



Water & Real Estate Transactions

Water Use Authorization

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. 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.

The Department strongly encourages buyers to thoroughly research water right information for properties involved in real estate transactions. When purchasing or selling property, consider the following questions:

What will the water be used for?

This is the most important question when determining the proper authority to use water. Surface water and groundwater may be used without a water right for a few specific uses. Any use of water, other than described under the exempt statutes (see ORS Chapter 537 for more information) requires a water right from the Water Resources Department.

Common Exempt Uses:

Groundwater for single or group domestic purposes:

Up to 15,000 gallons per day. Domestic includes household uses, such as cooking, cleaning, and sanitation.

Groundwater for ½ acre of lawn or garden: Up to 3,000 gallons per day. No larger than ½ acre irrigated.

Groundwater for commercial/industrial purposes: Up to 5,000 gallons per day. This does not include irrigation or watering to promote plant growth.

Natural Spring: Use of a spring that, under natural conditions, does not form a channel and flow off the property of origin at any time of year. This exemption requires a determination by the Watermaster.

Rainwater: Collection and use of rainwater from an artificial impervious surface, such as a roof.

REQUIREMENTS AT TIME OF SALE

Real Estate Transaction Act (RET) ORS 448.271

In any transaction for sale or exchange of real estate that includes a well that supplies groundwater for domestic purposes, the well owner is required to have the well water tested.

RESPONSIBLE PARTY: Seller

WHEN: Upon accepting an offer to purchase

TEST FOR: arsenic, nitrates, and total coliform bacteria

DEADLINE: within 90 days of receiving test results seller to submit to Oregon Health Authority and buyer

CONTACT:

Oregon Health Authority
Drinking Water Services
www.healthoregon.org/wells

Well Identification Number ORS 537.789; 537.793

A landowner must apply for and attach a Well ID tag to each well located on the property involved in the real estate transaction.

RESPONSIBLE PARTY: Seller, buyer, or representative

DEADLINE: within 30 days of property sale/transfer

CONTACT:

OWRD Well Identification Program
(503) 986-0854
owrd.info/wellid

What is the permit process?

Water right permits are obtained in a three-step process:

1. Application
2. Permit (five years to use water as approved)
3. Claim of Beneficial Use → Certificate

There may be other options to obtain water aside from obtaining a new right. Talk to your Watermaster about options: Find yours at owrd.info/watermaster.

Is there legal access to the water?

A water right does not create a legal easement. Often, the location where water can be legally accessed is on a neighboring property. This is a common situation when multiple homes share a well(s). Access onto another property must be obtained from the landowner who owns the well and any intervening property owners.

Consider requesting legal documentation authorizing access to the water source if not located on the property being purchased.

Is there a Well Log?

Well logs have been required for all new wells since 1962. A well log is a report prepared by the well driller, describing how the well was built, altered, deepened, or abandoned. The well log number begins with the first four letters of the county where the well is drilled. New water right permits or transfers will not be approved for existing wells without a well log. Well logs can be found at owrd.info/welllog - to find the correct log you may need to know when the well was drilled, when the house was built, prior owner names, and tax lot number.

Is there an existing water right?

Any use of water, other than those described under the exempt statutes, requires a water right from the Water Resources Department. Even if a property deed identifies a water right on a property, it should be confirmed with the Department. Over time a water right may have been moved via water right transfer or become subject to non-use.

If there is a water right permit (not yet certificated), ensure that all deadlines have been met and that the permit is still valid. The permit needs to be assigned to the buyer.

Assignment forms can be found on the Department's webpage at owrd.info/forms.

Locating Water Rights

Use the Water Right Information Search tool to find a water right: owrd.info/wris

Is the water right subject to forfeiture?

A water right remains valid as long as it is not cancelled and beneficial use of the water is used without lapse of five or more consecutive years.

Water must be used exactly as described by the water right of record. If after purchasing the property, a buyer intends to modify an existing water right through the transfer process, consider requesting evidence that the water was used consistent with the water right of record in the last five years from the seller. Acceptable supporting documentation for an Evidence of Use Affidavit (required by the water right transfer application) can be found under Forms on the Department's website.

Additional information

For more detailed information about water rights in Oregon, download "**Water Rights in Oregon**" at owrd.info/aquabook

The **online mapping tool** for determining if a property has a water right: owrd.info/wrmapping

Water right application **forms and fees**: owrd.info/forms

Locate a **well constructor**: owrd.info/wellconstructor