

## COMMONLY ASKED QUESTIONS REGARDING SURFACE WATER

### 1. Who's responsible for the water that crosses the road?

In the control and distribution of surface waters, municipal corporations ordinarily have the same rights and are subject to the same liabilities as private persons. In the absence of a specific state law, there is no obligation to prevent the natural flow of surface water or to protect private property from the impacts of drainage. There is no liability for damage caused by the increased or accelerated flow of surface waters which have not been diverted from their natural course. Stated another way, generally there is no liability for damages caused by an increase in the volume of surface water as long as the flow of water is not diverted from its natural course.

The courts have found that surface water is a common enemy which every proprietor must fight for himself as long as it takes its natural course.

The courts have also found that a municipality is not an absolute insurer regarding any and all, resultant damage from surface water.

### 2. What is the County responsible for?

The County has statutory discretion to install whatever drains are necessary for proper drainage of roads.

The County must make every attempt possible to utilize the existing natural drainage channels to carry surface water.

If the natural channels are fully utilized, the County would generally not be liable, even if the volume of water flow is increased to the detriment of lower property owners.

### 3. Can I re-direct the water onto the road or someone else's property to ease my problems with drainage?

The County does have authority to initiate action against a landowner who impairs or damages a drain, ditch, etc., directly affecting a public road under some circumstances. The statute authorizing this is ORS 368.251, which provides the following;

*"No person shall stop, obstruct or in any other manner impair or damage any drain, ditch or other man-made or natural waterway that:*

1. Prevents water from causing damage to, flowing across or standing on a public road under county jurisdiction; or
2. Benefits a public road under county jurisdiction."

### 4. What if my neighbor diverts water onto my property? Will the County take action against my neighbor?

If the second owner could show a substantial enough diversion of the natural drainage, that owner would have a cause of action against the first diverting landowner. This, however, would be a private right of action in which the County would not be involved.

The County does not have a right to bring a cause of action, on behalf of (or for the benefit of) the second owner against the first owner.

### 5. What is a natural channel?

The term "natural channel" has been construed to include all channels through which water flows naturally under existing conditions. However, there is authority that an artificially created drainage may become "natural" due to its long time use and acceptance. A court has held in a given case that a municipality is not liable for discharging surface water through one of its street culverts into a ditch on plaintiff's land, where that was the natural course of the water, the culvert was necessary, and the ditch and culvert had existed for more than twenty years.