

Water Rights, Wells and Irrigation – Property Owners’ Rights and Responsibilities

By Guest Editor, Michael Mattick, Soon-to-be-Retired Watermaster for Lane & Linn Counties

The construction, maintenance, and use of wells and ground water is overseen by the Oregon Water Resources Department. They publish a booklet called Well Water Owner’s Handbook, http://www.oregon.gov/owrd/pubs/docs/Well_Water_Handbook.pdf.

If you have a well on your property, this booklet may address some things you wonder about, and may give you some things to consider. In this article I will try to address some of the common questions I have heard over the last 18 years.

Don’t I own the water under my land?

Under Oregon water law, all of the water in the state belongs to all of the people of the state. With some exceptions, a water use permit, certificate or registration (known as a water right) is required to use water; however, you do NOT need a permit if the use is only for:

- Domestic or Group Domestic of up to 15,000 gallons per day (individual or community use)
- The irrigation of up to one-half acre of NON-commercial lawn or garden
- Commercial use of up to 5,000 gallons per day
- Livestock watering
- Commercial irrigation of any amount - even one-eighth of an acre - requires a water right.

For example, anyone using a well or stream to irrigate marijuana they intend to sell needs a water right. But just because they want one doesn’t mean they can get one. The state is conservative about protecting stream flows during the summer and they will evaluate any new well permit for its potential impact the nearest stream. A well owner may irrigate one half acre of lawn and garden, for personal use, without a water right, but any commercial irrigation requires some kind of authorization.

What about rain water or ponds?

Under state law, ORS 537.141(1) (h), the use of rain water collected from an artificial impervious surface (a roof or paved parking lot) does not require a water right of any kind. But a dam across a valley, including man-made ponds, though it may be collecting rain water, would NOT get this exception if it also stores runoff from the natural landscape. With naturally occurring springs, landowners do not need a permit to use that water, as long as it would not naturally flow off of the property in a well-defined channel.

What good is a water right?

Their primary purpose is to figure out who gets to continue using water during a time of shortage. The oldest water right is the last one shut off. The newest water right is the first shut off (after illegal uses, i.e., those with-out water rights). The exempt uses listed above actually have water rights, they are just not documented with a permit or certificate. If it is necessary to regulate exempt users, the Watermaster determines their priority date from whatever information is available, starting with a well log.

What is a well log?

Since 1955, the State has been recording information on new well construction (Well Logs). The Water Resource Department maintains this database. Well logs provide good information when the property is up for sale or if the well needs work. Unfortunately, it is often difficult to connect an old well to a well log, because we have a different address system than we did in 1955 (no more Rural or Star Routes), tax lot numbers change as parcels get subdivided, and ownership changes over time. In 1996, we required drillers to put stainless steel ID tags on new wells and old ones they worked on. This will help us locate

the construction reports for those. All others are required to get ID tags when the property next changes hands. If your well does not have an ID tag, you can request one at any time. See http://www.oregon.gov/owrd/GW/docs/well_id_app_form.pdf.

We try to match existing wells to a well log. In order to positively identify the well log, we may need to know a history of the property ownership back to the time when the well was drilled. The well logs always have the name of the original land owner, but we do not attempt to update subsequent ownership.

Who regulates water quality in wells?

There is no agency which regulates water quality pumped from private wells. Landowners who rent property for residential use are supposed to have a potable water source. If the water is not safe, they may be liable if its consumption results in injury. Any system serving more than 3 hook ups is considered a Public Water System.

The Oregon Drinking Water Services of the Oregon Health Authority tries to ensure that public water systems meet minimum standards. Public systems need to have an identified system operator who is trained and periodically tests the water for contaminants. More information on the Drinking Water Services can be found at

<http://www.oregon.gov/oha/PH/HEALTHYENVIRONMENTS/DRINKINGWATER/Pages/consumers.aspx>

Do landlords have liability for contaminants in ground water?

Yes. We recommend wells be tested for contaminants annually. Any wells drilled in volcanic geology (anything in the hills East of the Willamette River, or South of Eugene) could have high levels of naturally occurring Arsenic. These levels can change over time which is why we recommend annual testing. Other contaminants to look for are Nitrates and Bacteria. The Drinking Water Services web site above has good links to fact sheets on each of these contaminants.

Can a landowner drill their own well?

We discourage it. Few people have access to the equipment, or experience necessary to properly construct a water well. It is best to hire a licensed bonded well contractor. A landowner can construct their own well if they first get a landowner's permit and bond. The permit currently costs \$25, and a bond good for \$5000 will cost approximately \$500. The bond ensures we have resources to hire a professional constructor if a landowner gets in over their head.

What if it is just an irrigation well?

We look at all wells as Water Wells which may be used as a potable source, if not now, then in the future. All wells must be built to at least the same minimum standard.

What about very old wells constructed before there were standards?

We do not make landowners bring old wells up to today's standards unless there is some reason to suspect they may be related to a health threat. Any well without a well log may be required to be abandoned (filled with cement, and the casing pulled or ripped) if it, or a nearby well, tests positive for contaminants. The District 2 Watermaster office is located at the Lane County Courthouse (125 E 8th Ave, Eugene) near the Deeds and Records counter. The phone # is 541-682-3620. The new Watermaster is Lanaya Blackely, and she will be up to speed very soon. Contact information for other Watermaster offices can be found in the back of the Well Owner's Handbook (see above).

Michael Mattick is the primary water-use and well construction official for Lane and Linn counties. After 18 years of service, he is transitioning to retirement but is helping with the transition to a new Water Master.

This column offers general suggestions only and is no substitute for professional legal counsel. Please consult an attorney for advice related to your specific situation.