

Understanding Water-Use Regulations: Medical and Recreational Marijuana



Marijuana-related water use is subject to the same water-use regulations as any other irrigated crop. Under the Oregon Water Code of 1909, all water belongs to the public. With a few exceptions, cities, irrigators, businesses, and other water users must obtain a water right from the Water Resources Department to use water from any source – whether it is underground, or from lakes or streams. Generally speaking, landowners with water flowing past, through, or under their property do not automatically have the right to use that water without authorization from the Department.

New water permits are not available in many areas of Oregon, so individuals are strongly encouraged to investigate their water-resources options before investing in a project that requires a water supply. Violations of Oregon Water laws can result in civil penalties or prosecution for a class B misdemeanor.

The best way to identify your legal water resources options is to speak with your local watermaster (see next page). For more information, you can contact the Department at 503-986-0900, or visit our website at <http://www.oregon.gov/owrd>.

What are the water-use authorization options?

1. A water right may already be associated with your property; however, you will need to confirm that the right is still valid, and that it can be used for your purposes. Similarly, water may be obtained from a water purveyor such as a city or a water district that delivers water under an existing water right.
2. If available, water may be acquired by obtaining a new water-right permit for surface water or groundwater.
3. Certain water uses are authorized through Oregon law as “exempt” from the need for a water right. More information about exempt uses is provided below. Check with your watermaster to make sure your use qualifies.
4. There can be other options to obtain water aside from obtaining a new right to surface water or groundwater. In some cases, with Department approval, a water right from another property can be transferred to a new parcel, or stored water that is captured during the winter and spring can help provide a supply. Talk to your watermaster about options.

What else should you know about the use of your water right?

Once you have a water right, make sure that you comply with the conditions on the right. It is always a good idea to check with your watermaster to understand the conditions. Water rights are issued for a particular place of use, type of use, and point of diversion. Water rights also have limits on the amount of water that can be used, and may include limitations on the season of use. Your watermaster can help you to understand the terms of use on your water right.

If you want to change how the water is being used (for example, from field irrigation to a greenhouse), check with your watermaster to make sure that the change fits within your existing water right. In some instances you may need to obtain approval from the Department through a process called a transfer. In addition, there may be limits on the months that the water can be used. Water rights may be subject to forfeiture if not used for five consecutive years.

In addition, there may be times where there is not enough water for every water user who holds a water right. In times of shortage, the senior user is entitled to receive all of his or her water, before a junior user. For example, a senior user with a priority date of 1910 can make a call for water, and users with a junior date (after 1910 for this example) may be regulated off in order to satisfy that senior right. You should talk with your local watermaster to understand how frequently regulation is likely to occur, so that you can plan your operations accordingly. *Note: Although exempt groundwater uses do not require a permit, the well may be subject to regulation like any other water right in times of water shortage.*

How do I obtain a water right permit in the State of Oregon?

Most water rights are obtained in a three-step process. The applicant first must apply to the Department for a permit to use water. Once a permit is granted, the applicant must construct a water system and begin using water. After water is applied, the permit holder must hire a certified water-right examiner to complete a survey of water use (a map and a report detailing how and where water has been applied). If water has been used according to the provisions of the permit, the Department will issue a water-right certificate.

What sources of water are exempt from the permitting process and how can the water be used?

- **Natural springs:** Use of a spring that, under natural conditions, does not form a natural channel and flow off the property where it originates at any time of the year is considered exempt from the need to obtain a water right. Check with your watermaster to determine if your spring qualifies for the exemption.
- **Rainwater:** Collection and use of rainwater from an artificial impervious surface, such as a roof, is considered exempt from needing a water-right. For more information, refer to ORS 537.141. Check with your watermaster to make sure that your rainwater system is properly set up to meet this exemption. You may also need to check on local regulations with your county and/or city.
- **Exempt use of groundwater for non-irrigation-related commercial/industrial purposes:** Under the exemption, up to 5,000 gallons per day could be used for commercial or industrial use without a water right. This would include processing marijuana; however, this exemption *does not* include water to promote plant growth/cultivation.
- **Exempt use of groundwater for one-half acre of non-commercial lawn and garden:** Water for cultivation/growth of marijuana, whether in a greenhouse or not, does not require a water right permit provided that the irrigation is no more than one-half acre in area *AND* the cultivation is *non-commercial*. Use of groundwater to *grow* marijuana plants where there is intent to profit does not qualify for a groundwater exemption. Non-commercial includes homegrown recreational marijuana and medical marijuana for personal use, or where there is no intent to profit. Medical growers that seek to make a profit from medical or recreational marijuana are not eligible for this exemption. For example, an individual that grows marijuana and donates it to patients and dispensaries could qualify for the exemption. Conversely, an individual that grows marijuana and is reimbursed for the costs of the production and labor – intending to make money – *would not* qualify.

*NOTE: This is not a complete list of exemptions, but rather lists those most pertinent to the growth and production of marijuana. Like any crop, the **growth of marijuana for commercial purposes, whether medical or recreational, is not eligible for groundwater exemptions.***

Can water be obtained from a federal water project?

The federal government is responsible for determining whether water from their projects can be used to grow marijuana. Previous statements by the federal government indicate that use of Bureau of Reclamation water for the purpose of growing marijuana is prohibited. Contact the Bureau of Reclamation or your irrigation district for more information.

Who is my watermaster?

District 1	Nikki Hendricks	503-815-1967
District 2	Michael Mattick	541-682-3620
District 3	Robert Wood	541-506-2652
District 4	Eric Julsrud	541-575-0119
District 5	Greg Silbernagel	541-278-5456
District 6	Shad Hattan	541-963-1031
District 7	David Bates	541-426-4464
District 8	Rick Lusk	541-523-8224
District 9	Ron Jacobs	541-473-5130
District 10	JR Johnson	541-573-2591
District 11	Jeremy Giffin	541-306-6885
District 12	Brian Mayer	541-947-6038
District 13	Travis Kelly	541-774-6880
District 14	Kathy Smith	541-479-2401
District 15	David Williams	541-440-4255
District 16	Joel Plahn	503-986-0889
District 17	Scott White	541-883-4182
District 18	Jake Constans	503-846-7780
District 19	Greg Wacker	541-396-1905
District 20	Amy Kim	503-722-1410
District 21	Ken Thiemann	541-384-4207

