Understanding
Water Rights in Oregon
A Guide for Land Trusts

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Prepared for the Coalition of Oregon Land Trusts by:

Caylin Barter
Natasha Bellis
Michelle Smith

The confluence of the Wallowa and Lostine rivers on the Wolfe Farm conservation easement. Photo © Leon Werlinger
Author information

Caylin Barter - caylin.barter@jordanramis.com
Caylin is a water and natural resources lawyer with extensive experience in water rights, conservation program management, project implementation, and environmental policy. Previously working with the Freshwater Trust as their Flow Restoration Director, Caylin has recently joined the Jordan Ramis law firm. Caylin holds a JD with a Certificate in Environmental & Natural Resources Law from the University of Arizona’s James E. Rogers College of Law and a BS in Natural Resources from Cornell University. Caylin volunteers with the Coalition of Oregon Land Trusts’ pro-bono legal program.

Natasha Bellis - natasha@deschutesriver.org
Natasha works with the Deschutes River Conservancy (DRC), providing strategic oversight of the organization’s stream flow restoration programs including negotiating agreements and convening and facilitating stakeholder processes in priority stream reaches. She holds a MS in Environmental Studies from the University of Montana with a focus on collaborative conservation and a JD from Lewis and Clark Law School with a certificate in Environmental and Natural Resource Law. Prior to joining DRC, Natasha developed conservation land acquisitions for the Deschutes Land Trust and directed the flow restoration program for The Freshwater Trust. Natasha volunteers with the Coalition of Oregon Land Trusts’ pro-bono legal program.

Michelle Smith - michelle.erin.smith@gmail.com
Michelle formerly worked at Davis Wright Tremaine, LLC, in the environmental and natural resources practice group. Prior to joining Davis Wright Tremaine, she worked as an Assistant Attorney General with the Oregon Department of Justice in the Charitable Activities Section and Trial Division. She holds a certificate in Environmental and Natural Resources Law from Lewis and Clark Law School. Immediately following law school, Michelle clerked for the Colorado Supreme Court. Michelle also volunteers with the Coalition of Oregon Land Trusts’ pro-bono legal program.
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(1) Preface

Water resources in Oregon are experiencing increasing pressures because of overuse, and many streams are no longer able to accommodate new appropriations. Given the increasing demands for and decreasing supply of water, land trusts need to be proactive in assessing whether water is necessary to meet stewardship and conservation goals, and if so, how to secure access to those water resources.

Many of the conservation goals which land trusts seek to achieve in a land transaction could not be accomplished without ensuring the availability of water rights. For example, a land trust seeking to conserve property for agricultural use will likely need to ensure the availability of a water right to support agricultural use at the property. In other circumstances, the land trust may be seeking to conserve or restore habitat. Habitat conservation goals will also generally be reliant on the presence of water, though most typically, the conservation goals will be achieved by ensuring that adequate water remains instream.

Box 1 – Example of acquiring of Green Island and its water rights

For a straightforward yet illustrative example of how important it is to consider water rights when acquiring a property, we can look at McKenzie River Trust’s Green Island. In 2003, the land trust purchased 865 acres from a long-time farming family at the confluence of the McKenzie and Willamette rivers. Dubbed Green Island, this historic river island and floodplain property had senior water rights associated with the deed. The land trust, in negotiating the terms of the purchase with the landowners, ensured that the water rights were included with the property. This was important as the water and associate infrastructure was vital for effective restoration planting of the historic floodplain and riparian forest habitats.

In fact, having recognized that water rights are so essential to achieving conservation values, some land trusts have created policies requiring that conservation easements always include all water rights appurtenant to the land encumbered by the easement.

Given that water is often a critical component to achieving the stewardship and conservation goals of a land transaction, it is important for land trusts to consider how water can benefit conservation goals as a foundational question in all transactions. Where water is necessary to support conservation goals, the land trust should proactively review available water rights and negotiate the purchase or use of water rights as part of conservation transactions.

This guide intends to provide an Oregon land trust with the information necessary to allow it to address water rights as part of conservation transactions. First, the guide provides an overview of Oregon water law. Next, the guide outlines the due diligence process for water rights. Finally, the guide identifies specific issues a land trust should consider when addressing water rights as part of a conservation transaction.
(2) Introduction to Oregon Water Law

(A) Basic Concepts

All surface water and groundwater in Oregon is publicly owned, and its use is administered by the Oregon Water Rights Department (OWRD). Water rights, therefore, are rights to use water allocated by the state to users. In practice, any consumptive use of water—that is, a use that requires water to be diverted from the source, such as irrigation—must comply with state laws governing that use. Like other western states, Oregon follows the doctrine of prior appropriation, or “first in time, first in right”: this means the first person to divert water and put it to beneficial use can acquire a right to the continued use of the water that is enforceable against subsequent diverters in times of shortage.

Four basic legal principles govern water use under prior appropriation:

- **Beneficial Use**: water may be legally diverted from the source only if used for a beneficial purpose without waste.
  - Beneficial uses include, but are not limited to, the following: irrigation, domestic, industrial, municipal, and instream.
  - Water diversion that exceeds the quantity needed to fulfill the beneficial use constitutes waste and cannot form the basis of a water right.

- **Priority**: water rights are administered according to their seniority which determines whether a user will have a legal claim to water during times of shortage.
  - In times of shortage, newer water rights will be ordered shut off to ensure older water rights receive their full deliveries.
  - Water rights have a priority date that generally corresponds to the date that the application for a permit to use water was submitted to OWRD.
  - Many water rights have a priority date that precedes the Oregon Water Code, passed in 1909. Determined via adjudication, these “vested” water rights hold a priority date that generally corresponds to when the water was first diverted for beneficial use.

- **Appurtenancy**: water rights are associated with a particular legal description of land and can be used only on that land.
  - In certain cases, it is possible to transfer the water right to other lands, though the proposed transfer must survive rigorous administrative review.

- **Forfeiture**: water rights must be used at least once every five years or else they are legally forfeited and subject to cancellation.
  - Oregon uses a 15-year look-back period for evaluating whether a water right is still valid, meaning that a five-year period of nonuse that ended nine years ago can still expose the water right to a claim of forfeiture.
  - A water right can also be deemed partially cancelled if a portion of the right is not applied to beneficial use for five years.²

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¹ Several uses are considered “exempt uses” and do not require a water right. Exempt uses of surface water include diverting from certain small springs, limited stockwatering, water used for fish screens, and emergency firefighting. Exempt uses of groundwater include stockwatering, watering less than half an acre of lawn or noncommercial garden, domestic wells using less than 15,000 gallons per day, and industrial uses of less than 5,000 gallons per day but excluding irrigation.

² This generally applies when a portion of the original water right footprint ends up under a building or a road. However, simply diverting less than the full amount allowed under the right does not result in forfeiture if the water user maintains the diversion, has irrigation infrastructure in place, and is “ready, willing, and able” to use the full amount allowed under the certificate.
Deciphering a Water Right

Before diving into how to get a new water right or how to change one once you have it, we include here a basic introduction to the terms that often appear on the face of a typical water right certificate.

- **Certificate Number**: unique number assigned to each water right by OWRD when the certificate is issued.
- **Owner**: the legal name of the individual or company entitled to the use of water under the right. The information is often out-of-date and will not reflect the current owner of the appurtenant land.
- **Source(s)**: the name of the stream, reservoir, spring, or well from which the water is diverted.
  - If a stream, the certificate will also list the larger-order river basin to which the stream is tributary.
- **Beneficial Purpose(s)**: the designated use of the water (e.g., irrigation, domestic, etc.).
- **Number of Acres**: the total footprint of land to which the water will be applied.
- **Procedural History**: whether the water right originated through confirmation by decree, perfection of a permit, result of a transfer, etc.
- **Priority Date(s)**: the date the water right was perfected, i.e. put to beneficial use (section 1(C)(iii)(b); this can be expressed as a year or a date certain or even a time of day on a date certain.
- **Point(s) of Diversion (POD)** (if groundwater, called Point of Appropriation): the legal description of point where water is diverted from the source, generally expressed in relation to Township, Range, Section, and Quarter Section.
- **Duty**: the total volume of water that may be diverted in the season of use assuming water is physically and legally available at the source.
  - Duty is typically described in acre feet per acre for irrigation use (one acre foot equals the volume of water necessary to cover one acre of land one foot deep).
  - Duty may be further restricted to limit use to a portion of the duty during a specified portion of the season of use.
o Duty limits for irrigation use are correlated (sometimes loosely) with crop water requirements in that particular basin, and may range from as low as 2 acre feet per acre to as high as 6 acre feet per acre or more.

- **Season of Use:** any date-based limits on exercising the right.
  o Do not assume that a certificate that lacks a season of use allows year-round use of the right. Season of use often does not appear on the face of the certificate but is governed by decree (see section (2)(E)(i) for more on decrees).

- **Rate(s):** the maximum flow rate divertible at the source.
  o Rate is typically described in terms of cubic feet per second per acre for irrigation use; 1/40th cfs/acre or 1/80th cfs/acre are common.
  o Rate limits may vary throughout the season depending on the water right and the decree.
  o When a certificate includes multiple points of diversion, the water right might split the rate between the PODs or it might allow diversion of the full rate at any of the PODs.
  o In many cases, diverting at the maximum certificated rate may exhaust the water right’s total duty before the end of the season of use.

- **Requirement for Deficiency of Primary Right (Supplemental Rights Only):** if a water right is supplemental to another right, the certificate will include language requiring that the supplemental right be used only to augment deficiencies in the primary right.

- **Place of Use:** the legal description of lands where water can be applied, generally expressed in relation to Township, Range, Section, and Quarter Section.

- **Other Conditions:** any additional terms to which the water right is subject.

(C) **Obtaining a New Water Right**

Sometimes it becomes necessary in the course of managing an acquisition to acquire a new water right to accomplish stewardship goals. While getting a water right is technically as straightforward as filing a permit application, constructing and using a conveyance system to deliver water to the place of use, and filing a claim of beneficial use (discussed in greater detail in section (2)(C)(iii), a threshold question should be addressed before jumping into the deep end: is water even available for appropriation?

(i) **Water Availability**

In drier parts of the state, and even throughout much of the temperate west side, much of the water flowing in streams and through aquifers is already spoken for. OWRD uses a proprietary Water Availability Report System (WARS) to determine if new appropriations can be granted. As defined by OWRD,

> Water availability is the amount of water that can be appropriated from a given point on a given stream for new out-of-stream consumptive uses. It is obtained from the natural stream flow by subtracting existing in-stream water rights and out-of-stream consumptive uses.

[http://www.oregon.gov/owrd/Pages/wr/index.aspx#Water_Availability_Report_System](http://www.oregon.gov/owrd/Pages/wr/index.aspx#Water_Availability_Report_System) (note that existing instream water rights are legally protected from being diminished by new consumptive-use appropriations). If the WARS indicates insufficient flow to satisfy the new use throughout the period of need, other alternatives may exist (see Supplemental Rights, section (2)(C)(ii); see also Transfers, infra section (2)(C)(iv)).
(ii) Primary or Supplemental?

In many cases, a new water right will be requested to fully serve the needs of the contemplated use. This is known as a primary right. In other cases, a new water right will be sought to shore up inadequacies in an existing right, generally resulting from interruptions in the supply available from the primary source. This is known as a supplemental right. A supplemental right will generally come from an alternate source, such as another stream for a supplemental surface water right or a well for a supplemental groundwater right. Supplemental rights are subject to the same requirements of water availability as discussed previously in section (2)(C)(i).

Two important aspects of supplemental rights bear mention. First, a supplemental right will not be granted if the primary right is fully satisfied. In other words, the primary right must be deficient at least some of the time in order for a supplemental right to be justified. Second, once issued, a supplemental right may only be accessed when the primary right is not available.3

Additional considerations involving supplemental water rights are discussed in Transfers, infra section (2)(C)(iv).

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3 In certain situations, Oregon also allows for limited licenses to provide temporary water for land management or early establishment of native plants. See this information sheet and the OWRD application form for more information.
(iii) From Application to Certificate

Once you know the type of water right you want and the availability of water to meet it, it’s time to start the application process. There are three primary steps: applying for and receiving a permit, using the water per the terms of the permit, and eventually receiving a water right certificate.

(1) Application for Permit

A permit entitles the applicant to begin construction and use of water. The application will generally contain the following elements:

- Legal description of property;
- Map showing proposed source and place of use;
- Land use information;
- Names and addresses of landowners potentially impacted by proposed use;
- Authorization to access land not owned by applicant, if applicable;
- Application fee.

OWRD will then conduct an initial review to determine if sufficient water is available to satisfy the proposed use without causing injury to existing water rights or to public resources. OWRD will also consider whether the proposed use is consistent with basin plans, local land use restrictions, water quality standards, and state and federal rules (for instance, scenic waterways or sensitive fish habitat may place additional constraints on new consumptive uses). For all of these reasons, OWRD encourages applicants to seek a pre-application conference to help daylight potential issues early in the process.

Once its initial review of the application is complete and any errors or concerns are addressed, OWRD publishes public notice of the application. OWRD then develops and publishes a proposed final order, which opens a protest period for any interested members of the public to raise objections. If a protest is filed and cannot be resolved by the parties, this triggers a contested case hearing with an administrative law judge, which can lead to significant delay and expense. If no protests are received, a final order approves the application and the permit is issued.

(2) Constructing Conveyance and “Proving up”

With a permit in hand, the permittee can begin construction and start using the water. The permit will generally allow five years to fully develop the water right. Once the system is done and the water can be put to full beneficial use, it is time to hire a certified water rights examiner (CWRE) to prepare a “claim of beneficial use” (which includes a water use report and a final proof survey map) for submission to OWRD. Note that the claim of beneficial use must be submitted within the five-year completion period or within one year of the full beneficial use of the water, whichever comes first.

(3) Certificate

If OWRD concludes, based on the claim of beneficial use and any necessary field visits, that the permittee has met the terms of the permit, OWRD will issue a water right certificate bearing a priority date that corresponds to the date the application was accepted. The property interest is now enforceable against junior users, and any changes to the water right must go through OWRD’s transfer process (see Transfers, infra section (2)(C)(iv)).
From pre-application conference to final certificate, the process can (and typically does) take years, even for relatively simple irrigation systems on relatively underutilized watercourses. Make sure before you set out that you have a good shot at reaching the final destination. Though countless water right holders have successfully navigated the process without engaging an attorney, countless others likely wish they had. Depending on your familiarity with the process and the unique characteristics of your property and its environs, it may be prudent to hire a water lawyer or a CWRE to handle the entire transaction or at least to complete an initial assessment of your situation.

(iv) Transfers

A water right certificate confers on its owner the right to divert water from a specified point, from a specified source, for a specified purpose, at a specified place. Any proposed change to any of these elements—such as adjusting the acreage watered or the type of use—requires a trip through the transfer process. Transfers can also be a valuable tool to secure water for a property where a new water right is infeasible because existing instream rights or consumptive uses already account for all available water. Importantly, a transfer will not affect the underlying priority date of the water right.

(1) The Transfer Process

As is the case with an application for a new water right, a proposed transfer will undergo rigorous administrative review and will be approved only if OWRD concludes the change will not enlarge the existing right or injure other water rights. Transfers can be structured as temporary or permanent in nature, and can involve all or a portion of a water right. The transfer process also applies when changing the character of use of a water right, for example from a consumptive use such as irrigation to an instream use. In any case, applications are processed in the order they are received, and the application may have to wait a year or more to reach the front of the line, at which point the actual review can take another year or more. An administrative process known as “reimbursement authority” can be used as a shortcut where time is of the essence—for a fee, OWRD will farm out the review to an approved contractor to complete on an expedited schedule.

A transfer application will include attachments similar those needed for a new water right application, with additional information required to characterize current water use. Generally, a map prepared by a CWRE will also be required. There are often several rounds of requests for additional information, requiring attention on behalf of the applicant to avoid the application being denied as incomplete. Once all items are received, OWRD will publish notice of, and invite public comment on, the proposed change.

It is critical to keep in mind that OWRD will first ensure that the current use comports with the terms of the existing water right before moving onto evaluating the proposed change. Therefore, it behooves a transfer applicant to make sure the house is in order before inviting regulatory scrutiny of the status quo. OWRD will evaluate the current use of the water right and gauge the impact of the proposed change(s) on other users, and then a preliminary determination will be issued proposing to approve or deny the transfer according to

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4 There are some exceptions to this general rule. For instance, a point of diversion can be relocated to accommodate the natural movement of the stream channel, but only if the movement stays within 500 feet of the original POD, does not leapfrog any other POD, and includes a fish screen if requested by ODFW. ORS 540.510(5). Contact your local Watermaster if you are unsure of whether a particular desired change to a water right requires a transfer.

5 Enlargement occurs when the scope of the water right or the exercise of water right exceeds what is provided for in the certificate or permit, or exceeds the actual historical use of the water right. The term is not limited solely to the quantity of water consumed.

6 Injury occurs when a change in the use of a water right would prevent another water user from using the water to which they are legally entitled.
whether injury is expected to result. Often OWRD will be able to work out a solution with the applicant that mitigates the risk of injury while still achieving the intent of the transfer. Notice is again published, and if no protests are received, the final order approving or denying the transfer will be issued. If approved, the final order identifies a deadline for finalizing the transfer.

Only after the final order is issued will the applicant be authorized to begin using water according to the terms approved in the transfer; up until that time, water use must comply with the existing water right certificate. Note that a water right that is in the transfer process is often exempt from forfeiture. After proving up the transfer but before the transfer deadline in the final order, the applicant must engage a CWRE to prepare a final proof map and a claim of beneficial use documenting compliance with the terms of the final order. OWRD then cancels the original water right and issues a new water right incorporating the changes resulting from the transfer.

Be aware of supplemental rights in the transfer process (for more on supplemental rights generally, see section (2)(C)(ii), supra). If an applicant wishes to change the place of use for a primary right that is augmented by a supplemental right, OWRD will require the supplemental right to be transferred along with the primary right or else the supplemental right will be cancelled (i.e. the supplemental right cannot exist on its own without a primary right to supplement). Similar considerations apply for temporary transfers. In the case of instream leases (see Box 2, below), a supplemental right does not have to be included in the lease of a primary right per se, but the supplemental right cannot be exercised during the term of the lease of the primary right—to do so would constitute enlargement—so it is important to make sure you do not put yourself in a situation where you cannot exercise your supplemental right for a period of five years because the primary right is locked up in a lease.

**Box 2 – The instream lease: a mini transfer that protects your water right from forfeiture**

The instream lease is an excellent tool for avoiding forfeiture of surface water rights while also augmenting streamflow. Leases can last for up to five years at a time and are renewable without limitation. Lease applications are much less onerous to prepare than transfers, cost little to submit, receive expedited review, and do not require the assistance of a CWRE even when maps are required. They can encompass the full water right or a portion of the acres, and they can even accommodate split-season use, whereby a water right may be exercised for the certificated use during one part of the year and for instream use during the remainder.⁷

(2) **Transfers of Conserved Water**

While the path laid out above applies to most transfers, there are certainly other more exotic and complex options available. Oregon’s Allocation of Conserved Water program (detailed in ORS 537.470) is one such example. This program exists to help remove the disincentive to conserve water through irrigation efficiency projects that otherwise exists under the prior appropriation doctrine. Specifically, it remedies the situation where the amount of water conserved is now subject to cancellation for nonuse, eliminating the farmer’s ability to switch back to a crop with higher water demands in the future and potentially reducing property value.

Under the conserved water program, the state and the conserved water applicant split the benefit of the irrigation upgrade or conveyance upgrade. The state receives a minimum of 25% of the conserved water for instream use, while the applicant can retain a maximum of 75%. If non-reimbursable state or federal funds

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⁷ Split-season leases are an exception. Currently, ORS 537.348 authorizes split season leases only through the year 2024 and only for up to a maximum of 10 years per water right.
are used to complete the project, a proportional percentage of water is retained by the state. Up to 100% of
the conserved water can be dedicated to instream use by the applicant.\(^8\) Upon completion of the project, as
many as three permits can be issued (one for the lower-demand use, one for the applicant’s share of the
conserved water, and one for the state’s share of the conserved water), and all three of the new water rights
retain the priority date of the original water right certificate. There are technical requirements that must be
met in order for an application for an allocation of conserved water to be approved, but there may be
technical and financial assistance available under a variety of state and federal programs. Note that as with
transfers, OWRD will review the conserved water proposal for potential injury to other water users and
mitigate where necessary. Injury may result from a reduction in return flows\(^9\) that are available to downstream
users. In the right situation, the incentive of receiving a new water right with a senior priority date may be an
ideal solution for a forward-thinking land trust looking to modernize infrastructure on an acquisition of
agricultural land.

(D)  Water Rights in Action

With tens of thousands of water rights on the books, you may be wondering how it actually works on the
ground. The unsurprising answer is, “It depends.” Water availability, user demand, enforcement priorities,
local customs, and neighbor relations all play a role in how water rights are administered in any given time
and place.

Oregon is divided into 21 districts for purposes of water rights administration. Each district has a
Watermaster whose job it is to manage water use, including responding to calls for water during times of
shortage, reviewing all permit and transfer applications, inspecting diversion infrastructure, measuring
streamflow, and reporting water use. Attachment E provides a list of Watermasters in the state. During
periods of low streamflow and high demand (generally summer), Watermasters can find themselves drowning
in calls from water users whose rights are not being fully satisfied. The Watermaster then has to assess
streamflow upstream of the caller and determine whether there are upstream junior users who are diverting
water to which the downstream senior user is legally entitled. If this is the case, the Watermaster shuts off
upstream junior users in descending order from newest to oldest until sufficient streamflow exists to satisfy
the downstream senior user.

This process, known as “regulation,” varies widely from place to place and from year to year. A single
Watermaster may be responsible for water rights regulation across a 5,000 square-mile district with hundreds
of streams and thousands of water rights. This results in a system that is largely complaint-driven, and in
times of shortage, absentee landowners (including many land trusts) may find themselves at a strategic
disadvantage if steps are not taken to build solid relationships with their neighbors, their Watermaster, and
the land itself. As stewards, land trusts should take an active role in ensuring the wise management of their
water rights to protect the validity of the right, the integrity of the resource, and the value of the asset.

(E)  Due Diligence

Water right due diligence is a multi-step process of discovering the history of water use on your property and
is an important process in determining the parameters, quality and transferability of water right(s) appurtenant
to the property. It involves gathering and analyzing information on water rights, land use, water use
infrastructure and water rights regulation. The due diligence process will also often give you insights into the

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\(^8\) The state’s share of the conserved water is proportional to the percentage of non-reimbursable public funding
used to achieve the water conservation upgrades, capped at 75%, though the applicant can choose to dedicate
100% instream. Example: public funds are used to pay for 80% of the costs of piping a leaky irrigation ditch. The
state will receive 75% of the conserved water to dedicate to instream use.

\(^9\) Return flows refers to the water that is not consumed and ultimately returns to the stream.
culture surrounding water use within your community. Once complete, the due diligence process will enable you to identify the options available to you with regards to water use and management on your property.

The steps outlined below provide primary due diligence steps for land trust professionals wishing to independently research water rights in Oregon and learn more about the water right due diligence process. Several resources exist to aid with all the steps outlined below and are referenced in Attachment G.

Regardless of the level of individual engagement in the due diligence process, OWRD is a critical resource in determining past water use, confirming current water use and regulation, and vetting future water right changes. Becoming familiar with OWRD’s website and engaging with local field staff (Watermasters) are worthwhile investments of time.

(i) **Know Your Rights**

- **Document research.** The first step in water right due diligence is determining what water rights, if any, are appurtenant to the subject property. In Oregon, all water is publicly owned and is administered for beneficial use by OWRD through the issuance of water right permits and certificates. There are a variety of ways to obtain a list of water right certificates appurtenant to a property, but the most reliable information will come from OWRD, either by contacting local field staff or by using the Water Rights Information System (WRIS, see Attachment F). Once located, a water right certificate will identify the key parameters of water use on the property at the time the certificate was issued including the source of water for withdrawal, type of use, priority date, rate of water withdrawal, duty or total volume of water allowed, point of diversion(s) location and place(s) of use.

  It is important to determine that the water right certificate you locate represents OWRD’s most recent picture of water use on the property. Use WRIS to compile a genealogy of water use on the property by examining past and pending transfers, mapping surface and groundwater rights on the property using OWRD’s online mapping resource, and obtaining copies of documents. Make sure to examine the decree associated with the water rights you are researching. Decrees are issued by circuit courts and are the originating legal documents for how water is used in each county or watershed. Decrees typically give information not provided on water right certificates (e.g. seasons of use, duty limits, and maps) that can further limit the use of water on a property and can be found using OWRD’s website (see Attachment F).

  One final but important step in document research is reviewing the chain-of-title for the underlying land to ensure that water rights have not been sold, conveyed or retained after a previous land sale. For example, land trusts should check whether the water rights holder used the water rights as security for a UCC financing. If so, subordinating this security agreement to a conservation easement may be necessary (see example subordination language Attachment H.)

- **Ground-truthing.** In many cases, the most recent water right certificate for a property is decades old and does not accurately reflect conditions on the ground. In other cases, a water right transfer or other change may have resulted in the issuance of a new water right certificate that reflects recent changes in water delivery or place of use. In all cases, site visits are essential to identifying what, if any, changes have occurred since the issuance of non-cancelled water right certificate(s) associated with the property and to note discrepancies in the water right certificate and conditions on the ground (i.e. shifting watercourse, new buildings or roads, new points of diversion). Take pictures of water use and delivery infrastructure and, if possible, make a map that reflects an understanding of how water is currently used on the property. Compare site visit findings with WRIS’s online mapping tool and aerial photography, noting any inconsistencies. A water right certificate or permit is the starting point for all current and future water use on a property. Making changes to a water right in
the future will usually require fixing any discrepancies between the water right certificate and current conditions on the ground.

(ii) Quality of Rights

- **Transferability.** The ability to legally transfer or make changes to a water right greatly influences future water-use options on a property. The two biggest factors influencing transferability of a water right are validity and pending transfers.

In Oregon, as in most western states, beneficial use is the primary measure of validity. To maintain a valid water right, a water right holder must beneficially use the water at least once every five years with no lapses of five or more consecutive years over the past fifteen years. A water right holder must also maintain a diversion and delivery system capable of using the entire water right on the property, although use of the entire volume of certificated water is not required. Assessing the validity of a water right requires developing a history of water use on the property using information gathered during site visits and through document research. Aerial imagery is especially useful here as it one of the easiest ways to determine if a property has received water over time—irrigated acreage is easy to identify, especially east of the Cascades. Additionally, gathering information and records from the current and/or previous landowner regarding water use (i.e. types of crops grown, when water is used, pumping records, receipts for seed/fertilizer purchased, instream lease) will provide support for a claim of validity. Finally, it is essential to verify this information with OWRD field staff who likely have first-hand knowledge of water use on the property. While state-initiated cancellation of a water right due to nonuse is rare in Oregon, OWRD will investigate water right use to ensure validity before approving any changes or transfers.

Pending transfers are another factor affecting the transferability of water rights. Any water right in the process of a change (i.e. change a point of diversion, place of use, or type of use) must complete the transfer and use the water right with the change in place before OWRD will issue new certificates reflecting the change. The water right will only become transferrable again with the issuance of new water right certificates reflecting the earlier change. It is important to note that transfers involve many steps and can take years to process.

- **Reliability.** Reliability is largely a function of natural streamflow availability and the priority date of the water right. A water right’s reliability will indicate the amount and timing of water available under the certificate, which in turn drives planning around potential water use (for example growing crops or other plantings) on the property.

Most stream systems in Oregon are snow-pack driven and streamflow peaks with spring runoff and then tapers to base flows by mid-summer. Water right holders are entitled to use this water based on the prior appropriation doctrine. With regards to reliability, water rights are often expressed in terms of “senior water rights” and “junior water rights.” In general, senior water rights are satisfied more often than junior water rights, although every watershed has unique indicators for what qualifies as a senior water right. In some watersheds, a senior water right means there is enough natural streamflow to fully satisfy the water right for the entire irrigation season, while in other watersheds, a senior water right may only be satisfied for 80% of the irrigation season. Furthermore, there is variability among watersheds regarding what priority dates qualify as senior versus junior water rights. For example, on Whychus Creek in the Deschutes Basin, senior rights include those carrying priority dates from 1869 -1894 and are satisfied throughout the irrigation season in nearly every water availability scenario. Water rights junior to 1894 receive attenuated reliability, decreasing with newer priority dates.
Understanding the reliability of a water right can come from discussions with OWRD, current or previous landowners, and neighboring water users. OWRD also hosts historic streamflow gaging and water right information on its website allowing for the creation of an independent reliability analysis, a technical report beyond the scope of this paper.

- **Regulation.** The presence of state regulation helps ensure delivery of a water right. While the state does its best to provide regulation for water rights via local Watermasters, resource constraints and other factors often prohibit the regulation of every water right. Many of the larger river systems in the state are regulated, meaning that in times of shortage, OWRD will use streamflow gaging and field visits to ensure that senior water rights are satisfied first, curtailing more junior water rights as water availability dictates. Many of the smaller watersheds in the state are not regulated and water use and delivery in times of shortage is sorted out, less formally, among neighbors. Be aware of the presence or absence of state regulation in the river system associated with the water right you are researching. Where they exist, regulation records are also useful in assessing reliability (see above).

- **Human due diligence.** By design, water allocation under the doctrine of prior appropriation affects fellow water users. A change in property ownership or to the use of a water right is likely to impact a third party in some way. It is important to consider these possible effects and mitigate if necessary. Be aware that third parties can publicly protest water right transfers and make assertions of nonuse.

Following is an example of parties and issues to consider:

- **Irrigation Districts:** If the water right associated with the property is in an irrigation district, state law requires consultation with and approval by district managers before processing transfers.

- **Marginal use:** If you are proposing to use the water right differently, carefully consider how this change will affect neighboring water rights holders’ access to water. For example, was the water right validly, yet marginally, used over the previous five years? If so, neighbors had access to additional water that they may not have access to if you legally increase or change the type of water usage. This could contribute to bad feelings or a public assertion of nonuse even if the proposed change is technically legal.

- **Instream transfers:** In some areas, purchasing land and transferring all the water to an instream use is not culturally accepted as it takes agricultural land out of production and threatens the rural economy. Understanding attitudes and perceptions around instream use is important to crafting changes to water rights that alleviate local concerns (i.e. split season leasing, temporary instream leases).

- **Subsequent land use:** It is, of course, important to consider what future management of a site looks like if or when the water use changes. For example, transferring water rights instream can mean good things for a creek, but drying up land can also mean a property full of weeds if not proactively managed.
(3) Considering Water Rights with a Conservation Transaction

The above information provides the foundation for conducting a basic review of water rights. The following identifies and examines specific issues that may arise in conservation transactions.

(A) How Much Water?

The first step in incorporating water rights into land transactions is to identify whether water is necessary to achieve the particular stewardship goals of the transaction and then to determine the quantity of water necessary to achieve those goals. Land trusts should typically limit the amount of water purchased or encumbered by the conservation easement to the amount necessary to achieve their stewardship goals.

(B) Incorporating Water Rights in the Transaction

There are several ways in which a land trust may structure a transaction to incorporate water rights. As described above, while water rights are considered appurtenant to real property and generally transfer with the underlying property, they are also considered a personal usufructuary property right10 which an owner may independently sell. Therefore, even in fee transactions (where title to the land is purchased), it is important that the land trust and landowner reach agreement as to whether the water rights will be included as part of the transaction. In addition, in circumstances where the land trust does not purchase the water rights outright, the land trust should ensure that the management of any appurtenant water rights are addressed in the conservation easement or in a separate water rights agreement (for example a lease).

(i) Purchase

In some circumstances a land trust may determine that acquiring ownership of water rights is the best management option. Outright purchase of water rights gives the land trust clear control over the water rights and allows the land trust to make administrative changes without needing to rely on a third party. Typically, water rights that will be purchased will be included in the purchase agreement for the property. As noted above, appurtenant water rights are not automatically included with the property purchase. If a water right has not already been conveyed to another party, it will remain appurtenant to the land being sold unless it is explicitly excluded in the sale of the land (though is a good idea to identify the water right in the warranty deed). If the land trust is purchasing an easement rather than the land itself and wishes to control the water, then the water will need to be included in a conveyance deed separately in or conjunction with the easement.

Following the purchase of a water right, the land trust should ensure that it notifies OWRD of any ownership changes to the water right. For certificated water rights, an ownership update form should be filed with OWRD, available at:


For water rights permits and transfers, a request for assignment should be filed with OWRD, available at:

http://www.oregon.gov/owrd/PUBS/docs/forms/Assign.pdf

In addition, if purchasing the water right associated with an easement, the water conveyance deed (sometimes called a quitclaim deed) must be filed with the county clerk.

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10 A usufruct is a limited real property right and means the right to use the property.
(ii) Conservation Agreements

The purchase of water rights may not be desirable or feasible in all transactions. For instance, a landowner may not wish to sell water rights appurtenant to the relevant property or a land trust may determine that it does not have the administrative capacity to manage water rights. In circumstances where a land trust does not wish to hold water rights but still wants to ensure the continued availability of water on the property, provisions governing the management water rights should be included in the conservation easement\(^\text{11}\), or, in some circumstances, in a separate water rights agreement.

Water leases are an example of a separate water rights agreement that may be used by a land trust to encumber water. In a lease, the water right user leases the right to use water\(^\text{12}\) from the water right holder for a specific time. This type of agreement may be a good option when landowner does not wish to sell water rights outright. In addition, this may be used to obtain water rights when it is not possible to obtain water rights from the landowner of the purchased or encumbered property. In those cases, a water lease could be used to obtain water rights from another property owner that could be temporarily transferred and used on the relevant property. Note that this concept of water leasing is distinct from the instream leasing process described in Box 2. Here, if the land trust contemplates leasing water under a water right that is appurtenant to another property, an administrative transfer will be required prior to any use, regardless of the duration of the use.

In cases where water rights are encumbered as part of a conservation easement, the easement should include provisions which identify how the water rights should be managed and used to achieve the stewardship goals of the land transaction.

Provisions may include:

1. **Conservation Goals**
   - Identifying the conservation goal to be served by the water right.

2. **Restrictions**
   - Prohibiting the landowner from making changes to the place of use, point of diversion, or type of use.
   - Prohibiting the landowner from changing the place of use off the pertinent property.
   - Prohibiting the sale of the water right that would move the water right off the pertinent property.
   - Prohibiting the waste of water.

3. **Maintenance of Water Rights**
   - Requiring the landowner to continue historical use and not abandon the water rights.
   - Providing land trust/easement holder with the right to cure any forfeiture, including by transferring water rights instream.

4. **Forbearance agreements**
   - Agreeing to postpone, reduce or suspend the use of a water right for a limited and specific time period to support conservation goals, commonly habitat restoration.

5. **Affirmative duties**
   - Identifying permitted uses of water.
   - Specifying that use of the water right to support conservation goals is permitted, which may include changes in timing of use, type of use, point of diversion or place of use.
   - Requiring temporary or permanent transfer of water to instream use.

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\(^{11}\) Note that even if water right management provisions are included in a conservation easement, this does not protect the water rights from forfeiture if they are not put to beneficial use within a five-year period.

\(^{12}\) Water right leases may also include the use of water infrastructure (discussed below in section (3)(B)(iii)).
Appendix D of The Land Trust Alliance’s paper, “Land Trusts and Water, Strategies and Resources for Addressing Water in Western Land Conservation,” provides useful examples of conservation easement provisions addressing water rights. Appendix D, Pg. 116, 

(iii) Infrastructure Agreements

The land trust should assess whether it will need access to any infrastructure associated with the related water rights, including any rights-of-way, diversions (headgates), conveyance infrastructure (canals, ditches), water storage (ponds, reservoirs), wells, and any water rights shares. To the extent possible, the purchase agreement or easement should identify all supplemental infrastructure that will be encumbered by the easement. It may also be prudent to include a general provision in the agreement or easement that provides that all access and infrastructure rights (including those necessary to convey water) necessary to allow use of the water rights are encompassed within the agreement.

(iv) Decision Not to Encumber Water Rights

In some cases, the land trust may determine that it does not wish to include water rights as part of the conservation transaction. In those cases, it is helpful for the land trust to specify in the agreement or easement that water rights are not necessary to meet the conservation values and that the landowner may continue historical use of the water. In other cases, the land trust may determine that it only needs to restrict a portion of the landowner’s water right to meet its stewardship goals. For instance, a land trust may only wish to restrict use during a particular season (during salmon spawning or times of low water flow), or may wish to restrict use to the historical manner of use. The agreement or easement should clearly identify these types of partial restrictions and provide for a means to monitor compliance with the provisions.

(v) Water Use and Conservation Values

A land trust may wish to draft water use agreements or conservation easements to permit changes to a water right in order to enhance conservation values. Examples of this may include:

1. Conservation measures to increase efficiency. As described above in section (2)(C)(iv)(2), Oregon has adopted the Allocation of Conserved Water Program, which encourages water users to implement conservation measures by granting a percentage of the water conserved to the water user and a percentage of the water conserved to instream use. Additional information on the program can be found here: http://www.oregon.gov/owrd/pages/mgmt_conserved_water.aspx.

2. Restriction on new diversions. Where the land trust’s conservation goal is to maintain water instream, the land trust should specify that the landowner may not apply for any new diversion points or apply for new water rights on the same stream or from hydrologically connected groundwater.

3. Instream Use. As described above, Oregon recognizes instream use of water as a beneficial use. Water may be transferred instream permanently or in short-term leases. The transfer of water instream ensures that the water rights will be protected for instream use for the duration of the transfer. Land trusts whose conservation goal is habitat restoration or improving natural stream flow may wish to explore the transfer of water rights instream.
(vi) Identifying Water Rights

Any water right included in a transaction should be clearly identified. At a minimum, water rights should be identified by their certificate, permit or transfer number. In addition, copies of water right certificates, permits or transfers identifying the priority date, quantity, point of diversion, place of use, well number, and any season of use (typically agricultural rights) should be attached to the relevant agreements. Section (2)(B) (and Attachment A) provides a copy of a water rights certificate and identifies where pertinent information is located on the certificate.

(C) Partnerships

One way a land trust can incorporate water rights into land transactions is to partner with water trusts. These organizations specialize in acquiring and managing water rights, and partnerships can allow land trusts and water trusts to maximize the conservation potential of land transactions. A list of water trusts in Oregon is provided in Attachment B.

The following example illustrates how water trusts and land trusts can work together:

**Spotlight: Deschutes Partnership**

*Whychus Creek, McKay Creek*

The Deschutes Partnership, formed in 2005, brought together the Deschutes Land Trust, the Deschutes River Conservancy, the Upper Deschutes Watershed Council and the Crooked River Watershed Council. Together these organizations are working to develop strategic, integrated restoration programs in Deschutes basin tributaries designed to increase the pace and scale of watershed restoration efforts.

Within the Deschutes Partnership, each organization plays a specific role in the overall effort based on their unique expertise, capacity and areas of focus:

- Land conservation
- Streamflow restoration
- Stream habitat restoration
- Fish passage and screening
- Community education and outreach
- Monitoring and evaluation

The ecological outcomes achieved by integrating land conservation, flow enhancement, and stream restoration on Whychus Creek encouraged the Partnership to work on developing a grand vision for the permanent protection, restoration and stewardship of the most important habitat along other key stream reaches, including the Metolius River and the lower Crooked River.

(D) Monitoring Water Rights

A land trust that has entered into an agreement with a landowner regarding water rights will need to develop a plan to monitor the use of those water rights going forward. Importantly, as described in section (2)(A) above, water rights can be forfeited if they are not used at least once every five years. Therefore, the land trust
must ensure that water rights are put to actual beneficial use at least once every several years. In addition, the land trust will need to develop a process for monitoring the use of water rights to ensure that the landowner is complying with applicable provisions of the conservation easement or water use agreement.

Conservation easements should include provisions that require annual reporting by the landowner to confirm water use and compliance with conservation values identified in the easement or agreement. In addition, the easement should include provisions which allow the land trust to access the property to ground-truth the use of water. This may include ensuring that any pumps or diversion works are functioning or visually assessing the ground for evidence of water application. Finally, the easement should provide the land trust with the authority to cure any violations of the easement.

(E) Special Issues in Conservation Transactions

Addressing water rights as part of a conservation transaction can present some unique issues with which a land trust should be familiar.

(i) Appraisals and Tax Deductibility

Because water markets are nascent or nonexistent in most parts of the state, water rights can be very difficult to value. Where there have been comparable sales in the same area, those sales can be used as a baseline. However, in many regions it can be difficult to find comparable sales. Though there are consultants available who can assist in valuing water rights, those services may often be cost prohibitive for land trusts. If augmenting stream flow is a goal of a specific land transaction, the land trust should consult with the local water trust. Water right values may vary drastically within a single basin depending on priority date, location, and other factors. Attachment D provides resources for valuing water rights. The issue of valuation will also arise when seeking to value the conservation easement for tax purposes.

For outright donations of water rights, the IRS recently provided their strongest indication yet on the question of tax deductibility of a western water right donation. In 2016, Trout Unlimited (TU) submitted a formal request to the IRS seeking a decision clarifying whether the donation of a water right would be entitled to a tax deduction under IRC 170(h). In response, the Department of the Treasury included the matter in their Priority Guidance Plan for 2017. Appropriative western water rights are distinct whole property interests, and as long as they are permanently donated (even if only seasonally), they appear to qualify for deductibility under current Internal Revenue Code.

(ii) Flow Restoration

In many cases the conservation value the land trust wishes to achieve is the restoration of stream flow. The most common way flow restoration is accomplished is through OWRD’s instream leasing and transfer program. Oregon recognizes instream uses as beneficial uses and provides a system for water rights owners to protect water rights instream against diversion by junior appropriators. Water rights may be dedicated to instream use by way of short-term leases of up to five years, temporary transfers longer than five years, or permanent transfers. Applications to transfer water instream are available here: http://www.oregon.gov/owrd/pages/mgmt_instream_tools.aspx. The OWRD website also provides other tools that water rights holders can explore to support instream values.

In cases where a landowner continues to hold the water right, the land trust should include a provision in the easement or water use agreement that specifies whether and for how long the water rights need to be transferred instream.
Finally, a land trust may wish to lease or temporarily transfer water rights instream to avoid forfeiting unused water rights. Water rights held instream are not subject to forfeiture. Therefore, in circumstances where a land trust or landowner is unable to use its water rights for a period of time, it is often prudent to transfer those rights instream to avoid the permanent loss of those rights.

(iii) Assuring Compliance with Funding Agreements

Some funding agreements may require land trusts to ensure that water rights are not lost as part of the transaction. For example, the Bonneville Power Association’s Wildlife Mitigation Program funding agreement specifies that the land trust will not forfeit the water rights. (See Sample Deed of Conservation Easement, Paragraph D, pg. 45 available at: http://www.dfw.state.or.us/wildlife/willamette_wmp/docs/WWMP_Administration_Manual.pdf.) Land trusts should carefully review all funding agreements to ensure compliance with applicable water rights provisions.

In addition, some cases may require subordination of some rights or other liens that impact water rights. For example, water rights can sometimes be used as collateral for a Uniform Commercial Code (UCC) Finance Statement on a property. In such cases where a conservation easement is involved, it is important to get the UCC lien subordinated to the conservation easement. Attachment H has sample subordination language.

(4) Conclusion

As good stewards of the land, land trusts should be mindful of the need for water to support conservation goals. This guide and the attached resources are intended to provide land trusts with the tools to ensure that water is managed for long-term availability to meet the land trust’s stewardship goals.

The next generation. Liam and Weston Wolfe play in the Lostine River. Along with their conservation easement with the Wallowa Land Trust, their family has entered into long-term water agreements with The Freshwater Trust. Photo (c) Leon Werdinger
(5) Resource Attachments

(A) Attachment A: Water Right Certificate

(B) Attachment B: Oregon water trusts, and their associated focus areas

- **Confederated Tribes of Umatilla Indian Reservation** (Umatilla and Walla Walla basins)
  - David Haire, 541-276-3447, waterresources@ctuir.org

- **Deschutes River Conservancy** (Deschutes basin)
  - Kate Fitzpatrick, 541-382-4077 x18, kate@deschutesriver.org

- **The Freshwater Trust** (Fifteenmile, Grande Ronde, Wallowa, and John Day basins)
  - Meg Belais, 503-222-9091 x48, meg@thefreshwatertrust.org

- **Trout Unlimited** (Umatilla, Walla Walla, Grande Ronde, Klamath, and Rogue basins)
  - Chrysten Lambert (Klamath): clambert@tu.org
  - Aaron Penvose (NE Oregon): apenvrose@tu.org
Attachment C: Water Right Transaction Funding Sources

- **Public**
  - Bureau of Reclamation: water management planning, project feasibility studies, water right transactions and conservation projects
  - National Fish and Wildlife Foundation: Columbia Basin Water Transactions Program. Funding provided by Bonneville Power Administration to Qualified Local Entities (QLEs) for water right transactions and conservation projects in select Columbia basin watersheds.
  - Natural Resources Conservation Service: conservation projects. Contact local NRCS office.
  - Oregon Water Resources Department: water project grants and loans (feasibility and implementation) in Oregon.
  - Oregon Watershed Enhancement Board: water right transactions and conservation projects in Oregon.

- **Private**
  - Bonneville Environmental Foundation: mitigation-like funding through Water Restoration Certificates
  - Private foundations, usually by area.

Attachment D: Help with Water Right Evaluation and Valuation

- **Certified Water Rights Examiners:**
  - [http://www.oregon.gov/owrd/Pages/wr/index.aspx](http://www.oregon.gov/owrd/Pages/wr/index.aspx)

- **Consultants:**
  - AMP Insights, [www.ampinsights.com](http://www.ampinsights.com)
  - GSI Water Solutions, Inc., [www.gsiwatersolutions.com](http://www.gsiwatersolutions.com)
  - Summit Conservation Services, [www.summitconservation.com](http://www.summitconservation.com)
  - WestWater Research, [www.waterexchange.com](http://www.waterexchange.com)
  - Farmers Conservation Alliance (FCA) Solutions, [www.fcasolutions.org](http://www.fcasolutions.org)
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<td>District 1</td>
<td>Nikki Hendricks</td>
<td>503-815-1967</td>
<td><a href="mailto:nikki.m.hendricks@oregon.gov">nikki.m.hendricks@oregon.gov</a></td>
</tr>
<tr>
<td>District 2</td>
<td>Michael Mattick</td>
<td>541-682-3620</td>
<td><a href="mailto:Michael.I.MATTICK@oregon.gov">Michael.I.MATTICK@oregon.gov</a></td>
</tr>
<tr>
<td>District 3</td>
<td>Robert Wood</td>
<td>541-506-2652</td>
<td><a href="mailto:Robert.L.WOOD@oregon.gov">Robert.L.WOOD@oregon.gov</a></td>
</tr>
<tr>
<td>District 4</td>
<td>Eric Julsrud</td>
<td>541-575-0119</td>
<td><a href="mailto:Eric.W.JULSRUD@oregon.gov">Eric.W.JULSRUD@oregon.gov</a></td>
</tr>
<tr>
<td>District 5</td>
<td>Greg Silbernagel</td>
<td>541-278-5456</td>
<td><a href="mailto:Greg.M.Silbernagel@oregon.gov">Greg.M.Silbernagel@oregon.gov</a></td>
</tr>
<tr>
<td>District 6</td>
<td>Shad Hattan</td>
<td>541-963-1031</td>
<td><a href="mailto:Shad.L.HATTAN@oregon.gov">Shad.L.HATTAN@oregon.gov</a></td>
</tr>
<tr>
<td>District 7</td>
<td>David Bates</td>
<td>541-426-4464</td>
<td><a href="mailto:david.d.bates@oregon.gov">david.d.bates@oregon.gov</a></td>
</tr>
<tr>
<td>District 8</td>
<td>Rick Lusk</td>
<td>541-523-8224 ext 231</td>
<td><a href="mailto:Rick.M.LUSK@oregon.gov">Rick.M.LUSK@oregon.gov</a></td>
</tr>
<tr>
<td>District 9</td>
<td>Ron Jacobs</td>
<td>541-473-5130</td>
<td><a href="mailto:Ronald.K.JACOBS@oregon.gov">Ronald.K.JACOBS@oregon.gov</a></td>
</tr>
<tr>
<td>District 10</td>
<td>JR Johnson</td>
<td>541-573-2591</td>
<td><a href="mailto:jr.johnson@oregon.gov">jr.johnson@oregon.gov</a></td>
</tr>
<tr>
<td>District 11</td>
<td>Jeremy Griffin</td>
<td>541-306-6885</td>
<td><a href="mailto:Jeremy.T.GIFFIN@oregon.gov">Jeremy.T.GIFFIN@oregon.gov</a></td>
</tr>
<tr>
<td>District 12</td>
<td>Brian Mayer</td>
<td>541-947-6038</td>
<td><a href="mailto:brian.m.mayer@oregon.gov">brian.m.mayer@oregon.gov</a></td>
</tr>
<tr>
<td>District 13</td>
<td>Shavon Haynes</td>
<td>541-774-6880</td>
<td><a href="mailto:Shavon.L.Haynes@oregon.gov">Shavon.L.Haynes@oregon.gov</a></td>
</tr>
<tr>
<td>District 14</td>
<td>Kathy Smith</td>
<td>541-479-2401</td>
<td><a href="mailto:Kathy.A.SMITH@oregon.gov">Kathy.A.SMITH@oregon.gov</a></td>
</tr>
<tr>
<td>District 15</td>
<td>Susan Douthit</td>
<td>541-440-4255</td>
<td><a href="mailto:Susan.M.Douthit@oregon.gov">Susan.M.Douthit@oregon.gov</a></td>
</tr>
<tr>
<td>District 16</td>
<td>Joel Plahn</td>
<td>503-986-0889</td>
<td><a href="mailto:joel.m.plahn@oregon.gov">joel.m.plahn@oregon.gov</a></td>
</tr>
<tr>
<td>District 17</td>
<td>Tyler Martin</td>
<td>541-883-4182</td>
<td><a href="mailto:tyler.e.martin@oregon.gov">tyler.e.martin@oregon.gov</a></td>
</tr>
<tr>
<td>District 18</td>
<td>Jake Constans</td>
<td>503-846-7780</td>
<td><a href="mailto:jake.w.constans@oregon.gov">jake.w.constans@oregon.gov</a></td>
</tr>
<tr>
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<td>Greg Wacker</td>
<td>541-297-6157</td>
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</tr>
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<td>Amy Kim</td>
<td>503-722-1410</td>
<td><a href="mailto:Amy.J.Kim@oregon.gov">Amy.J.Kim@oregon.gov</a></td>
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<td>Ken Thiemann</td>
<td>541-384-4207</td>
<td><a href="mailto:kenneth.c.thiemann@oregon.gov">kenneth.c.thiemann@oregon.gov</a></td>
</tr>
</tbody>
</table>
Attachment F: OWRD Water Right Information System screenshots
http://apps.wrd.state.or.us/apps/wr/wrinfo/

OWRD Water Right Information System: Query by File Identification Number

Decree: drop down decree options; identified by major basin; verify with Watermaster.
OWRD Water Right Information System: Query by Location
OWRD Water Right Information System: Water Right Information

Current contact information: verify, typically not current owner.

Status: Look here first as initial indicator of validity, if “canceled,” look to “transfer” in “workflow” section to right.

Workflow: convenient overview of history of water right. Pay special attention to orders and transfers.

Scanned Documents: excellent resource for accessing pertinent documents such as water right certificate and associated transfers.

Water right mapping: convenient way to get initial footprint of right; not always accurate; be sure to verify with Watermaster and on-the-ground conditions.
OWRD Water Right Information System: Water Right Information

Point(s) of Diversion and Place(s) of Use: essentially a description of the water right certificate; verify with certificate.

Water Right Genealogy: administrative history of the water right; recreate using orders and transfers (found under ‘workflow”).
OWRD Water Right Information System: Link to Water Right Mapping

[Image: A screenshot of the OWRD Water Rights Mapping Tool interface, showing a map with a current right outlined and various tools and layers options.]
**OWRD: Near Real Time Streamflow Data**

![Near Real Time Hydrograph](image)

**Oregon Water Resources Department**

**Near Real Time Hydrograph Data**

**Select by Station Attributes**
- **Basin:** Deschutes
- **Station Type:** All Stations
- **Station Status:** Active
- **My Stations:** All Stations
- **Station Name:** Whychus

**Select by Station ID (Number or USBR code)**
- **Station ID:**
- **Ending Station ID:**

**Map Selected Stations**
- Google Maps
- Google Earth (km)

**Selected Stations**

<table>
<thead>
<tr>
<th>Station ID</th>
<th>Name</th>
<th>Basin</th>
<th>Status</th>
<th>Most Recent Values</th>
</tr>
</thead>
<tbody>
<tr>
<td>14075000</td>
<td>WHYCHUS CR NR SISTERS, OR</td>
<td>Deschutes</td>
<td>Near Real Time</td>
<td>Mean Daily Flow: 196 cfs @ 07/23/2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instantaneous Flow: 206 cfs @ 07/24/2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instantaneous Stage: 1.13 ft @ 07/24/2017</td>
</tr>
<tr>
<td>14075010</td>
<td>WHYCHUS CR BL TSD DIV NR SISTERS</td>
<td>Deschutes</td>
<td>Near Real Time</td>
<td>Mean Daily Flow: 63 cfs @ 07/23/2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instantaneous Flow: 74 cfs @ 07/24/2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instantaneous Stage: 3.63 ft @ 07/24/2017</td>
</tr>
<tr>
<td>14075050</td>
<td>WHYCHUS CR AT SISTERS, OR</td>
<td>Deschutes</td>
<td>Near Real Time</td>
<td>Mean Daily Flow: 71 cfs @ 07/23/2017</td>
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<tr>
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<td></td>
<td></td>
<td></td>
<td>Instantaneous Flow: 80 cfs @ 07/24/2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instantaneous Stage: 1.73 ft @ 07/24/2017</td>
</tr>
<tr>
<td>14075100</td>
<td>WHYCHUS CR AT CAMP POLK RD NR SISTERS, OR</td>
<td>Deschutes</td>
<td>Active</td>
<td>Mean Daily Flow: 159 cfs @ 05/24/2017</td>
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<td></td>
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<td></td>
<td>Instantaneous Flow: 117 cfs @ 05/25/2017</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instantaneous Stage: 1.73 ft @ 05/25/2017</td>
</tr>
</tbody>
</table>

**Click for historic data**

**Current information**

- [Link to historic data](#)
(G) Attachment G: Due Diligence Checklist

Document Research
- Search for water rights using WRIS or contacting OWRD field staff
- Review key information on water right(s) appurtenant to property
  - Water right certificate
  - Decree
  - Past or pending transfers
  - Review maps: decree, water right mapping with OWRD online mapping tool, previous transfers, permit application
- Chain of title review

Ground-Truthing
- Site visit
  - Pictures
  - Look at point of diversion
  - Identify places of water use
  - Infrastructure?
  - Make current map based on above if possible
- Compare on-ground conditions with water right certificate and decree
  - Note inconsistencies and/or questions
- Gather records on water use

Validity
- Review records on water use
  - Power bills
  - Fertilizer bills
  - Equipment receipts
- Look at aerial imagery
- Confirm with OWRD field staff

Reliability
- Identify water right as senior or junior
  - Ask OWRD field staff
  - Ask current/previous landowner
  - Ask neighboring water users
- Build a reliability table using streamflow gaging and water right data

Regulation
- Inquire with OWRD to determine if water source is regulated.
- If water source is not regulated by OWRD, determine how water is allocated.

Third-party concerns
- Water right part of an irrigation district or federal (Bureau of Reclamation) project?
- Potential for planned use to conflict with current culture?
- Potential for third-party to dispute validity of water right?
(H) Attachment H: Sample Language to Subordinate a UCC lien

Subordination. At the time of conveyance of this Easement, the Easement Property is subject to a Deed of Trust and UCC Financing Statement in favor of ___________ (“Lienholder”). Said Deed of Trust and Financing Statement were recorded on _______, 20__ in the records of _______ County, Oregon under Recording No. __________ (the “Lien”). In accordance with Treasury Regulation Section 1.170A-14(g)(2), the Lienholder has agreed by separate subordination agreement, which will be recorded contemporaneously with this Easement, that, in the event of foreclosure of the Lien, under judicial or non-judicial proceedings, or in the event of other sale, transfer, exchange, or conveyance of title to the Easement Property, the Easement Property shall be foreclosed, sold, transferred, exchanged, or otherwise conveyed subject to the Land Trust’s rights to enforce the conservation purposes of this Easement in perpetuity and subject to the Land Trust’s rights to proceeds in the event of termination or extinguishment of this Easement, in whole or in part, in accordance with Treasury Regulation Section 1.170A-14(g)(6)(ii). All provisions contained in this Section 6.18 shall insure to the benefit of and be binding upon the successors and assigns of the parties thereto.