may divert water from its natural course.

What is a water right? It is an authorization from the State to make use of the water – either surface water or groundwater. Water rights are issued by the Oregon Water Resources Department (OWRD). WEID has seven primary water rights and one supplemental right for the benefit of its irrigators.

Who actually owns the water right? The State courts have determined that the water right is "owned" by the entity or person whose name is on the water right. That is WEID or the US Bureau of Reclamation for our water rights. The water is owned in trust for the benefit of our irrigators. There are three parts to "holding" a water right – 1) the appropriation (taking of the right from its natural course); 2) the delivery (such as down the main canal and laterals or through a pump station); and 3) the beneficial use of the water (irrigating the land). You, as an irrigator have responsibility to assure the water is put to beneficial use (see more explanation below).

I've heard of exempt use, so what is that? The law includes limited exceptions to the general rule that a water right is required; these are called exemptions. Typically in our area, they are domestic groundwater wells for household needs, stock watering, gardens and non-commercial lawns up to ½ acre. Those are privately owned systems (not part of WEID).

How does the irrigation district fit in? The WEID has gone through the processes to obtain water rights for its patrons. It diverts and delivers the water in compliance with state and federal laws. Water is available to each patron because they have a water right, and the District charges an annual fee for the water right. It is up to each patron to use the water by putting it to "beneficial use."

What does beneficial use mean? Water rights are issued for a specific purpose, such as irrigation, without waste. It is a broad term, but means "use for the prescribed purpose without waste".

So, if I turn my sprinklers on for one day a year, is that beneficial use? No, there would be no beneficial purpose to that. Use must be to the benefit of the landowner – crops, lawn, garden, pasture and so forth should be grown. The use also needs to cover the area where the water right lays on the property. For instance, if you have 2.0 acres of water rights, you need to irrigate those same 2.0 acres to protect the rights from forfeiture due to non-use.

How much water can I use? Each water right has a specified rate (the amount of water you can take at any time) and a duty (the total amount you can use during the irrigation season). As an irrigation district, WEID has set its rate to 8.5 gallons per minute per acre up to 4.5 acre-feet per acre annually. In some dry years the WEID Board of Directors may determine that it will deliver less water.

What does “use it or lose it” mean? This phrase refers to a basic element of water law – that the right must be regularly exercised in order to remain valid. A certificated (as opposed to a permit) water right remains valid forever, so long as it is used. If the water right is not used for a period of five or more years, it becomes subject to forfeiture and cancellation. The process is not automatic. The state must first prove that a right has not been used. More and more, however, OWRD watermasters are using aerial imagery to identify areas of non-use. See ORS 540.610 for details.

What is the difference between a “permit” and a “certificate”? Water rights are issued in two stages. The first stage is a permit, which is the initial authorization for a water user to develop its sources and make use of the water. The second stage is the certificate which is issued after the water use is fully developed. This “vests” the water right. It can last forever and can be lost only by showing that a right has been forfeited due to non-use (see above). Non-use cannot occur under a permit, but once the certificate is issued, the five year “clock” starts. All of WEID’s water rights are certificated, so we are trying to be diligent about potential non-use areas.

What is a transfer of water right? For our purposes, the term “transfer” is used for a change in place of use for a certificated water right. One user gives up the water right and another user takes it. These can be temporary (one year) or permanent. A transfer application must be filed with OWRD. Rights within an irrigation district must be filed by the irrigation district or receive approval of the district prior to transfer. WEID keeps a list of folks wanting water rights to be transferred ONTO their property and those wanting water rights to be transferred OFF their property.

What if I don’t want the WEID water right? You can request WEID to transfer OFF all or part of any right that you don’t want. The right can be removed if the area can be dried up (no seepage or high water table for instance). The District will work with you to remove the unwanted rights from your property. If filed by February 1 of each year, it will be done for the upcoming water season.

Can I buy or sell WEID water rights? Yes, as long as the right can be delivered by the District and does not result in injury to any other water user. Both parties should contact the District so the transfer of rights can be prepared and filed with the OWRD. Filing and preparation costs will need to be paid by the receiving party to WEID for such transfer.

If I buy or sell my land, what happens to the water right? Water rights are appurtenant to the real property, so they are deemed to be included in the land sale. If they are expressly reserved to the seller in a contract, they should be transferred off the property within five years of the last water use in order to avoid possible forfeiture.

Can I get water rights for my property? All the water rights in WEID are designated, but sometimes there are folks wanting to give up all or a part of their water. This is usually due to a change in use of their property or to new buildings. To get on the waiting list for water rights, contact the WEID office to file a form requesting water. A staff member can advise you of the waiting time and costs of a water right transfer.