

# Water

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“It’s a very complex issue and there’s just a lot of history to it,” said Niki Iverson, project manager for the Oregon Water Utilities Council.

And this conversation about water reallocation comes at the same time as a wider review of how the Corps operates its system of Willamette basin dams. An act of Congress is needed for any of the water to get divvied up, but for the first time since the conversation started in 1988, the end appears in sight.

## How we got this point and why

Every drop of water in Oregon belongs to the public.

Since 1909, state law has required anyone who uses water from a surface source, such as a river, to apply for a water right from the Oregon Water Resources Department.

Oregon uses a prior appropriation model for water rights, meaning the first to obtain a water right is the last to be shut off in times of low water flows, regardless how that would impact another municipality or farmer.

Congress passed the Flood Control Act of 1938, authorizing the Army Corps of Engineers to build and operate a series of dams in the Willamette River basin, including Detroit Dam along the North Santiam River.

Those dams allow for normal river flow during most of the year, but also hold back millions of gallons of water.

The Bureau of Reclamation holds Oregon water rights, on behalf of the federal government, for all of the water stored behind the Willamette Project’s 13 dams.

Those rights currently are designated exclusively for irrigation.

The Bureau can contract out up to 95,000 acre-feet per year for irrigation without triggering a consultation under the Endangered Species Act. Farmers currently hold contracts on 75,000 acre-feet.

“So the Corps owns the bathtubs,” said Brent Stevenson, district manager for the Santiam Water Control District. “The Corps operates them to protect for flood, but if they were only for flood, they would smooth out those peaks, they would be live flow and a normal flow.”

## Cities, others requesting water since 1990

The rest of the stored water historically has been used for fish conservation.

But cities, industry and farmers have been eyeing the water since at least 1990, when the Oregon Department of Agriculture submitted an application to the Oregon Water Resources Department requesting that some water be reserved for future irrigation needs.

Municipal water suppliers followed with their own request, in 1994.

Oregon won’t issue either group water rights until the U.S. Army Corps of Engineers decides how much water is available for which purposes.

A process to do that, called the Willamette Basin Review, began in 1996. It was put on hold in 2000 after concerns that dam operations were jeopardizing threatened fish species.

The Corps resumed the review in 2015, after a push in the 2013 Oregon Legislature.

With input from each of the potential users, the Corps developed a feasibility study, estimating total peak season demand through 2070.

The result: 2.08 million acre feet, or 30% more water than is available, would be needed to meet all demands. Fish protection alone, they said, would take 1.59 million acre feet, nearly all of the available water.

The study considered several alter-



**North Santiam is dammed by Detroit Dam a half a mile from Detroit and by Big Cliff Dam near Mill Creek.** KELLY JORDAN / STATESMAN JOURNAL

natives for sharing the water, including proportional reductions to each of the categories, or splitting the water between fish and irrigation, with none for cities or industry.

In November 2017, the Corps decided on a tentative plan that allocated each category less than its needed amount, and held back about 20% for flexible future allocations.

But in early 2018, Oregon state agencies formally requested a different option, and the Corps agreed.

The new plan gives irrigators and city/industrial users their full estimated peak demands. Fish/wildlife was allocated 30% less than its estimated need.

Now, conservationists are crying foul.

“We’re going to treat endangered fish on par with summer lawn watering,” said Brian Posewitz, a lawyer at Water-Watch of Oregon.

Agriculture groups, too, are unhappy, saying the process the Corps used to determine their estimated peak need was flawed.

“It doesn’t provide sufficient water for agriculture,” said Gail Greenman, the Oregon Farm Bureau’s national affairs director.

They say an alternate calculation, paid for by the Oregon Department of Agriculture, should be used, and are asking for 37% more than currently proposed.

While a public comment period has passed, intense lobbying and negotiations are going on behind the scenes, both at the state and federal levels.

## What do environmental interests want?

Although nearly all of the water released from the Willamette Basin’s 13 dams has historically been used for in-stream fish protection, that has never been formalized with water rights.

Conservation groups say they support taking that action. But, they’ve told the Corps, they believe the feasibility report overstates water needs for irrigation and for municipal and industrial uses, and gives those needs undue preference.

“The Corps should reject (the plan) and work with the Oregon Water Resources Department to allocate the entire available storage capacity of the Willamette Valley Project to in-stream rights for fish,” said Conrad Gowell, Native Fish Society River Steward Program Director.

Taking no action would be better than implementing the current plan, WaterWatch’s Posewitz said.

Posewitz said the Corps’ method of estimating needs among the various users is flawed:

“The report quantifies fish needs solely from the estimated minimum flows necessary to keep two species of fish from going extinct,” he wrote the Corps. “In contrast, the report estimates future needs for municipal, industrial and irrigation by estimating maximum possible demand ... without any expectation for improved efficiency or conservation.”

He argued that saving important fish species from going extinct should be given more weight than meeting peak

municipal demands, “most of which are for non-essential purposes such as watering outdoor decorative lawns and landscaping.”

In addition to divvying up the stored water, the plan also lays out what will happen if the reservoirs don’t fill up. The Corps has decided to take a “share the pain” approach, with proportional reductions to each user.

Conservationists say that doesn’t do enough to protect fish.

In March 2019, the National Marine Fisheries Service sent the Corps a draft biological opinion on the current reallocation plan saying it believes the plan will jeopardize listed fish. NMFS and the Corps are negotiating over that opinion.

Conservationists also say the Corps should wait until a parallel process, which later could impact allocations, is finished.

As a result of environmental lawsuits, the Corps has agreed to do an overall study of the impact of the dams on listed fish, including a new environmental impact statement. The results could impact everything from how much water gets stored to when it is released.

“It doesn’t make any sense to do this reallocation until you’ve done the study on dams in general,” Posewitz said.

## What do municipal interests want?

Creswell had more problems than most Oregon communities in similar situations.

The city 13 miles south of Eugene – best known as the hometown of Gonzaga basketball coach Mark Few – was growing rapidly in its role as a bedroom community, jumping to 5,050 in 2010 from 3,599 in 2000.

As Creswell expanded, its demands for water increased beyond the rights it owned to the surface water on the Coast Fork of the Willamette River.

The city used wells to augment its surface water until those were found to have an unacceptably high level of arsenic.

Creswell needed another source.

In 2013, the Corps of Engineers took on a small-scale project to determine if it was feasible to sell 437 acre feet of water stored behind the Dorena and Cottage Grove Dams to Creswell to augment its municipal water supply.

“They thought Creswell was small enough and might be a good test case,” Creswell city administrator Michelle Amberg said. “They wanted us to, and they did give us a lot of support. The valley cities paid for everything. It was not out of pocket for Creswell.”

“But we did not end up with a contract. And we do not have access to the water.”

A major concern of Creswell – and one shared by all potential suitors for the unallocated water – is would the right to that water be treated as a junior water right and be subject to curtailment in times of drought?

It’s a question that has never been answered.

The capital cost for the city to construct the water filtration system was too great for Creswell to gamble.

Though the Creswell model didn’t ultimately lead to a new source of drinking water for the city, it established one thing: the cost.

In the draft report, the Corps calculated a capital cost of \$2,345 per acre foot. That cost included a portion of operation and maintenance costs of the dams. And the municipal – or industrial – water user also would be responsible for a portion of any repair costs of the dam.

Those restrictions were among the factors that made Creswell walk away from the deal.

Developing future water rights is critical as cities throughout the Willamette Basin, which already contains about 65% of Oregon’s population, grow.

“We’re actually pretty concerned about redundancy and resiliency,” said Niki Iverson, who also is the water resources manager for Hillsboro. “We’re really interested in finding sources for drought, natural disasters.”

Hillsboro and the Tualatin Water District are partnering in the \$1.2 billion Willamette Water Supply Program. Scheduled to be complete in 2026, it will carry Willamette River water through 30 miles of pipes to Hillsboro.

That kind of infrastructure improvement is what many municipalities would be faced with if they are able to purchase water stored behind the dams.

Before they could purchase the stored water rights, the municipalities would have to prove need, and also would have to develop the water into a usable commodity in a reasonable amount of time.

Wilsonville is the only city in the Portland area that takes its drinking water from the Willamette, but other municipal and industrial interests in the largest populated area of the state such as Lake Oswego, Tigard, Tualatin, the Port of Portland and the Willamette River Water Coalition own rights to it.

“There’s been a lot of cities included over the years,” Iverson said. “We’ve been interested in getting access to stored water, that’s why we’re really interested in the final outcome of this study.”

The current recommended plan, based on growth projections for cities in

the Willamette Basin, would allocate 159,750 acre feet of water for future municipal and industrial purposes.

## What do agricultural interest want?

The one interest that has received a taste of the stored water is agriculture.

The Bureau of Reclamation was authorized to issue 95,000 acre feet of stored water for irrigation, and many farmers have taken advantage of that.

The Santiam Water Control District has stored water in its portfolio that dates back to 1980.

As part of the 2008 Willamette Basin BiOp, the Bureau of Reclamation was capped in its contracts for water from the North Santiam River at 11,574 acre feet.

“The North Santiam, you can’t get a new stored water right,” Stevenson said. “Almost everywhere else in the Willamette system, you can still get an irrigation right for stored water from the Bureau of Reclamation.”

The cost for agricultural users to get access to the water has been capped at \$8 an acre, a far more approachable price than the \$2,345 per acre foot the Corps proposed for Creswell.

The Oregon Department of Agriculture took on an independent analysis to determine how much additional water the agricultural users would need through 2070.

It determined 1,150,000 acre feet will be needed to produce the same crops now produced in 2070, 492,697 acre feet in addition to the 2014 baseline demand of 658,200, the increased demand accounted for by climate change.

But after that analysis came out, the Corps hired a third party, David Miller and Associates, to conduct a similar study.

That study came out to between 109,382 to 372,683 less than the Department of Agriculture analysis, depending on the modeling.

Which number is correct is the heart of the debate by farmers.

“By artificially constraining the location where the demand model applies and failing to account for a significant portion of increased demand within the constrained buffer, the Corps manufactured and artificially low demand number that does not adequately account for the long-term future needs of the agricultural sector,” the Oregon Water Congress argued.

Predicting climate change and which crops will be most productive and profitable in the Willamette Valley in the future is difficult.

But looking at states with warmer climates and how much water they require to produce similar climates provides some insight.

“There’s not many crops in Central Valley of California that are successful without irrigation,” Stevenson said.

“What happens to the Willamette Valley if that grass seed acreage becomes non-productive in the future. That’s where I see the Corps failing,” he said.

## How might water rights be resolved?

In the three decades since allocating the water behind the dams was first examined, the process has crawled at a snail’s pace.

The current plan is at the office of the Corps’ Deputy Commanding General for Civil and Emergency Operations, and is out for consultation by the National Marine Fisheries Service, also known as NOAA Fisheries.

“Then they have to consult with us to basically get our opinion on what needs to be done to make sure that the action doesn’t jeopardize the listed species,” NOAA spokesperson Michael Milstein said.

After that consultation is finished, the report is put out for a 30-day state and agency review then sent to the U.S. Army Corps of Engineers chief of engineers office for the Chief’s Report Milestone, which is expected on November 18, 2019.

Changes to the plan are unlikely after that date.

If approved, the plan would be sent to the assistant secretary of the Army for Civil Works, and from there to the federal Office of Management and Budget.

Then it would go to the U.S. House Committee on Transportation and Infrastructure, which is chaired by Oregon Rep. Peter Defazio, to request authorization.

If it makes it all the way through all of those bodies – provided there are no legal challenges – it’s still going to take years and money for any city or farmer to get their hands on it.

“Anyone who uses the water supply has to go through the Oregon Water Resources Department,” Corps spokesperson Lauren Bennett said.

Even if, by some miracle, every other interested party that has been involved in the decision making process is happy with the eventual result, not everyone will win.

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