

Water rights and preparing for irrigation season

BY SCOTT PROSE



Applegate Lake in December 2020. Photo: Ben Thorpe.

The Applegate Valley is fortunate to have an incredible water source in the river and its tributaries.

As a resident of the Applegate and an employee of the Oregon Water Resources Department (OWRD), I spend a significant amount of time in our area helping landowners with water use concerns. Working with people in the valley is enjoyable and a privilege. However, I often find that folks have misunderstandings about water law and how it might affect them. Water law can be complicated, so I would like to cover some basics that are helpful to know and provide useful contact information.

What are water rights?

Water rights authorize people to use water for nonexempt purposes. There are exempt uses of groundwater for domestic and residential use, but irrigation or another use that exceeds those exemptions requires a water right.

For example, the irrigation of a commercial crop requires a water right or other legal water source. Water rights usually come in two types: surface water or groundwater. Water rights are issued for a particular source, place of use, type of use, and quantity, and generally have a time frame for which part of the year they apply.

While most surface water bodies are fully allocated—meaning there may be no water available for new water rights—the Applegate main stem and Rogue River benefit from water still available in Applegate Lake and Lost Creek Lake. You can apply for water rights through these facilities—often called “contract water” (see note)—at OWRD and the Bureau of Reclamation. (Note: Many water users close to the Applegate River have water rights under contract with the United States Bureau of Reclamation. This is a good time of year to verify that your contracts are current. If you have questions about contracts, please contact your local watermaster.)

Do I need a water right to water my lawn, garden, or personal orchard from my well?

If your lawn, garden, or orchard are—in total—not more than half an acre and you are not growing a crop for sale, your use of groundwater is considered “domestic use” and is allowed without a water right under ORS 537.545. However, you may not use *surface* water to irrigate your lawn or garden without the appropriate water right or authorization to do so.

How do I know if I have water rights?

OWRD’s water right mapping tool on our website lets you search for your property and will show many water rights, but it is best to request a water right research from OWRD staff to clarify water right information for your property.

As many new farmers are moving to the area, it’s crucial that anyone desiring to have a commercial farm do due diligence and look into the water situation. Unfortunately, some folks invest a large sum of money in property and irrigation infrastructure, only to receive a visit from the Watermaster informing them they don’t have the necessary authorization to use their well or creek.

What does “grandfathered water rights” mean?

As much as people use the term “grandfathered water rights,” it has no legal meaning in Oregon Water Law and has so many colloquial definitions that the term is not useful.

Water rights generally have priority dates associated with them. Older dates are referred to as “senior” water rights on a system. This creates an order in which “junior” water rights can be regulated off in favor of “senior” water rights during times of scarcity. This process is referred to as a “call for water.” If you have water rights and live in Williams, you’ve experienced this nearly every season over the past decade.

What do I do if I believe someone is appropriating water illegally?

Please contact the OWRD SW Region Office and share your concern. If applicable and resources permit it, an investigation will occur. You will likely talk to Christi, our office manager in Medford. She works incredibly hard and is deserving of your politeness. Please be patient, as our District 14 and District 13 watermasters receive a high volume of calls. You can reach the SW Region Office at 541-774-6880.

Shavon Haynes is the Watermaster for District 13, which covers Jackson County. He can be reached at Shavon.L.Haynes@oregon.gov or 541-218-5125.

Scott Ceciliani is in District 14, covering Josephine and Curry counties, and he can be reached at Scott.C.Ceciliani@oregon.gov or 541-476-1288.

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OPINION

What can we do about housing?

BY ANYA PARADISO

We had a housing crunch in Jackson County before the fires last fall. It is even worse since we lost 2,500 homes in the Almeda fire alone. We have such a severe housing shortage in the Applegate that people are living in vehicles, sheds, and even tents this winter, some on private property, some hidden away in state and federal forests.

If I lived in the city of Medford or other local cities and owned just a city lot, it would be legal for me to build a guest house or accessory dwelling unit (ADU) as long as I could meet the setbacks. For those of us who live in the country, Jackson County forbids us to put any kind of second living unit on our property no matter how many hundred acres we might own.

How did this happen?

In the 1960s and ’70s, when the economy was not wonderful, people with acreage began subdividing and selling off pieces of their property. Our legislature saw that and worried we would soon go the way of California, where whole counties full of orchards, ranches, and farms had been turned into subdivisions. Some of you might remember those ubiquitous bumper stickers that proclaimed: “Don’t Californicate Oregon.”

The legislature decided it needed more stringent land use laws and passed Senate Bill 100 in 1973, specifying that every county had to formulate a rural zoning plan in compliance with the state plan, which forbade selling off parts of rural acreage.

None of us want to see rural Applegate land turned into subdivisions, but the laws

passed in the ’70s and ’80s didn’t anticipate modern needs. In public meetings, Jackson County discovered that most rural landowners were furious that the right to do what they wanted on their own land was being taken away.

Peter Sage, one of the Jackson County Commissioners working at the time to comply with the new state laws, said they had a hard time working out what they thought was a fair compromise. Lowering farmland taxes and declaring needs of working farmers took precedence over rural residents.

It’s unfair to allow Oregon residents living in cities to build guest houses and ADUs on small city lots but not allow those with more land in rural areas to do the same thing. Allowing one ADU under 1,000 square feet would give owners a space for family (parents or children), medical caregivers, hired hands, or supplemental rental income.

State Senator Jeff Golden says there have been several attempts in recent years to get the state to allow rural ADUs, but none have passed. With our desperate need for housing, now might be the time for an organized fight to get back this right.

It is time for a concerted effort to lobby the state and county governments to allow this change. Any Applegaters who are interested should contact me, and I will facilitate putting everyone together to work towards this goal.

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Editor’s note: At author’s request, her name appears uncapitalized.



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For more information, contact:

Jackson County

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Josephine County

Max Unger @ 541-373-1445 or imaxunger@gmail.com

Next deadline: May 1