



# **Water Enforcement and Cannabis**

**House Committee on Agriculture, Land Use, and  
Water**

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# Overview

- Increased cannabis cultivation in Oregon
- Water 101
- Joint Audit of ODA registered hemp sites
- Field staff challenges
- Enforcement staff challenges
- Closing Thoughts

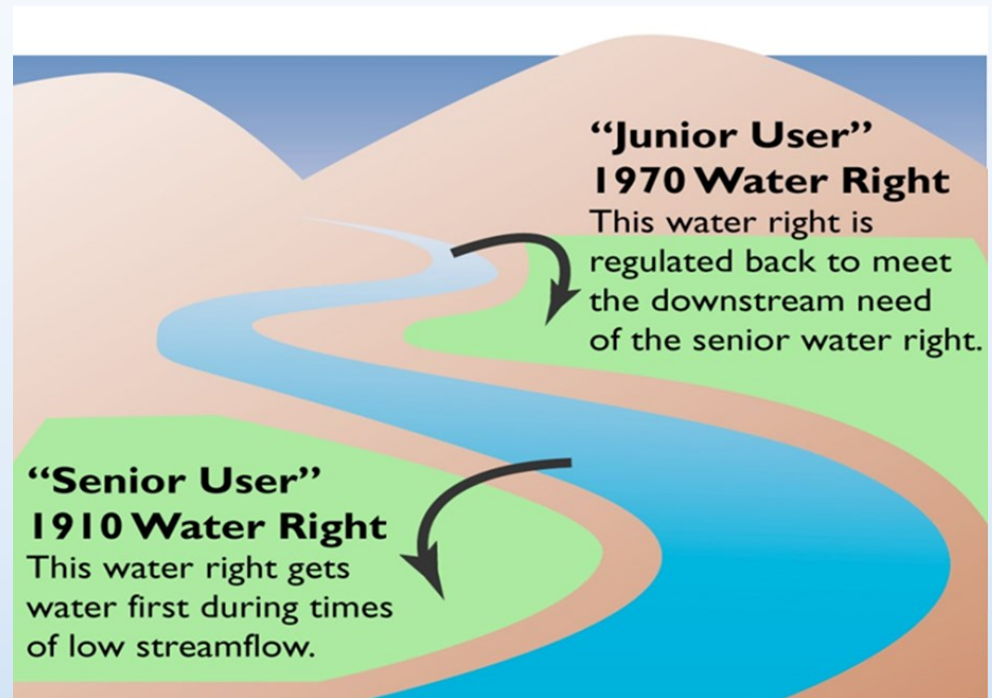
# Cannabis in Oregon

- Legalization
  - 2015: Recreational Marijuana
  - 2018: Hemp
- Increased water complaints
- Southwest region hit hardest
- Water issues at registered and non-registered sites



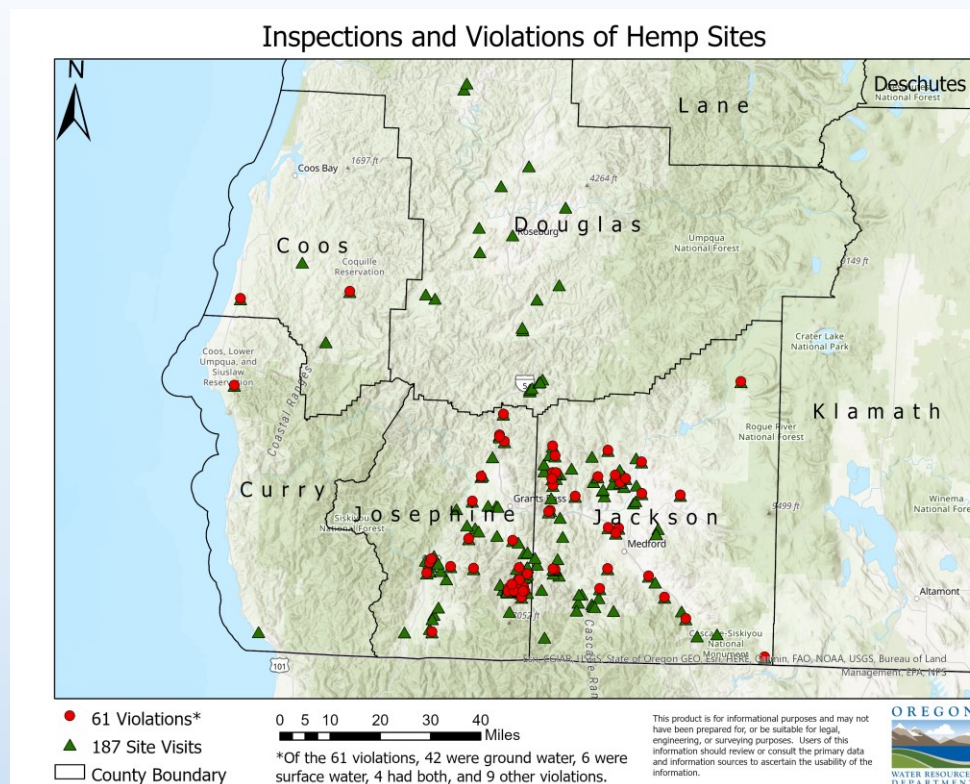
# Water Rights 101

- Water rights are issued for a **character, place, source, volume, and season** of use
- Prior appropriation doctrine
- Regulation occurs to some extent every year
  - Water is seldom available to satisfy every right in each basin



# 2020 Joint Hemp Audit

- 187 ODA registered hemp sites visited in SW region
- 32% of sites out of compliance with water law
  - 75% using unauthorized well
  - 44% had a water right
- 2021 findings
  - ~25% out of compliance





# Compliance with Water Law

- Compliance is not static
- Having a water right doesn't mean in compliance
  - Character, place, source, volume, and season of use
  - Ex: Cannot use groundwater if right is only for surface water
- Requires significant field presence to monitor and follow up on compliance



# Challenge: Property Access

- Staff safety is a concern
- Gaining access is difficult to assess water use and check compliance
- Access denied by the owner/responsible party, a locked gate, tall fences, or “no trespassing” signs
- Staff can obtain an administrative warrant; need evidence of illegal use; slow process and significant staff time needed
- Can't observe unauthorized use that occurs when not at property
- Limited tools for monitoring compliance

## Challenge: Illegally Using Exempt Use Wells

- Groundwater more reliable and better quality than surface water
- Unauthorized use of well instead of authorized district or surface water rights
- Difficult to untangle amount of water used for domestic purposes vs irrigation
- Suspected unauthorized use and water hauling from exempt use "domestic" wells
- Complaints from neighbors concerned that pumping is impacting their wells



# Unauthorized Water Sources: Water Hauling

- Claims of hauling water when property does not have water rights
- Often poor evidence that hauling is occurring in adequate amounts for the crop
- Hauling is sometimes claimed when really using exempt use well
- Immense use of staff time to audit water hauling receipts and follow up
- Water trucks fill at unauthorized sources or steal water from private ponds and watering holes
- Difficult to prove that claims are false


# Pre-formal Enforcement Work



- Field staff learn of violation



- Investigate potential violation



- Confirm violation, issue NOV or regulation order, contact water user



- Voluntary compliance gained, no further action

## If voluntary compliance is not achieved:

- If a notice of violation (NOV) is issued, a time is provided to correct the violation:
  - Compliance achieved – Monitor for repeat violations (NOV is valid for three years)
- If the water user fails to correct the violation within the time provided, then the matter is forwarded to enforcement staff for formal action:
- Formal action may include:
  - Civil penalties
  - Criminal penalties

# Civil and Criminal Penalties

## Civil

- Max: \$5,000 fine per violation (each day is a separate violation)
  - Rules specify amounts lower than the max (highest \$1,000)
- Repeat offenses can increase fine
- \$20k highest issued civil penalty in recent history for violations (\$500x40 days)

## Criminal

- Max: Class B misdemeanor
- \$2,500 fine and up to 6 months in jail
- Only been used once in recent history

# Enforcement Challenges

- Lack of staffing is an issue – Bottleneck for Field Staff
  - Two Well Construction and Compliance staff with only *a portion* of their duties dedicated to enforcement work
- NOV issuance timeline is too short
- Changes in grower/responsible party at a site restarts the enforcement process



## December 2021 Special Session

- \$5 million; 29 FTE mainly for field and enforcement staff
- Will provide faster and more comprehensive response to complaints
- Increased capacity for follow up and monitoring
- Develop best practices and better understand policy needs around cannabis
- Increased education and informational resources through communications person to help folks understand the law
- Still in discussion with stakeholders about the use of the funds

## Closing Thoughts

- Appreciate the additional staff capacity, which will help the Department be more responsive to the public over cannabis complaints and better address the challenges
- Some policy changes may help the Department; however, issues are complex and need to take the time to identify policy solutions
- Cannabis issues are bigger than water policy
- Water Resources Department should not be seen as the fix to address all of the issues with unlicensed sites
- Issues with unlicensed sites will take years to address
- Sufficient law enforcement is critical to addressing illegal cannabis operations

**OREGON**



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