

# WATER

## ACTIVITIES IN WATERS AND WETLANDS

### WHO MUST COMPLY?

All landowners and operators and USDA program participants must comply. Permits for fill, excavation, or similar alterations in waterways and wetlands are issued by the Corps of Engineers (Corps) under section 404 of the Clean Water Act, and by the Division of State Lands (DSL) under the state removal-fill law. The NRCS (formerly the Soil Conservation Service) administers the Swampbuster provisions of the 1985 Food Security Act, as amended in 1990, 1996, 2002, and 2008. All landowners and operators are responsible for obtaining any necessary federal and state permits or clearances for Swampbuster provisions.

### REGULATED ACTIVITIES

Placement of fill material, excavation, alteration of stream banks or stream course, ditching, draining, stump removal (large clearing projects), and plowing or discing wetlands not previously farmed (conversion to agricultural use) are all regulated activities in the areas described below.

### AREAS REGULATED

Regulated areas where alteration permits or clearances may be required include rivers, streams, lakes, ponds, and wetlands.

- Streams and creeks include all perennial and some intermittent creeks, including ones that have been ditched.
- Lakes include the permanent water area and any seasonally saturated wetlands that surround the permanent water body.
- Wetlands include areas known as swamps, sloughs, marshes, ponds, and wet meadows. They may be forested, shrubby, prairie-like, or have no vegetation if they have been altered. Wetlands that are being farmed may be supporting crops or pasture plants.

*Caution: Many wetlands are only seasonally wet and may not look like wetlands during certain times of the year. Typically, seasonal wetlands are very wet areas in the winter and spring but dry by early-to-mid summer. If an area is difficult to farm because it is too wet, the site may be a regulated wetland that should be evaluated prior to conducting regulated activities. Wetlands subject to regulation are identified in the field, based upon soils, vegetation, and hydrology.*

### EXEMPTIONS

Some wetland types and some activities are exempt from permit requirements and from Swampbuster provisions. Exempt activities include established ongoing farming activities, such as plowing, seeding, and cultivation; routine maintenance of ditches (to original capacity); replacement of malfunctioning drainage systems or water control structures (to original capacity); and some minor projects involving small amounts of fill or excavation. You may not perform maintenance activities that increase the original scope and design of the drainage system without a permit.

However, there is not an exact correspondence between the Swampbuster provisions, Clean Water Act, or the state removal-fill law. If you are planning to conduct any of the activities listed above (regulated activities), you should contact NRCS, Corps, and DSL for information regarding any restrictions, regulations, or exemptions that may apply. The information in this handbook is intended only as a guide.

### TECHNICAL ASSISTANCE

#### Programs and permits

For USDA program participants, the first point-of-contact is NRCS. There is a field office in most counties. The local Soil and Water Conservation District (SWCD) can help you locate the nearest office, or you may phone the state office in Portland. In addition to administering Swampbuster, NRCS provides landowner technical and financial assistance with natural resource conservation, including wetland restoration.

#### US DEPARTMENT OF AGRICULTURE

##### Natural Resources Conservation Service (NRCS)

1201 NE Lloyd Blvd., Suite 900

Portland, OR 97232

Phone \_\_\_\_\_ 503-414-3200

Web \_\_\_\_\_ <http://www.or.nrcs.usda.gov>

#### NATURAL RESOURCES CONSERVATION SERVICE (NRCS)

Jeremy Maestas, State Habitat Biologist

625 SE Salmon Ave., Suite 4

Redmond, OR 97756

Phone \_\_\_\_\_ 541-923-4358 ext. 109

For non-USDA program participants, the first point-of-contact is the Corps and DSL. Corps and DSL have a joint permit application and procedure for alteration of waterways and wetlands. The landowner will generally need to have a wetland determination from a private consultant (determination subject to review and approval) prior to applying for a permit to alter a wetland area. Permits may be approved (usually with conditions) or denied. The Corps

and DSL also provide assistance to landowners regarding wetlands and permits.

#### US ARMY CORPS OF ENGINEERS

##### **Regulatory and Resource Branch**

Jim Goudzwaard, wetlands specialist  
PO Box 2946  
Portland, OR 97208-2946  
Phone \_\_\_\_\_ 503-808-4376

#### OREGON DIVISION OF STATE LANDS (DSL)

##### **Earle Johnson, Western region manager**

775 Summer St. NE  
Salem, OR 97310-1337  
Phone \_\_\_\_\_ 503-378-3805

##### **Nancy Pustis, Eastern region manager**

20310 Empire Ave., #B-1  
Bend, OR 97701  
Phone \_\_\_\_\_ 541-388-6112

ODFW provides technical and financial assistance to landowners who want to improve conservation practices (wetland or upland) on their lands. They also provide information to the regulatory agencies (through the permit process) and to landowners on the best timing of in-stream work to minimize effects on fish.

#### OREGON DEPARTMENT OF FISH AND WILDLIFE

##### **Habitat Conservation Division**

3406 Cherry Ave. NE  
Salem, OR 97303-4924  
Phone \_\_\_\_\_ 503-947-6000  
Web \_\_\_\_\_ <http://www.dfw.state.or.us>

The US Fish and Wildlife Service provides financial and technical assistance through such programs as Partners for Wildlife.

#### US FISH AND WILDLIFE SERVICE

##### **Portland Field Office**

2600 SE 98th St., Suite 100  
Portland, OR 97266  
Phone \_\_\_\_\_ 503-231-6179  
Web \_\_\_\_\_ <http://www.fws.gov>

## FISH PASSAGE AT ARTIFICIAL IN-CHANNEL OBSTRUCTIONS AND DAMS

### WHO MUST COMPLY?

Owners/operators that construct, abandon, enlarge, or replace major parts of an in-channel artificial obstruction (i.e., dam) to the upstream and downstream movement of native migratory fish must provide adequate fish passage at the obstruction unless granted a waiver or exemption [ORS 509.580 through 509.645, and OAR 635-412-0020 and -0025]. Waivers are for situations where passage at the artificial obstruction would benefit fish, and mitigation is required that provides a net benefit for fish. Exemptions are generally for situations where passage would provide no appreciable benefit to fish. Passage plans, waivers, or exemptions must be approved by the Oregon Department of Fish and Wildlife (ODFW) prior to construction, abandonment, enlargement, or major replacement of the artificial obstruction.

Fish passage facilities must be operated and maintained by the owner or operator of the artificial obstruction to provide adequate passage of native migratory fish at all times.

### DEFINITIONS

Fish passage facilities at dams usually involve a fishway of some type for upstream passage and other measures for downstream passage.

#### **Artificial obstruction**

An artificial obstruction is any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

#### **Fishway**

A fishway is the set of human-built and/or operated facilities, structures, devices, and measures that together constitute, are critical to the success of, and were created for the sole purpose of providing upstream fish passage at artificial or natural obstructions which create a discontinuity between upstream and downstream water or bed surface elevations. A fishway generally takes the form of a series of stair-stepped pools (fish ladder) through which fish can migrate upstream.

#### **Native migratory fish**

Those native fish that migrate during their life cycle. A fish species list can be obtained from the ODFW statewide fish passage coordinator.

**Net benefit**

An increase in the overall, proximate habitat quality or quantity, as determined by ODFW, that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measure have been completed.

**WAIVER**

An owner/operator with an artificial obstruction may apply for a waiver of the requirement to provide fish passage if mitigation will be provided that creates a net benefit to fish [ORS 509.585(7)(a)].

**EXEMPTION**

An owner/operator with an artificial obstruction may apply for an exemption to the requirement to provide fish passage if

- a lack of fish passage was mitigated.
- a waiver was granted for the artificial obstruction.
- no appreciable benefit exists for providing fish passage [ORS 509.585(9)(a)].

**COST SHARING PROGRAM**

ODFW administers a cost share program that provides assistance to owners/operators for fishway construction. If an owner/operator is selected for the program, the State of Oregon covers 60 percent of the costs of each fish passage device (not to exceed \$75,000) and the owner/operator covers 40 percent. An ODFW cost share grant application may be obtained on the Web at [http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/screen\\_passage\\_grants.htm](http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/screen_passage_grants.htm). In most cases, owners/operators are also eligible for a tax credit.

**TAX CREDIT**

An owner/operator may be eligible for a state income tax or corporate excise tax credit of 50 percent, not to exceed \$5,000, per fishway. The owner/operator must apply for preliminary certification from ODFW prior to construction [ORS 315.138].

**TECHNICAL ASSISTANCE**

Technical assistance for providing fish passage may be obtained from ODFW's field coordinators (listed in the application), local field offices, the statewide fish passage coordinator, or <http://www.dfw.state.or.us/fish/passage>.

**OREGON DEPARTMENT OF FISH AND WILDLIFE****Greg Apke, Statewide Fish Passage Program Leader**

3406 Cherry Ave NE

Salem, Oregon 97303

Phone \_\_\_\_\_ 503-947-6228

E-mail \_\_\_\_\_ [greg.d.apke@state.or.us](mailto:greg.d.apke@state.or.us)**FISH SCREENING AND BY-PASS DEVICES AT WATER DIVERSIONS AND DAMS**

Fish screening and by-pass devices prevent the loss of fish when diverting water for human use. These devices are an important element in protecting or restoring fish populations throughout Oregon and are a critical tool in preventing additional endangered species act listing. A number of fish screen designs are available that work in conjunction with gravity and pumped water diversions.

**COST SHARE PROGRAM**

Oregon Dept. of Fish and Wildlife (ODFW) encourages the installation of fish screening or by-pass devices in water diversions of any size. The water user or ODFW can construct and install the devices. Approved fish screen projects receive cost share assistance from the State of Oregon for 60 percent of the costs of each device not to exceed \$75,000, and the water user covers the remaining 40 percent. The cost share cap of \$75,000 may be exceeded under certain circumstances. A tax credit is also available to qualified applicants for 50% of their costs to install a fish screen, up to \$5,000. An ODFW cost share grant application and additional information may be obtained from ODFW's field coordinators:

Bob Hair, Northwest Oregon \_\_\_\_\_ 541-296-8026

Brent Smith, Eastern Oregon \_\_\_\_\_ 541-575-0561

Rich Kilbane, Southwest Oregon \_\_\_\_\_ 541-826-8774

**WHO MUST COMPLY?**

Fish screening or by-pass devices are often required as a condition for a water right permit or transfer.

At water diversions greater than 30 cubic feet per second (cfs), fish screening and by-pass devices may be required by ODFW [ORS 498.306]. The installation and maintenance of these devices are entirely the responsibility of the water user. The ODFW cost share program may be able to assist with screen design and installation.

At water diversions less than 30 cfs, fish screening may be required when reviewed and approved by the Fish Screening Task Force. The minor maintenance of these devices is the responsibility of the water user. ODFW is responsible for major maintenance at under 30 cfs sites screened through the ODFW cost share program [ORS 498.306].

ODFW will be developing administrative rules for fish screens in 2009 which is expected to clarify when and under what conditions fish screens are required. The public is encouraged to participate in this rule development by contacting the statewide coordinator listed below.

Fish screening plans should be approved by ODFW prior to construction and installation of the fish screening or by-pass devices. Projects completed as part of the cost share program must receive approval as part of the application process.

## DEFINITIONS

### Fish screen

A fish screen is a screen, bar, rack or other physical barrier, including related improvements necessary to ensure its effective operation, and to provide adequate protection for fish populations present at a water diversion.

### By-pass

A by-pass is a pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted, but does not include fishways or other passages around a dam.

### Minor maintenance

Minor maintenance means periodic inspection, cleaning and servicing of fish screening or by-pass devices at such times and in such manner as to ensure proper operation.

### Major maintenance

Major maintenance means all maintenance work done on fish screening or by-pass devices other than minor maintenance.

## TAX CREDIT

A water user may be eligible for a state income tax credit of 50 percent not to exceed \$5,000 per fish screening or by-pass device. The water user must apply for preliminary certification from ODFW prior to construction [ORS 315.138].

For additional assistance or questions, please contact one of the coordinators listed above or the statewide fish screening coordinator.

## OREGON DEPARTMENT OF FISH AND WILDLIFE

### Alan Ritchey, Statewide Fish Screening Coordinator

3406 Cherry Ave. NE

Salem, OR 97303

Phone \_\_\_\_\_ 503-947-6229

E-mail \_\_\_\_\_ Alan.D.Ritchey@state.or.us

## GROUND WATER

### BACKGROUND

The 1989 Oregon Legislature established a law intended to prevent contamination of Oregon's ground water resource. The Oregon Department of Environmental Quality (DEQ) has lead responsibility to evaluate and implement strategies for preventing and correcting contamination of ground water. Contamination sources might include residential, commercial or farm sources such as fertilizers, pesticides, or other farm wastes.

### WELL WATER

If a residence is served by a well, Oregon law requires that the well be tested for nitrates and total coliform bacteria before any sale or exchange of the property. The seller must submit the test results to the Drinking Water Program of the Public Health Division. The division may also require additional tests for specific contaminants in an area of ground water concern or ground water management. For more information on well water testing, contact the Drinking Water Program, Drinking Water/Domestic Wells, P.O. Box 14350, Portland, Oregon, 97293-0350; Telephone: 971-673-0405.

### WELL CONSTRUCTION

To secure a ground water supply, you will need to estimate your water needs, locate a ground water source, obtain a water right (in some cases), select and contract with a licensed and bonded well constructor or get the needed Oregon Water Resources Department (OWRD) authorization to drill the well yourself. The OWRD recommends against drilling your own well. Standards on well depth, casing, sealing, development and yield testing, and developing a well log require specialized knowledge and equipment. Names of local well constructors are available from the OWRD Web page <http://www.wrd.state.or.us/OWRD/GW/index.shtml>, the classified section of the local telephone directory, the Oregon Ground Water Association, or at any OWRD office.

If you decide to drill a well yourself on your own property, you must

- obtain a landowner's well construction permit and file a \$5,000 bond with the OWRD.
- construct the well in accordance with state law, general standards and regulations.
- before beginning work, submit a well construction "start card" to both the Salem office and the appropriate OWRD regional office and complete a written water well report within 30 days of completing the well.

If a water right is required, the department recommends that you obtain a permit prior to drilling a well; otherwise, you may spend money on a well that you cannot use.

### ESTIMATING WATER NEEDS

To estimate peak daily water demand, add the appropriate quantities of water for all uses that would likely occur on the day of the year in which water needs would be highest.

Type of use	Gallons per day (GPD)
Family use (per person)	50-75 GPD
Lawn and garden	50-1,000 GPD
Livestock and cattle (per head)	12 GPD
Dairy (plus maintenance per head)	35 GPD
Goat or sheep	2 GPD
Hog	4 GPD
Horse or mule	12 GPD
Poultry-chickens (per 100)	5-10 GPD

In contrast to domestic wells, an irrigation well must be able to produce water at steady high rates for extended periods of time. Irrigation systems must be carefully designed to minimize pumping costs and to prevent excessive drawdown of the well's water level.

### FINDING GROUND WATER

You can learn about the quantity and quality of well water in your area from local water well constructors and neighbors. Water well reports are required by Oregon water law and are a basic tool used in checking for ground water availability. You may examine water well reports in your local watermaster's office or at the Water Resources Department's central office in Salem. You can also review water well logs through the department's home page (<http://www.wrd.state.or.us>) or more directly at: [http://apps2.wrd.state.or.us/apps/gw/well\\_log/Default.aspx](http://apps2.wrd.state.or.us/apps/gw/well_log/Default.aspx).

The US Geological Survey and National Water Well Association advise against employing a waterwitch to search for ground water.

### WATER RIGHTS RELATED TO GROUND WATER

With few exceptions, a water right is needed for use of ground water. OWRD recommends obtaining a water right prior to drilling a well. The following uses of ground water do not require that the user obtain a water right: stock watering; watering a maximum ½ acre non-commercial lawn or domestic garden; watering up to 10 acres lawn, grounds, and fields of schools within a critical ground water area; up to 15,000 gallons per day for single or group domestic use; up to 5,000 gallons per day for any single industrial or commercial use; and down-hole heat exchange.

### TECHNICAL ASSISTANCE

#### OREGON WATER RESOURCES DEPARTMENT

725 NE Summer St., Suite A

Salem, OR 97301-2430

Phone \_\_\_\_\_ 503-986-0900

Web \_\_\_\_\_ <http://www.wrd.state.or.us>

## WATER QUALITY MANAGEMENT AREA PLANS

### BACKGROUND

In 1993, the State Legislature approved the Agriculture Water Quality Management (AgWQM) Act, which requires the Oregon Department of Agriculture (ODA) to prevent and control water pollution and soil erosion from agricultural activities. The AgWQM Act directs ODA to work with farmers and ranchers to develop and implement AgWQM area plans for when a plan is required by state or federal law. AgWQM area plans and rules have been adopted for all 39 management areas in Oregon.

### WHO MUST COMPLY?

Landowners who conduct agricultural activities, within areas where AgWQM area plans and rules are in place, are required to comply with the rules designed to ensure the plans are successful. The goal of a plan is to achieve water quality standards designed to protect beneficial uses. Specific practices will not be prescribed to landowners as long as they are in compliance with area rules. However, landowners who are not in compliance, and who will not voluntarily take steps to address problems, may be subject to specific compliance orders and/or enforcement action.

#### Sample of Practices Protecting Water Quality

- Rotational grazing
- Conservation tillage
- Irrigation water management.

## COST SHARING ASSISTANCE

Federal or state cost sharing assistance may be available for landowner installation of conservation and water quality protection measures. Contact your local water quality specialists. They can direct you to the best source of financial assistance.

## TECHNICAL ASSISTANCE

### OREGON DEPARTMENT OF AGRICULTURE

#### Natural Resources Division

635 Capitol St. NE

Salem OR 97301-2532

Phone \_\_\_\_\_ 503-986-4700

Fax \_\_\_\_\_ 503-986-4730

Web \_\_\_\_\_ <http://oregon.gov/ODA/SWCD>

### ODA regional water quality specialists

#### North Coast / North Willamette region

Sheila Ault \_\_\_\_\_ 503-986-4707

#### Mid-Coast / South Willamette region

Kevin Fenn \_\_\_\_\_ 503-986-6486

#### Eastern Oregon region

Doni Clair \_\_\_\_\_ 541-523-4924

#### Central Oregon region

Ellen Hammond \_\_\_\_\_ 541-617-0017

#### Klamath / Rogue / Umpqua region

Eric Nusbaum \_\_\_\_\_ 541-302-3043

#### John Day / Umatilla region

Tom Straughan \_\_\_\_\_ 541-278-6721

## WATER RIGHTS

### WHO MUST COMPLY?

Under Oregon law, all water is publicly owned. With some exceptions, water users must first obtain authorization, or a water right, from the Oregon Water Resources Department (OWRD) before using water from any source—the ground, lakes or streams. A water right is a type of property right and is attached to the land where it was established. As a general matter, if the land is sold, the water right goes with the land to the new owner. Landowners with water flowing through or past their property do not automatically have the right to divert the water without state permission.

Currently, surface water in the state is generally not available for new appropriations during summer months. Additionally, many areas of the state have restrictions on further ground water appropriation. Some areas of the state may have restriction on future appropriation through legislative action or administrative order of the Water Resources Commission. Check with the Oregon Water Resources Department for restrictions in your area.

## EXEMPTIONS

Exempt uses of water are those that do not require water rights. Exempt uses of surface water include the landowner's use of a spring which, under natural conditions, does not form a natural channel and flow off the property where it originates. Stock watering is an exempt use if stock either drink directly from a surface source or from an enclosed diversion that satisfies certain conditions. The forest management water uses for mixing pesticides and slash burning are also exempt. Ground water exempt uses (see section on ground water) include stock watering and lawn or noncommercial garden watering not more than one-half acre in area. Be sure to consult with OWRD before assuming any water use is exempt.

## PERMITS AND APPLICATIONS

Applicants should check with the OWRD, 503-986-0900, to determine if water is available before submitting an application. There are three steps required before a water right may be granted. First, the applicant must apply to OWRD for a permit to use the water. Second, the department conducts a thorough review of the requested use to determine whether there is enough water to serve the use without injuring other water right holders or being detrimental to the public interest. If the department grants a permit, the applicant must then construct a water system to convey and use the water. Finally, after the water is applied, the permit holder must hire a Certified Water Rights Examiner (CWRE) to complete a survey of the water use. The survey map detailing applied water is then submitted to the department. (To obtain a list of CWREs, call OWRD, your local watermaster, or the Board of Engineering Examiners, 503-378-4180). If water is used according to the provisions of the permit, a final Water Right Certificate is issued. The water right document will list the allowed use, specific locations of use, source, maximum rate at which the water may be diverted, period of time when water may be diverted and other conditions of the use. Except under certain circumstances, a water right is forfeited if it is not used at least once every five years.

## CONSTRUCTION OF A RESERVOIR OR POND

Construction of any new pond or reservoir requires a permit to store water. An additional permit is required to divert, for use, stored water from the reservoir. Contact OWRD, 503-986-0900, for information regarding stored water construction and use permits.

## INSTREAM USE

The Water Resources Commission is authorized to issue instream water rights for fish protection, to minimize the effects of pollution, or for maintaining recreational uses. Instream water rights have a priority date and are regulated in the same way as other water rights. Water users with junior priority dates may be required to stop diverting water to protect senior water rights including senior instream water rights. However, water users with a senior priority date are not affected by junior instream rights. Water right holders are allowed to sell, lease, or donate water rights to be converted into instream uses, provided there is no injury to other water rights.

## CRITICAL GROUND WATER AREAS

Oregon law states that when the pumping of ground water exceeds the long-term natural replenishment of the underground water reservoir, the Water Resources Commission may act to declare the source a critical ground water area (CGWA) and restrict water use. Once a CGWA proceeding is initiated by the commission, no new well permits are issued during the course of the investigative proceedings. The order setting the limits of the CGWA may provide for certain users of water to have preference over other users, regardless of established water right priority dates. CGWAs can also be declared if there is interference between wells and senior surface water users or deterioration of ground water quality or temperature. Current CGWAs include Cow Valley near Vale; The Dalles in Wasco County; Cooper Mountain-Bull Mountain southwest of Beaverton and Tigard; and Butter Creek, Stage Gulch, and Ordnance areas in Morrow and Umatilla counties.

## TRANSFERRING WATER RIGHTS

A water right exists only for the amount of water, type of use, and place of use described in the water right. If an appropriator establishes the right to irrigate a particular tract of land, the water cannot later be diverted to other land or used for another purpose unless a transfer is authorized by OWRD. A water right transfer application must be filed with OWRD to change a point of diversion, the type of use, the place of use, or a combination of these. When a transfer of water right is completed, the date of priority is not changed. The water user is required to have a report and map prepared by a certified water right examiner after a successful transfer and use. When the use is confirmed, OWRD will issue a new certificate. Temporary transfers are also available, allowing the transfer of the place of use for a period not to exceed five years. A temporary point of diversion transfer is allowed if it is necessary to convey water to the temporary place of use. The water right

automatically goes back to the original place of use when the term of the temporary transfer expires. A water right holder may, under certain conditions, transfer the point of diversion from a surface water source to a ground water source.

## FEES

Check with the Water Resources Department for correct fees. <http://www.wrd.state.or.us>

## TECHNICAL ASSISTANCE

### OREGON WATER RESOURCES DEPARTMENT

725 NE Summer St., Suite A

Salem, OR 97301-2430

Phone \_\_\_\_\_ 503-986-0900

Web \_\_\_\_\_ <http://www.wrd.state.or.us>