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What To Do When the Watermaster Shuts Off Your Water?

April 15, 2020

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Weekly Summaries of our Latest Posts

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Archives

S.B. 98 Broadens Ability to Turn Wastewater into Renewable Natural Gas

Written October 2, 2019 by Rachelq Harman

Categories: [Legislation, Oregon, Water law](#)

Tags: [biogas](#), [clean drinking water](#), [Clean Water Act](#), [conservation](#), [renewable natural gas](#), [rng](#), [wastewater](#), [water](#), [water law](#)

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Starting September 29, 2019, natural gas providers in Oregon will have a new, renewable way of powering their customers' homes. Governor Kate Brown executed a new law at the end of July, 2019 allowing capture, treatment, and conversion of methane found in wastewater into renewable...

[Continue reading](#)

Wifi Through the Sewers in Anacortes

Written September 26, 2019 by Brian Fairbanks

Categories: [International, Washington](#)

Tags: [international](#), [land use](#), [municipal water](#), [washington](#)

No Comments »



The city of Anacortes, WA, is making news by running part of its new fiber optic cable network through its water system. Brown and Caldwell's Water News for September 25, 2019, links to a report by KUOW News: "Wifi wires will run through water pipes..."

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Presentation Outline

- Shut Off Notice
- Water Master Authorities
- Basis of Notice/Challenge
- Options for Resolution





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Shut Off *Notice*

- Oral:
 - Phone Call
 - Radio Announcement
- Written
 - Tag
 - Certified Letter
 - Regular Mail
 - Hand Delivery

RE: GROUNDWATER USE AND REGULATION – PLEASE READ THIS ENTIRE NOTICE

This is a Final Order other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review of the order must be filed within the time specified by ORS 183.482(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Dear Groundwater User,

Water right records at the Oregon Water Resources Department (OWRD) indicate that you are the owner, in full or in part, of the water rights and associated wells listed below. **If you are not the property owner, or if you lease the land to another operator, or are using a different well than is listed below, please contact us immediately.**



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Notice = Final Order?

“Final orders in other than a contested case” must state on first page under ORS 536.075(1):

- Order is a final order in other than contested case
- Order is subject to judicial review under ORS 183.484 and
- Any petition for judicial review of the order must be filed within the 60 days (ORS 183.484(2))
- *Any other order in other than contested case issued by OWRD is not a final order*



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Nevada Notices

- Oral
- Written:
 - Letter, usually certified (no strict requirements as to contents of letter)
 - Notice of Alleged Violation (NRS 532.200)





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Does Watermaster have Authority?



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State Watermasters

- Oregon Water Resources Director:
 - Has “general control over the watermasters.” ORS 540.030(1)
 - Executes “laws relative to the distribution of water . . .” ORS 540.030(2)
- Oregon Watermasters:
 - “Regulate the distribution of water . . . in accordance with the users’ existing water rights of record . . .” ORS 540.045(1)(a)



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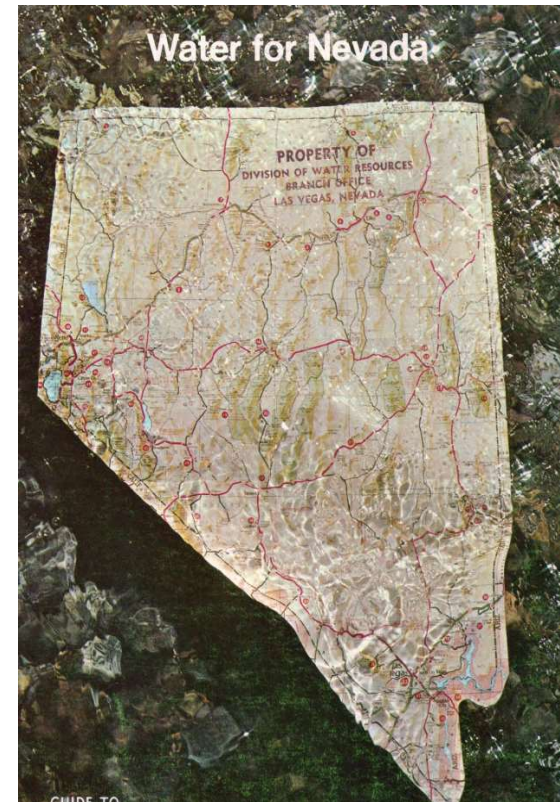
Utah

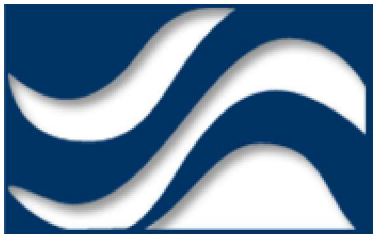
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Nevada State Engineer

- Administers Nevada's Water Code
- Regulates water rights under prior appropriation
- Nothing shall impair vested rights





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NV - State Watermasters and Agency Roles:

- NRS 533.0245: “The State Engineer shall not carry out his or her duties ...in a manner that conflicts with any applicable provision of a decree or order issued by a state or federal court, an interstate compact or an agreement to which this State is a party for the interstate allocation of water pursuant to an act of Congress.”



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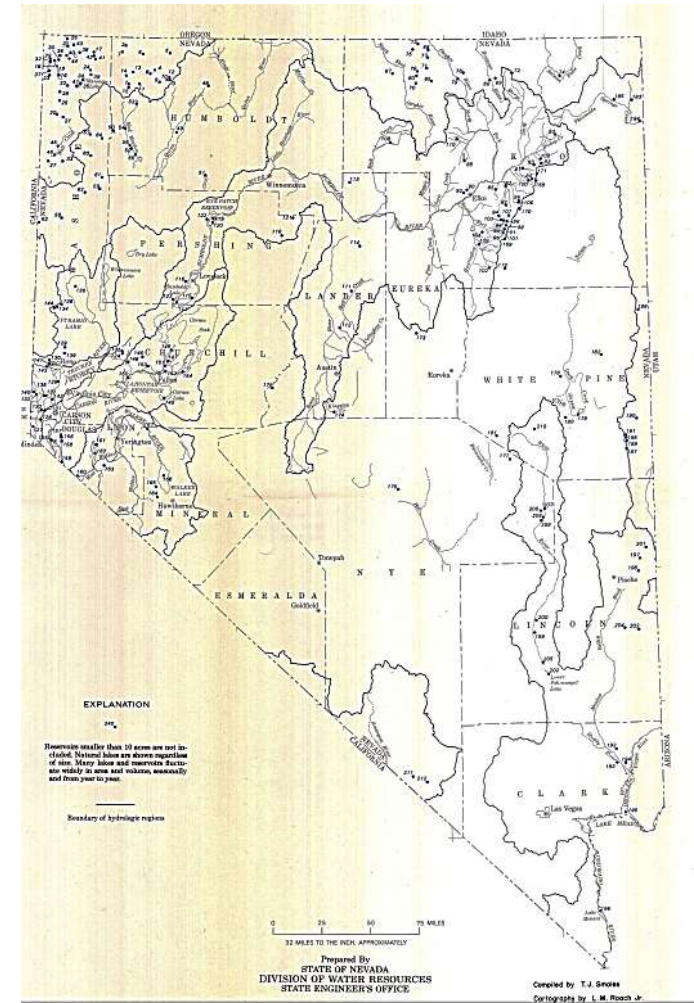
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Nevada “Watermasters”

- River or Water Commissioners
- Basin Engineers
“State Engineer Assistants”
- Enforcement Section
- NRS 533.465 - 533.475





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What Is Causing the Shutoff According to Final Order?



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“Priority Call”

Klamath Basin Water Distribution Update

January 2020

This site contains the stream location, status of water calls by senior users, whether regulation of water has occurred, and the priority date to which junior water rights are not allowed to be diverting water for the Klamath Basin in Oregon. If you are experiencing difficulty finding information, please call the District 17 Watermaster's office at 541-883-4182. This information will help water users know when water is available for diversion.

Please note: The graphs provide information on stream flow relative to the Klamath Tribes determined claims for instream flows. The graphs displayed do not indicate if regulation is or is not in effect.

Current Regulation



On March 3, 2020 the Klamath Watermaster Office received calls for enforcement of a determined claim for instream flows. This call for enforcement initiates the validation process. As of March 3, 2020, the call for instream flows on the Williamson River has been validated and regulation notices will be mailed shortly to all out of stream users on the Williamson River and all tributaries to the Williamson River. The Watermaster's staff will be monitoring flows on other stream in the Upper Basin.

If you have any questions, please contact the Watermaster's office at 541-883-4182.



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Element Challenge?



- Source: Surface or Ground Water
- Beneficial Use
- Place of Use
- Point of Diversion or Appropriation
- Rate
- Volume/Duty
- Season of Use
- Conditions



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Compare Your Right to Challenge



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- **Source**

- **Purpose**

- **Rate**

- **Priority**

- **Volume**

STATE OF OREGON
COUNTY OF MARION
PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

WOODBURN, OREGON 97071

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER:

SOURCE OF WATER: A WELL IN CHAMPOEG CREEK BASIN

PURPOSE OR USE: SUPPLEMENTAL IRRIGATION OF 51.4 ACRES

MAXIMUM RATE: 0.642 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 7, 1999

POINT OF DIVERSION LOCATION: NE 1/4 NE 1/4, SECTION 27, T4S, R2W, W.M.;
240 FEET SOUTH & 1250 FEET WEST FROM NE CORNER, SECTION 27

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW 1/4	SE 1/4	4.1 ACRES
SE 1/4	SE 1/4	4.1 ACRES
SECTION 22		
NE 1/4	NE 1/4	21.2 ACRES
NW 1/4	NE 1/4	21.3 ACRES
SE 1/4	NE 1/4	0.7 ACRE
SECTION 27		
TOWNSHIP 4 SOUTH, RANGE 2 WEST, W.M.		

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, the permittee

Water Resources Department



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Season

Point of
Diversion

Place of
Use

Condition

STATE OF OREGON
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#1- Consider Alternatives to a Challenge



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What Can I Do?

- Call the Watermaster for Clarification/Information
- Priority call: Rotation agreement with the senior user
- Non-priority order: Can I “fix” problem?



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#2 - Challenging a Shut Off Notice that is a Final Order



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OR – Formal Review of Watermaster Decisions

- Final Order is “in other than a contested case” (Regulation Order)
- Two Options:
 - Petition for Reconsideration
 - Petition for Judicial Review



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OR -Petition for Reconsideration

- Petition for Reconsideration may be filed within 60 days of agency order. OAR 137-004-0080(1)
- Set forth specific grounds supported by legal argument
- May include request for stay
- Service required
- Automatic denial after 60 days
- Within 60 days, agency may on its own initiative, reconsider (even if a PJR has been filed)



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OR -Petition for Judicial Review (“PJR”)

- Party affected by final order in other than contested case issued by OWRD may appeal to Circuit Court of Marion County **or** circuit court of county in which all or part of property affected by order is situated. ORS 536.075(1)



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OR-60 Day Filing Rule

- File within 60 days following date final order is served
- If Petition for Reconsideration filed, then within 60 days following date of denial
- Automatically denied 60 days following date filed.
- PJR shall be filed within 60 days following denial.

ORS 183.484(2)



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OR-PJR Contents

- Petition shall state facts showing how petitioner is adversely affected by order and ground(s) upon which petitioner contends order should be reversed or remanded
- ORS 536.075(4)



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OR – Automatic Stay

- Filing of petition in either circuit court ***shall stay*** enforcement of order unless:
 - OWRD determines “substantial public harm” will result if order is stayed
 - If OWRD denies stay, denial shall be in writing and shall specifically state substantial public harm that will result from allowing stay
 - ORS 536.075(5)





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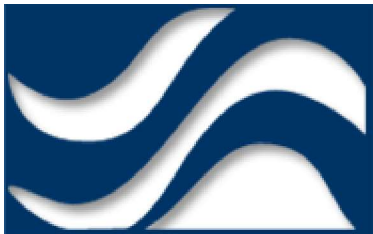
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NV - Stay of Orders Pending Review – Motion Required

- Order or decision in full force and effect *unless* (NRS 533.450):
 - Petition for Judicial Review filed in proper court within 30 days
 - Notice to State Engineer issued within 30 days
 - Notice to person who may have been affected by order or decision
 - Motion for Stay can be filed (not automatic). NRS 533.450(5).



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NV - Review of Order

- NRS 533.450(1):
 - “any person feeling aggrieved by any order or decision of the State Engineer . . . affecting the person’s interests . . . may have the same reviewed by a proceeding for that purpose . . .”
 - appeal “must be initiated in the proper court of the county in which the matters affected . . .”
 - “but on stream systems where a decree of court has been entered, the action must be initiated in the court that entered the decree.”



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COVID -19 Webinar Series

- Next Week: “What to Do When You Receive a Notice of Cancellation on Your Water Right?” (Oregon)
- https://zoom.us/webinar/register/WN_pTZELp1_T4GJPUL7Mz1FvA
- April 22, 2020
 - 12:00 PM to 1:00 PM PST
- Stay tuned to our blog/webpage for more registration information!



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