



Oregon Water Use Management and Water User Tools in Drought Conditions

PRESENTED BY
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April 22, 2022

Schwabe
WILLIAMSON & WYATT

AGENDA

- Oregon Water Rights – Basics & Regulations
- Water Management
- Drought Declarations and Tools for Water Users
- Limited Licenses
- Conserved Water Rights
- Storage Water Rights

OREGON WATER RIGHTS BASICS & REGULATIONS

OREGON'S SYSTEM

- “Prior Appropriation” – first in time, first in right
- Surface water laws - Feb 1909
 - ORS 537.120
- Groundwater laws – 1955
 - ORS 537.535



EVIDENCE OF A WATER RIGHT

- Permit
- Certificate
- Decree
- Unadjudicated Claim (Registration - ORS 537.605)
- Well Log (Exempt Use)

STATE OF OREGON
COUNTY OF CLATSOP
CERTIFICATE OF WATER RIGHT

This Is to Certify, That OREGON STATE FISH COMMISSION

of 307 State Office Bldg., Portland 1, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Big Creek and Big Creek Ponds constructed under Application No. R-29588, Permit No. R-1694, of Columbia River for the purpose of fish culture under Permit No. 23301 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from December 3, 1954

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.03 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the SW 1/4, Section 29, Township 8 North, Range 7 West, W.M.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to - - - - - of one cubic foot per second per acre,

and shall conform to such reasonable rotation system as may be ordered by the proper state officer. A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

NE 1/4
Section 29
Township 8 North, Range 7 West, W.M.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed
this 16th day of October, 1957.

LEWIS A. STANLEY
State Engineer

Recorded in State Record of Water Right Certificates, Volume 16, page 23183.

ELEMENTS OF A WATER RIGHT

- Appurtenant to the land
- Source of water – surface water, groundwater
- Point of diversion; point of appropriation
- Amount of water: rate, duty & period of use
- Place of use:
 - irrigation (number of acres)
 - Industrial or commercial (entire area of use)

ORS 537.140, 537.615

EXEMPT WATER USES

- Exempt Surface Water Uses – ORS 537.141
 - Emergency firefighting
 - Out-of-stream livestock watering operations that meet specific criteria
- Exempt Groundwater Uses – ORS 537.545
 - Domestic/Group domestic (up to 15,000 gpd)
 - One-half acre lawn and garden (non-commercial irrigation)
 - Commercial/Industrial - up to 5,000 gpd
 - Livestock watering

PERFECTION: “PROVING UP”

- 5 years to put water to full beneficial use
- Construct the diversion & delivery system
- Use the water on entire area, at full rate & duty, within allowed season of use
- Meet all other terms and conditions of the permit by the deadlines

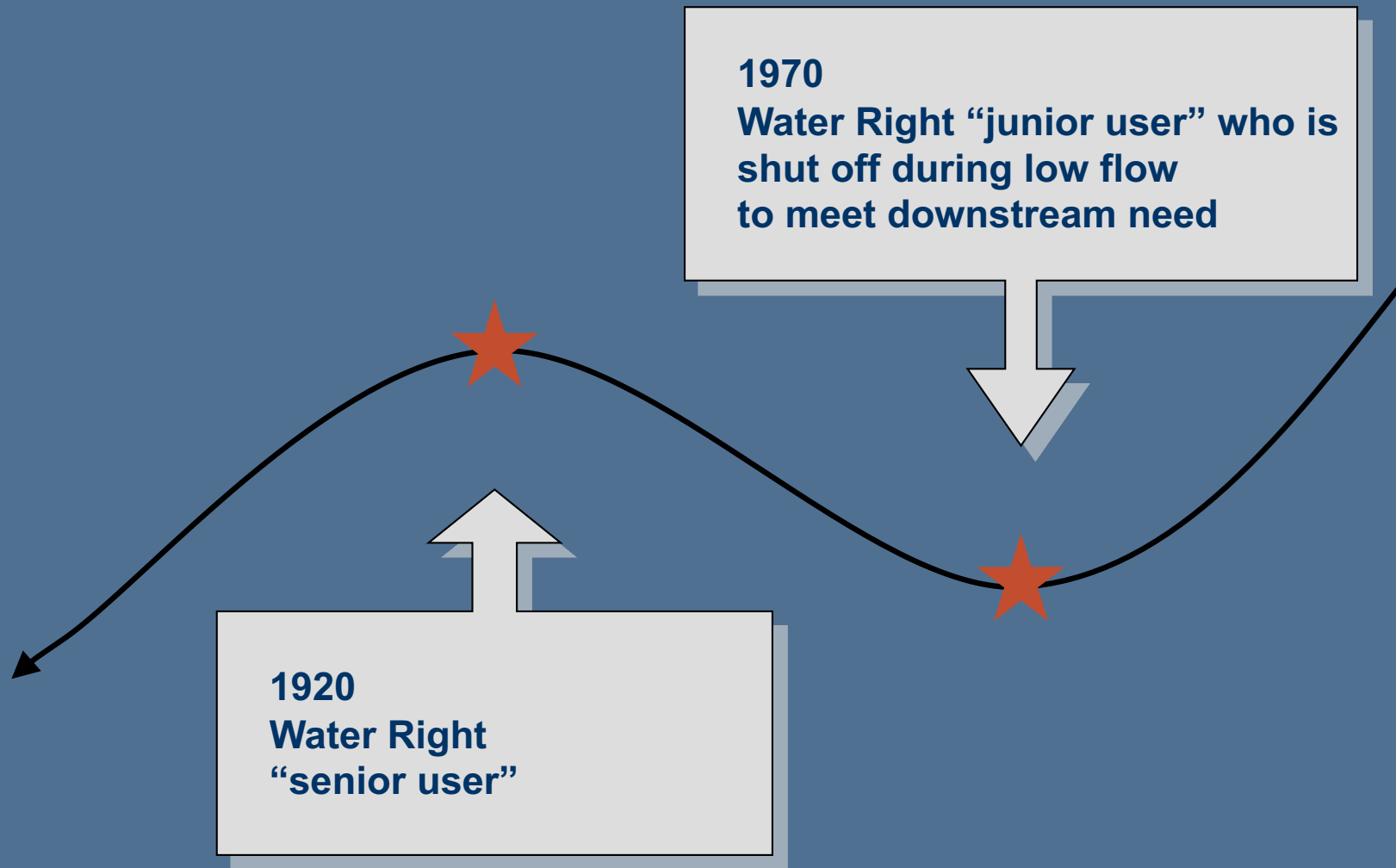


REGULATION

- Rules establish the means of distribution of water in accordance with the rights of various users. ORS 540.145
- Based on priority date
- Whether use is authorized?
 - location (place of use)
 - source
 - type of use
 - other conditions of water right



PRIORITY DATES



REGULATION

- Surface water regulation
OAR 690-250-0100
- Groundwater regulation
OAR 690-250-0110
 - Draw down conditions may trigger
 - Substantial interference (OAR 690-008-0001(8))
 - Connection to surface waters (OAR 690-009-0050)



REGULATION

- Futile call
 - at the request of the regulated water right holder
 - in the watermaster's judgment
 - “Upon the judgment that water will not reach its destination, or that an inadequate amount of water will reach its destination, the watermaster may disregard the call of the senior downstream appropriator.” OAR 690-250-0020(2)

FORFEITURE & CANCELLATION

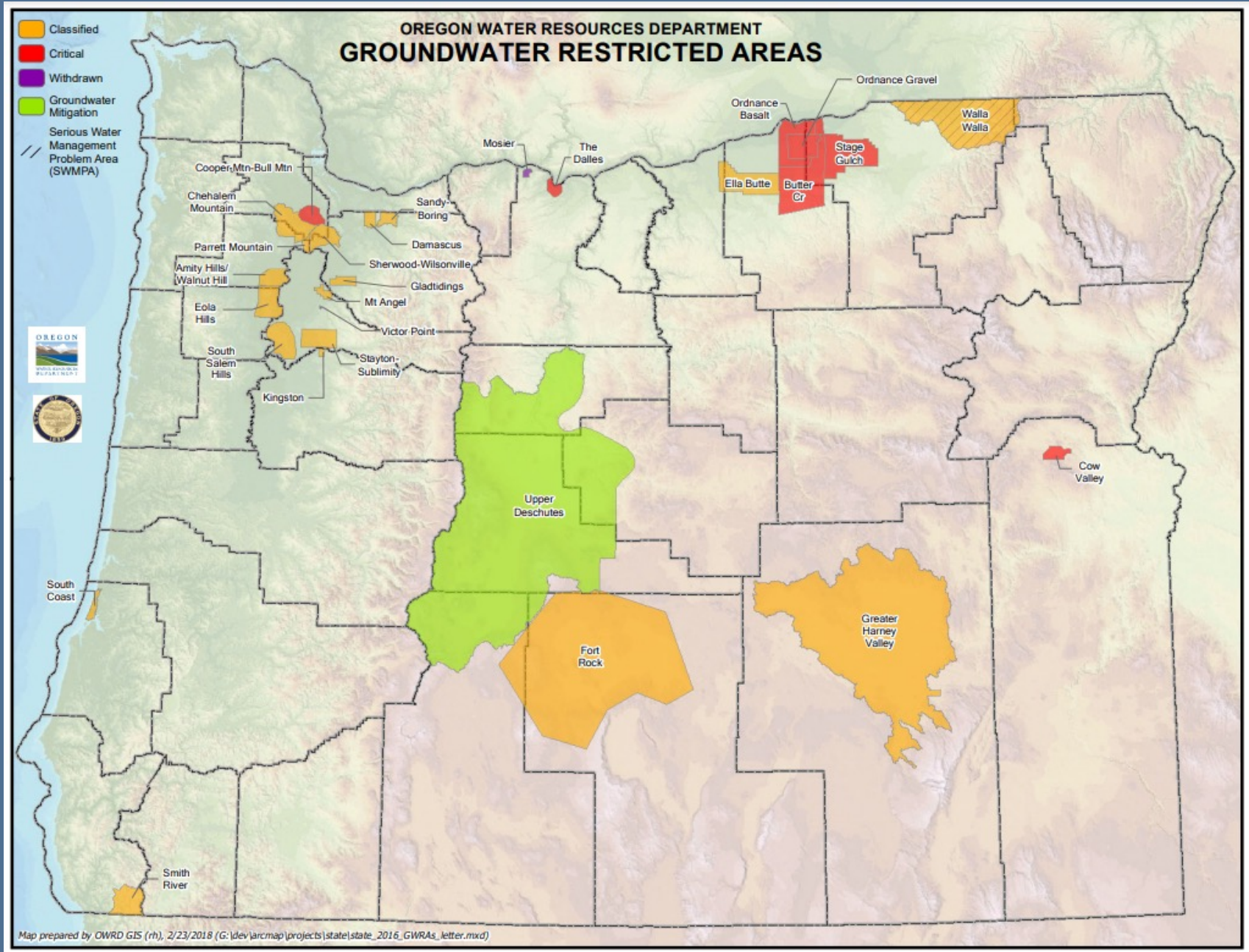
- If a water right is unused for 5 consecutive years it is subject to forfeiture
 - The use may be “excused” for one of the reasons listed in ORS 540.610
 - Ready, willing and able to use (ORS 540.610(3))
- Cancellation of a “forfeited” water right is not automatic
- Contested Case Hearing
- 15 year look back period (ORS 540.610(2)(f))

WATER MANAGEMENT

SURFACE WATER APPROPRIATION

- OWRD will not issue a surface water right unless surface water is available for appropriation (OAR 690-310-0150)
 - Water must be available at least 80% of the time during the period of proposed use (OAR 690-400-0010(11))





GROUNDWATER RESTRICTED AREAS

- Classified Areas – Limited Uses Authorized
 - Willamette Valley foot hills – OAR 690, division 502 – exempt uses only, some limited 5-year permits for irrigation, fire protection
 - Greater Harner Valley, Fort Rock, Walla Walla – See basin rules – exempt uses only
- Critical Groundwater Areas – ORS 537.730
 - Designated if: Groundwater levels are declining excessively, or well interference, or groundwater is being overdrawn
 - Cow Valley, The Dalles - Exempt Uses only
 - Cooper-Bull Mountain – Domestic and Stockwater exempt uses only
 - See Special Orders

GROUNDWATER RESTRICTED AREAS

- Groundwater Withdrawn Areas – ORS 536.410
 - Mosier – exempt uses only
 - Victor Point - no new uses
- Groundwater mitigation – Deschutes
 - Mitigation required for impacts to Deschutes Scenic Waterway (OAR 690, Div. 505, 521, and 522)
- Serious water management problem area - OAR 690-085-0020
 - Walla Walla – Requires measuring device on all groundwater uses due to: groundwater level declines, frequent water shortages, or unresolved user disputes

GROUNDWATER CONSIDERATIONS

- OAR 690, Division 9: potential for substantial interference with surface water
- Assumed to be hydraulically connected if in an unconfined aquifer and
 - less than $\frac{1}{4}$ mile; or
 - more than 5 cfs & less than 1 mile; or
 - less than 1 mile and rate is greater than 1% of the instream water right or greater than 1% of the discharge 80% of the time

OAR 690-009-0040

GROUNDWATER CONSIDERATIONS

- If potential for substantial interference with surface water exists, then
 - surface water availability applies to application
 - Div 33 & mitigation applies to application



DROUGHT DECLARATIONS AND TOOLS FOR WATER USERS

DROUGHT POLICY

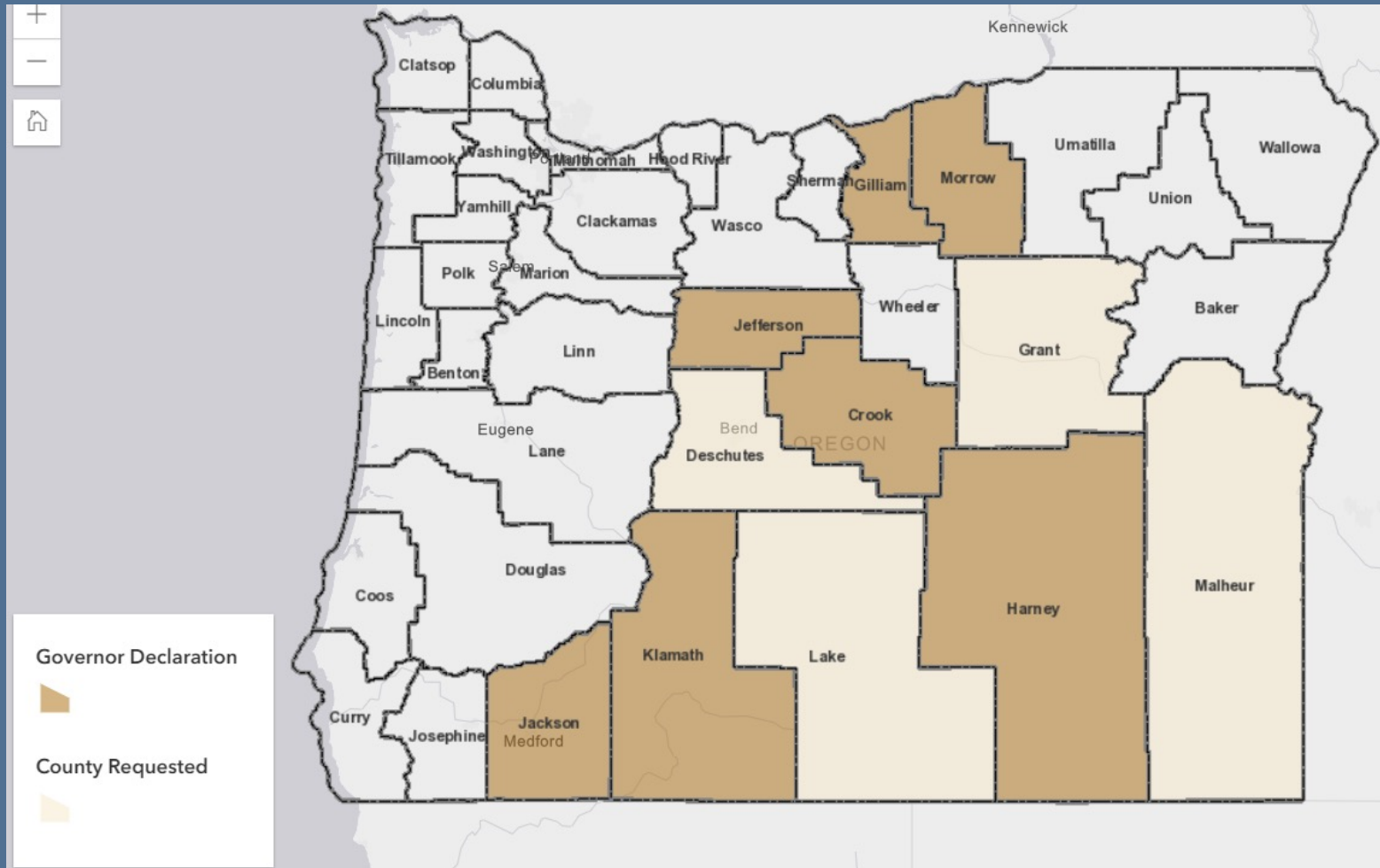
ORS 536.710

(1) The Legislative Assembly finds that *an emergency may exist when a severe, continuing drought results in a lack of water resources*, thereby threatening the availability of essential services and jeopardizing the peace, health, safety and welfare of the people of Oregon.

(2) The Legislative Assembly finds it necessary in the event of an emergency described in subsection (1) of this section, to *promote water conservation and to provide an orderly procedure to assure equitable curtailment, adjustment, allocation or regulation* in the domestic, municipal and industrial use of water resources where more than one user is dependent upon a single source of supply.

DROUGHT DECLARATION PROCESS

Governor's Drought Declaration - ORS 536.740



DROUGHT TRANSFERS

- Change the type of use, place of use, or the location of the point of diversion under an existing water right certificate, decree, or a claim.
OAR 690-019-0055
 - Expedited process
 - Transfer is in effect for the duration of the drought declaration or up to 1 year, whichever is shorter.



TEMPORARY EMERGENCY WATER USE PERMITS

- Application to temporarily replace water that is not available under an existing water right.
 - For example, use groundwater as an alternative to an existing surface water right
- Requires drought declaration, and
- Drought conditions must have created an inability to obtain water under an existing right.
- Typically takes 10 business days to process
- Valid for 1 year or the term of the drought declaration, whichever is shorter.

ORS 536.750; OAR 690-019-0040

LIMITED LICENSES

LIMITED LICENSE

- Short term uses, no more than 5 years
- No priority over other rights
- Water must be available and it cannot injure other water rights
- May only be issued for irrigation if:
 - the use is to provide water to establish a crop and no further irrigation will be required; or
 - to mitigate the impacts of drought when water is needed beyond irrigation season to avoid irreparable damage to the user's crop

ORS 537.143

CONSERVED WATER RIGHTS

CONSERVED WATER RIGHTS

Allocation of Conserved Water Program

- Irrigation efficiency projects results in conserved water (i.e. reduced transportation losses)
- Allocates 25% of the conserved water to the state for an instream water right; 75% to the water right holder/applicant

ORS 537.455; OAR 690-018



CONSERVED WATER RIGHTS

- Allocates 25% of the conserved water to the state for an instream water right
 - higher amount may be required depending on extent of public monies used for funding
 - instream water right is one minute junior to irrigation water right
- 75% of water conserved under an existing water right can be:
 - used on new lands
 - leased or sold to another user
 - dedicated instream
- Allows:
 - water “spreading”

STORAGE WATER RIGHTS

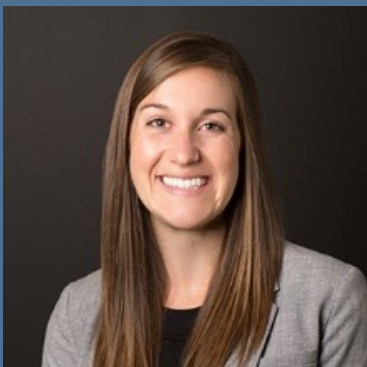
STORAGE WATER RIGHTS

- If surface water is not available during irrigation season, it may be available for storage outside of the irrigation season (ORS 537.400)
- Reservoirs may only be filled once per season
- Water availability for storage is determined based on a 50% exceedance rate
- A secondary water right is required to then put the water to use, for irrigation, for example

STORAGE WATER RIGHTS

- Reservations of water in Basin Plans
 - Some basin plans set aside certain quantities of water for future storage
 - Priority date is the date of the reservation
- ORS 537.356

QUESTIONS



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A microscopic view of several cells, with a prominent globe-like cell in the center, set against a dark blue background.


**Healthcare &
Life Sciences**

A green canoe with a wooden paddle resting on a calm lake. In the background, there are snow-capped mountains and a forested shoreline.

**Indian Law & Alaska
Native Corporations**

A perspective view of a long, brightly lit warehouse aisle with a yellow safety line on the floor. The ceiling is high with industrial equipment.

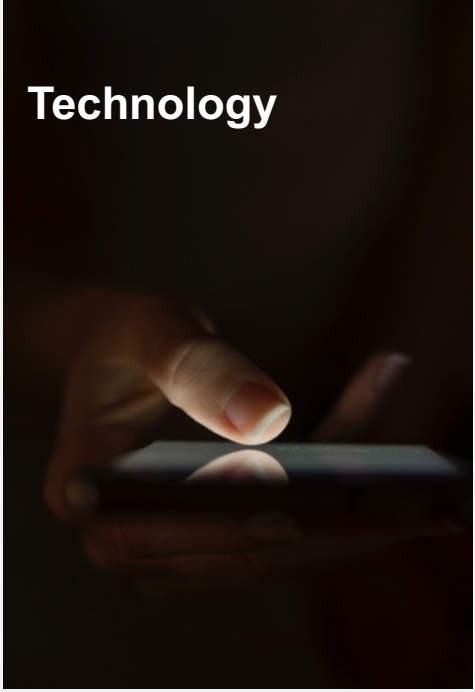
**Manufacturing,
Distribution & Retail**

A landscape featuring a red barn in the foreground, a green field, and a body of water reflecting the scene. In the distance, there are snow-capped mountains under a cloudy sky.

**Natural
Resources**

Silhouettes of construction workers on a building site. They are standing on a structure with rebar, with a cloudy sky in the background.

**Real Estate
& Construction**

A close-up of a hand holding a smartphone, with the screen glowing and reflecting light.

Technology

A large red ship docked at a port. The ship's hull is visible, and the water is calm. In the background, there are port cranes and a cloudy sky.

**Transportation,
Ports & Maritime**