



MODERNIZING OREGON WATER LAW

A New Framework Required

*by City of Redmond Mayor Ed Fitch
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OREGON CITIES - GROWTH MANAGEMENT & WATER

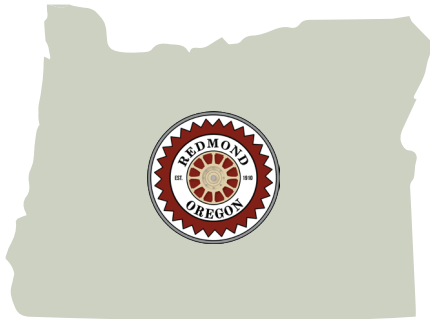
Until recently, city’s access to ground or surface water has never been an issue in Oregon. However, drought, climate change and other factors have brought water access into question. These new conditions combined with state land-use requirements for cities to manage growth, to comply with a myriad of state and federal mandates and to accommodate new citizens and businesses, demands a robust policy discussion as to how the future alignment of water access and land use should take place.

The City of Burns recently received a cap on their water usage. Redmond faced its own challenges when we received a partial denial of our application for additional water from the Deschutes aquifer. These events make it easy to imagine a future when our cities will face the dual threat of a denial for additional water resources which will lead to non-compliance with the statewide planning goals. This conflict plays out in our comprehensive plans. Under the current framework, the resolution would be mediation between the Water Resources Department and the Department of Land Conservation and Development; a mediation tool that has never been tested with an actual case.

Therefore, a new framework is needed. Cities should have the opportunity and be given priority in accessing necessary water resources to comply with the statewide planning goals as well as acknowledge comprehensive plans. The trade-off made by cities, should be a substantive commitment to water conservation measures.

Each city would develop a water conservation plan (although many have already done so) to be reviewed with both WRD and the DLCD, based upon statewide and basin driven standards as well as the city’s own reasonable capabilities. There should also be an analysis of what appropriate conservation metrics would be applied on a basin-by-basin approach. Finally, a plan for a substantial investment by the State in water conservation would be part and parcel of this approach. This policy framework will require both legislative change as well as amendments to the administrative rules. These would, of course, take time but hopefully be accomplished by the end of this decade.

This proposal is by City of Redmond Mayor Ed Fitch, and will hopefully be part of a future policy discussion regarding water and growth management.



REDMOND, OREGON

Population:

Redmond: **37,626**

Deschutes County: **212,141**

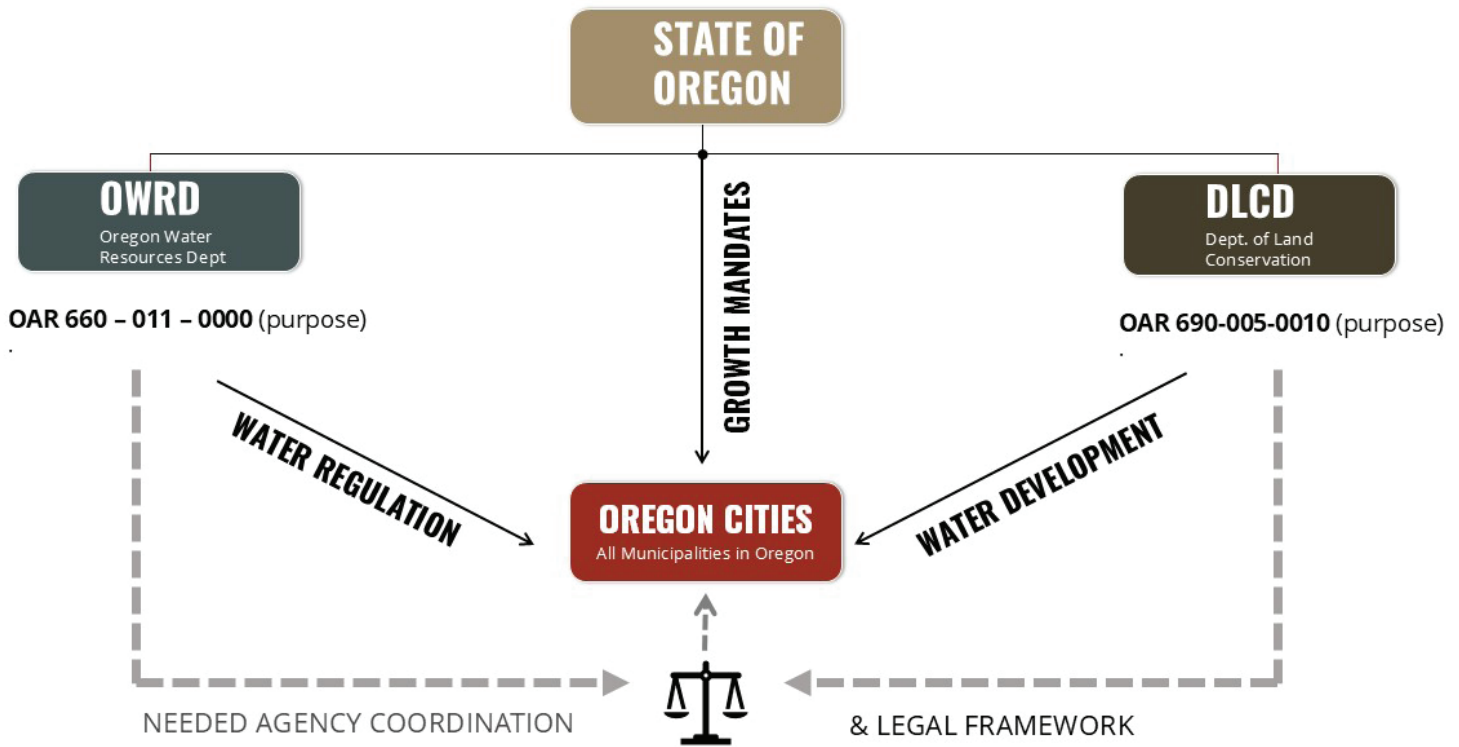
Elevation:**3,077 ft.**

Annual Precipitation:**8.64 in.**

Avg. Summer Temp:**85 degrees**

Avg. Winter Temp:**42 degrees**

CURRENT FRAMEWORK FOR OREGON WATER LAW



“To help cities with growth management and water resources, new legislative policy and investment, reflecting agency collaboration, is needed,” Mayor Ed Fitch

HISTORICAL CONTEXT

Origins of Oregon Water Law

- Rooted in over 100 years of legal precedent
- Prioritizes “first use” over value-based allocation
- Modern needs call for inclusion of:
- Social values
- Environmental sustainability
- Economic efficiency

COLLABORATIVE EFFORTS

Interagency Collaboration

- Water Resources Department (WRD)
- Department of Land Conservation and Development (DLCD)
- Goal: Help cities align with statewide planning goals and comprehensive plans and have access to water to meet those goals and plans

CONFLICT RESOLUTION

Mediation Framework

- Existing legal framework for resolving agency-city conflicts in 1990 Agency Coordination Program
- Rarely utilized in practice
- Opportunity to strengthen and promote this pathway

PROPOSED IMPROVEMENTS

Legislative and Policy Enhancements

- Clearer legislative guidance for cities
- Emphasis on managing growth and ensuring water access
- Focus on measurable water conservation metrics

INVESTMENT IN CONSERVATION

Funding and Resource Optimization

- Call for increased investment by state and local governments
- Prioritize water conservation initiatives
- Optimize long-term resource use and sustainability

ADMINISTRATIVE GUIDELINES

Policy Alignment and Compliance

- Specific rules for WRD and DLCD
- Ensure compatibility with local comprehensive plans
- Support statewide planning goals through clear administrative direction

ADMINISTRATIVE RULES

DLCD – Public Facilities Planning (OAR 660-011-0000)

Goal 11: Public Facilities and Services

- Purpose: Support Goal 11 by ensuring cities with populations over 2,500 adopt public facility plans
- Focus:
- Guide new development within Urban Growth Boundaries (UGBs)
- Ensure timely, orderly, and efficient provision of urban facilities
- Align infrastructure with urban needs and planning goals

Public Facilities : OAR 660 – 011 – 0000 (purpose) the purpose of this division is to aid in achieving the requirements of Goal 11 public facilities and services... And to implement ORS 197.712(2)(e) which requires that a city develop and adopt a public facility plan for areas within urban growth boundary containing a population greater than 2500 persons. The purpose of the plan is to help assure that urban development in such urban growth boundaries is guided and supported by types and levels of urban facilities and services appropriate for the needs and requirements of the urban areas to be serviced and that those facilities and services are provided in a timely, orderly and efficient arrangement as required by Goal 11.

WRD – Land Use and Water Management (OAR 690 Series)

Water Resources Department Administrative Rules

- OAR 690-005-0010: Align agency actions with statewide planning goals and local plans
- OAR 690-005-0020: Emphasizes integration of land use and water management
- OAR 690-005-0040: Dispute resolution steps for agency-local plan conflicts
- OAR 690-005-045 & 0050: Standards for compliance and compatibility
- OAR 690-005-0060: Prioritizes cooperation and technical assistance to local governments

OAR 690-005-0010 (purpose)

As required by ORS 197.180 this rule establishes policies and procedures for assuring agency compliance with statewide planning goals assuring compatibility with local comprehensive land use plans coordinating with local state and federal governments and special districts in land use matters and resolving land-use disputes.

OAR 690 – 005 – 015 (definitions)

(6) land-use dispute means a disagreement between the Department and the local government regarding plans, programs, policies, actions, or other matters relating to land-use which exists after the department has:

(a) apply the appropriate provisions of:

(A) OAR 690 – 005 – 0030 (compliance with statewide goals)

(B) OAR 690 – 005 – 0035 (compatibility with acknowledged comprehensive plans)

(C) rules identified in OAR 690 – 005 – 025

(b) other planning official or governing body of local government that the adoption amendment for implementation of a proposed department land use program activity would not be allowable under or which conflict with the policies or provisions of an acknowledged comprehensive plan; or determine that the adoption, amendment or implementation of a local government comprehensive plan does not conform to the commission’s statewide resources policy, would harm existing rights, or would otherwise impair the public interest and water resources.

OAR 690 – 005 – 0020 (policy)

(1) land use and water management are integrally related... Recognizing the responsibilities vested in both state and local government to manage and protect water resources, the Commission places a high priority on complying with statewide planning goals and achieving compatibility with local comprehensive plans

(2) in any action pursuant to a program identified in OAR 690 – 005 – 035, the Commission in Department shall comply with the goals and be compatible with local comprehensive plans to the greatest extent possible...

OAR 690 – 005 – 0025 (applicability)

The provisions of OAR 690 – 005 – 0010 through 690 – 005 – 0060 apply to actions taken by the department pursuant to the following land-use programs:

- (1) applications and permits...
- (2) Water right transfers

If the Commission or Department finds it necessary to take an action which is incompatible with acknowledge comprehensive plan in order to meet statutory obligations, the dispute resolution procedures identified in OAR 690 – 005 – 0040 shall be implemented prior to taking such action.

OAR 690-005-0040 (resolution of land use disputes)
(NOTE: land use actions do not necessarily involve rule making)

- (1) the Department shall attempt to prevent disputes over land-use related issues through early and frequent coordination with local governments.
- (3)... The department shall notify any affected department applicant of the dispute and provide the following in writing to the planning director other planning official, or the governing body of the affected local government...
 - (a) Reasons for the Department's proposed action
 - (b) those statutes, rules or land-use planning goals authorizing the department's actions
 - (c) Alternatives to the department's action or modifications of the proposed action, if any, which would result in compatibility
 - (d) a proposal to discuss and resolve the dispute...

OAR 690 – 005 – 045 (standards for compliance) the department has fulfilled its goal compliance and comprehensive plan compatibility obligations required by ORS 197.180 when it has:

- (1) applied the provisions of OAR 690 – 005 – 0035 (compatibility with acknowledged comprehensive plans)
- (2) applied provisions of rules identified or pertaining to programs listed in the administrative rules
- (3) follow compatibility procedures in its land use planning procedures guide.
- (4) Taking action to comply directly with statewide planning goals as necessary and as prescribed in OAR 690-005 – 0030.
- (5) Follow the dispute resolution procedures of OAR 690 – 005 – 0040 if necessary

OAR 690 – 005 – 0050 (Assuring goal compliance and acknowledged plan compatibility)

- (1)...the department shall assure that new rules and programs which qualify as land-use programs or amendments to existing land-use programs comply with statewide planning goals and are compatible with acknowledge comprehensive plans...
- (4) if new rules for programs are found to be land-use programs the department or commission shall men

OAR 690 – 005 – 0025, other sections of existing rule divisions pertinent to the program, and the departments land-use planning procedures guide as needed to assure goal compliance and compatibility with acknowledge comprehensive plans

OAR 690 – 005 – 0060 (cooperation)

- (1) the commission in department places a high priority on cooperating with and providing technical assistance to local governments.
- (2) Cooperation with local government shall include:
 - (a) informing planning departments of department activities in local water resources issues
 - (b) participating in periodic review
 - (c) reviewing or pursuing comprehensive plan amendment
 - (d) reviewing project proposals

CURRENT FRAMEWORK FOR OREGON WATER LAW

