



MEMORANDUM

May 21, 2015

TO: Senator Chris Edwards, Chair
Senate Committee on Environment and Natural Resources
Beth Riley, Committee Administrator

FROM: Racquel Rancier, Senior Policy Coordinator *RR*

SUBJECT: Response to Water Rights Question During HB 3217 Public Hearing

During the Committee meeting on Monday, May 18, Chair Edwards requested that the Department follow up with more information about when a water right is required. Specifically, the question was posed as to whether a water right is required for creating a floodplain to encourage the growth of grass, which could then be used to graze cattle.

The answer to this question will depend on the specific facts of the situation as demonstrated below; therefore, landowners should always check with the Department to determine whether a water right is required before engaging in a project.

It is important to note that House Bill 3217A does not modify laws pertaining to water rights. Therefore, the Department's analysis and discussion are based on existing Oregon water law.

A water right is required when there is an intent to control and make beneficial use of waters of the state.

For example, a water right would be required if a landowner were to install a structure within the streambed that results in the overflow of the water onto the adjacent property in order to grow pasture – this would clearly meet the test of intent to beneficially use and control the water.

Conversely, a water right would not be required for a property that naturally floods, thereby resulting in grass growing for a short time after high-flow events, which cattle could potentially graze. This is because there is no intent to control the water.

Similarly, a water right would generally not be required for a stream restoration project that includes small permeable structures that slow down the stream and build up the channel over a period of many years in order to restore the watershed functions, including riparian vegetation. In this instance, there is no intent to divert and beneficially use the water.