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# What Options are Available When You Receive Notice Your Well Construction is Non-Compliant?

Laura Schroeder & Sarah Liljefelt

April 29, 2020

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# Presentation Outline

- Sources of Well Construction Law
- Process for Drilling, Repairing & deepening wells
- General well construction rules
- Consequences for Failure to Comply
- Well Construction & Water Rights
- Responding to Well Construction Issues





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# Sources of Well Construction Law



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# OWRD Requirements

- Any well constructed in Oregon must comply with well construction rules - ORS 537.535
- Well driller licenses and construction rules – OAR Chapter 690, Division 200 through 240





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# OHA Requirements

- Applies to “public water systems” with more than 3 connections or for human consumption
  - Requires water quality testing, reporting, etc.
  - OAR 333-061-0020(107)
- Well construction requirements
  - Distances to nearest feedlots, sewer systems, buried fuel tanks, etc.
  - OAR 333-061-0050(2)(e)
  - Must comply with OWRD construction





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# Process for Drilling, Deepening & Repairing Wells



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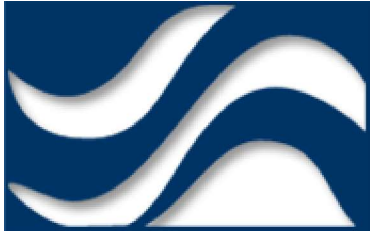
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# Start Cards

- Contains:
  - Name and address of owner
  - Approximate location of well
  - Proposed depth and diameter
  - Proposed use of groundwater
- \$225 fee to file

<p style="text-align: center;"><b>START CARD</b> <b>NOTICE OF BEGINNING OF WELL CONSTRUCTION</b> <b>(as required by ORS 537.762)</b></p> <p>This form must be completed and the original mailed or delivered to the region office within which the well is being constructed, converted, altered, deepened, or abandoned using one of the following methods: (a) by regular mail no later than three (3) calendar days (72 hours) prior to commencement of work; (b) by hand delivery, during regular office hours before work is commenced; or (c) by FAX before work is commenced. If method (c) is used, a legible copy of the start card shall also be mailed or delivered to the region office no later than the day work is commenced. The fee required under ORS 537.762(5) for the construction of a new well, deepening of an existing well, conversion of a monitoring well, geotechnical hole, or other hole shall be submitted to the Water Resources Department, 725 Summer Street NE Suite A, Salem, OR 97301-1266 with a duplicate copy of the start card. The Water Resources Commission has authority to impose civil penalties for failure to submit the required \$225 fee with the start card, for failure to submit the \$225 fee in a timely manner, and for failure to timely submit start cards.</p>
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# Well IDs

- If not issued, may be requested for wells on a landowner's property
- Must be attached to every new, altered, or repaired well – OAR 690-240-0410(10)





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# Exempt Use Registration

- Exempt groundwater uses include (for example):
  - Domestic
  - Irrigation of up to ½ acre noncommercial lawn or garden
  - Livestock watering
- Required for all new/reconstructed wells for exempt uses (within 30 days) - OAR 690-190-0100
- Does not apply to older wells



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# Well Logs

- Contains information gathered during drilling
- Submitted to OWRD by driller
- Includes:
  - Well construction
  - SWL
  - Water-bearing zones
  - Material
  - Well yield
  - More...

STATE OF OREGON  
WATER SUPPLY WELL REPORT  
(as required by ORS 537.705 & OAR 690-205-0210)

**LINEC**

WELL ID, LABEL # 1: 8  
START CARD # 5  
ORIGINAL LOG #

(1) LAND OWNER: Owner Well ID: Wey  
First Name: Wey Last Name: Wey  
Company: Wey  
Address: Wey State: OR Zip: 97101

(2) TYPE OF WORK: ☒ New Well ☐ Deepening ☐ Conversion  
Alteration (complete 2a & 10) ☐ Abandonment (complete 5a)

(3) PRE-ALTERATION: Casing: ☐ From: 0 To: 115 Gauge: 32 Sft. Plate: 32 Well Third: 32  
Material: Concrete From: 0 To: 115 Amt. spools: 9

(4) PROPOSED USE: ☒ Domestic ☐ Irrigation ☐ Community  
☐ Industrial/Commercial ☐ Livestock ☐ Dewatering  
☐ Thermal ☐ Injection ☐ Other

(5) BORE HOLE CONSTRUCTION: Special Standard ☐ (Attach copy)  
Depth of Completed Well: 115 ft.  
BORE HOLE: Dia. From: 6 To: 6 Material: Concrete SEAL: 32 To: 115 Amt. spools: 9  
Dia. From: 6 To: 6 Material: Concrete SEAL: 32 To: 115 Amt. spools: 9  
How was seal placed: Method ☐ A ☐ B ☒ C ☐ D ☐ E  
Backfill placed from: 0 ft. to 115 ft. Material: Concrete Size: 32  
Filter pack from: 0 ft. to 115 ft. Material: Concrete Size: 32  
Explosives used: ☐ Yes ☐ No Type: None Amount: None

(5a) ABANDONMENT USING UNHYDRATED BENTONITE: Proposed Amount: None Pounds Actual Amount: None Pounds

(6) CASING/LINER: Casing: ☒ Dia. 6 From: 0 To: 115 Gauge: 32 Sft. Plate: 32 Well Third: 32  
Material: Concrete From: 0 To: 115 Amt. spools: 9  
Shoe: ☐ Inside ☐ Outside ☐ Other Location of shoe(s): None  
Temp casing: ☐ Yes ☐ No Dia. 6 From: 0 To: 115

(7) PERFORATIONS/SCREENS: Perforations: 14 Rows Holes Drilled  
Screens: Type: None Material: None # of Tubes: None  
Screen: 4 Dia. 55 To: 115 Yield: 1440 Sft. Plate: 32

(8) WELL TESTS: Minimum testing time is 1 hour  
☐ Pump ☐ Bailor ☒ Air ☐ Flowing Artesian  
Yield gpm/min: 1 pat Drawdown: 115 Duration (hrs): 1  
Temperature: 58 °F Lab analysis: ☐ Yes ☐ No  
Water quality concerns? ☐ Yes (describe below) TDS amount: 400  
From: 0 To: 115 Description: None Amount: None

(9) LOCATION OF WELL (legal description): County: Lincoln Twp: 10 Range: 10 E/W: W  
Sec: 33 1/4 of the AE 1/4 Tax Lot: None  
Tax Map Number: None Lot: None  
Long: None or None DMS or DD: None  
Street address of well: None Nearest address: None

(10) STATIC WATER LEVEL: Date: 9-15-16 SWL (psi): 41 SWL (ft): 41  
Existing Well / Pre-Alteration: None Completed Well: None  
Flowing Artesian? ☐ Dry Hole? ☐  
WATER BEARING ZONES: Depth water was first found: 95  
SWL Date: 9-15-16 From: 95 To: 1 pat SWL (psi): 41 SWL (ft): 41

(11) WELL LOG: Ground Elevation: None From: 0 To: 115  
Material: Ground, Topsoil From: 0 To: 31  
Light Brown Subsoil From: 31 To: 70  
Dark Shale Stone From: 70 To: 115  
Grey Shale Stone (Soft) From: 70 To: 115

RECEIVED BY OWRD: RECEIVED BY OWRD  
OCT 24 2016 SEP 21 2016  
SALEM, OR SALEM, OR  
Date Started: 9-15-16 Completed: 9-15-16

(unbonded) Water Well Constructor Certification  
I certify that the work I performed on the construction, deepening, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to the best of my knowledge and belief.  
License Number: 1753 Date: 9-15-16  
Signed: Wey

(bonded) Water Well Constructor Certification  
I accept responsibility for the construction, deepening, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.  
License Number: 1753 Date: 9-15-16  
Signed: Wey  
Contact Info (optional): None

ORIGINAL - WATER RESOURCES DEPARTMENT  
THIS REPORT MUST BE SUBMITTED TO THE WATER RESOURCES DEPARTMENT WITHIN 30 DAYS OF COMPLETION OF WORK. Form Version: 0105



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# Does OWRD Review Well Logs?

- OWRD reviews *some* well logs
- No review required by ORS 537.765 & OAR 690-205-0210
  - A bill introduced in 2019 legislative session, H.B. 2331 A (2019), would have required OWRD to review well logs when received by the agency
  - <https://olis.leg.state.or.us/liz/2019R1/Measures/Overview/HB2331>



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# General Well Construction Rules



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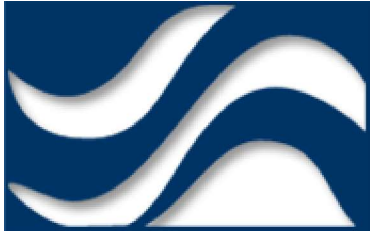
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# Well Construction Rules

- Consolidated formation rule
  - Casing must extend from land surface to at least five feet into solid formation above water bearing zone at least 13 feet below land surface (OAR 690-210-0150)
- Commingling rule
  - A water supply well cannot be “constructed in a manner that allows commingling or leakage of groundwater by gravity flow or artesian pressure from one aquifer to another.” (OAR 690-200-0043)
  - When deepening a well, must case and seal off all previous aquifers, including ones that are dry (OAR 690-215-0045)





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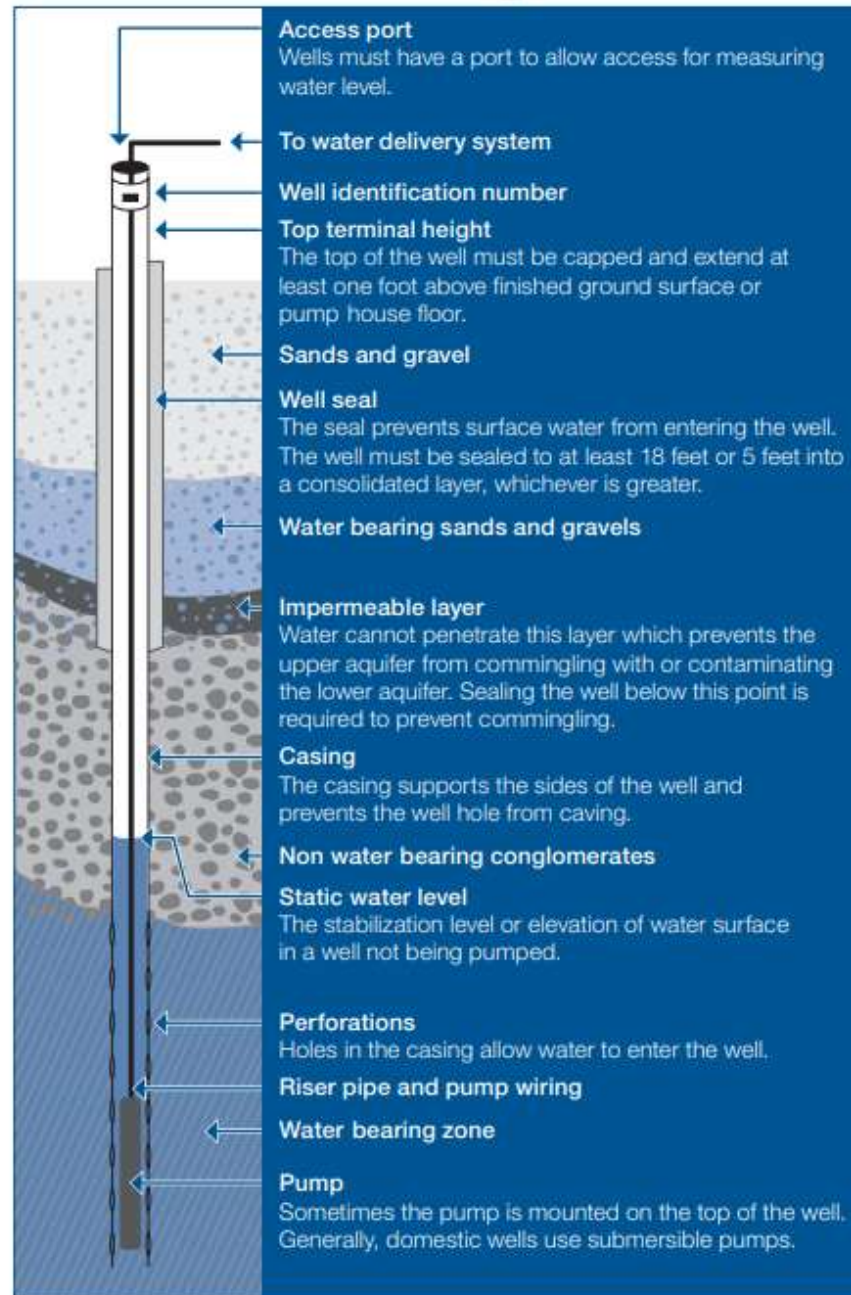
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## Water well diagram



*This diagram shows the different components that make up a well.*



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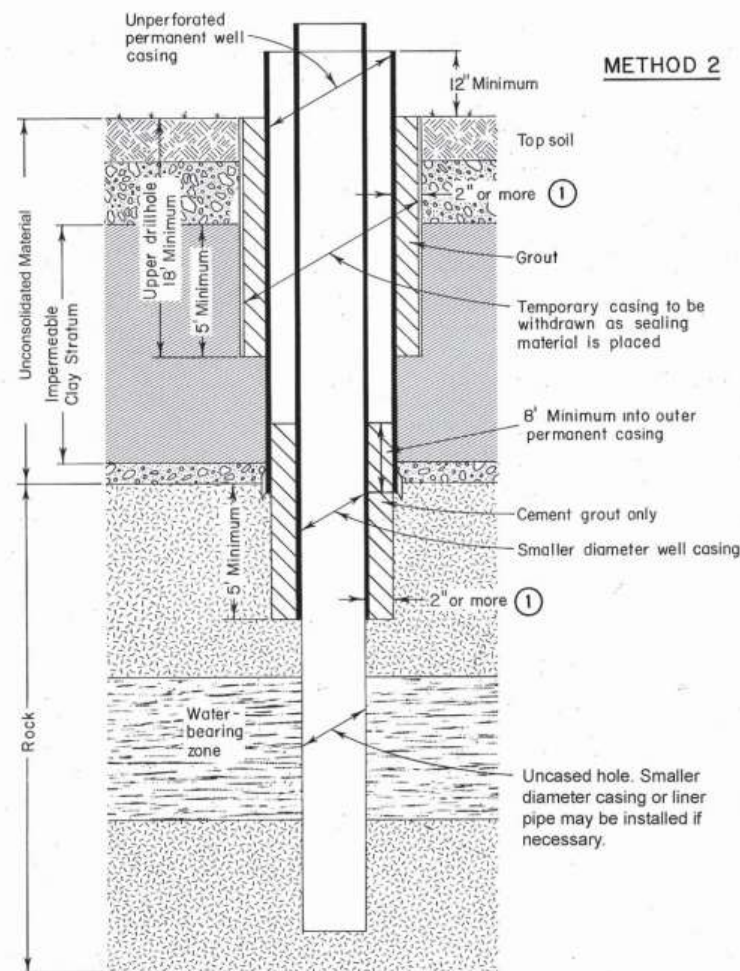
OAR 690-210-0150

Figure 210-5

# SEALING OF WATER SUPPLY WELLS IN CONSOLIDATED FORMATIONS (OAR 690-210-0150)

Overlying Material – Unconsolidated Material

Water-bearing Formation – Rock



① 1" or more if cement grout is placed by grouting method A, B, or D.  
Annular sealing space requirements are based on nominal casing sizes.

OWBIO 2001



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# Consequences for Failure to Comply

- Contractor required to fix/abandon
- Landowner required to fix/abandon if contractor is out of business
- OWRD Enforcement
  - Revocation of contractor's license
  - Civil penalties
  - Criminal penalties



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# Well Construction & Water Rights



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# “Aquifer” Definition

- “Aquifer” is a “geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristics such as potentiometric head, chemistry, and temperature.” (OAR 690-200-0050(9))





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# “Water Bearing Zone”

- No specific definition in OWRD well construction rules
- OHA definition: “Water-bearing zone” means “that **part or parts of the aquifer** encountered during drilling that yield(s) water to a well.” OAR 333-061-0057
- *See blog by Jakob Wiley:*  
<https://www.water-law.com/owrds-various-aquifer-definitions/>





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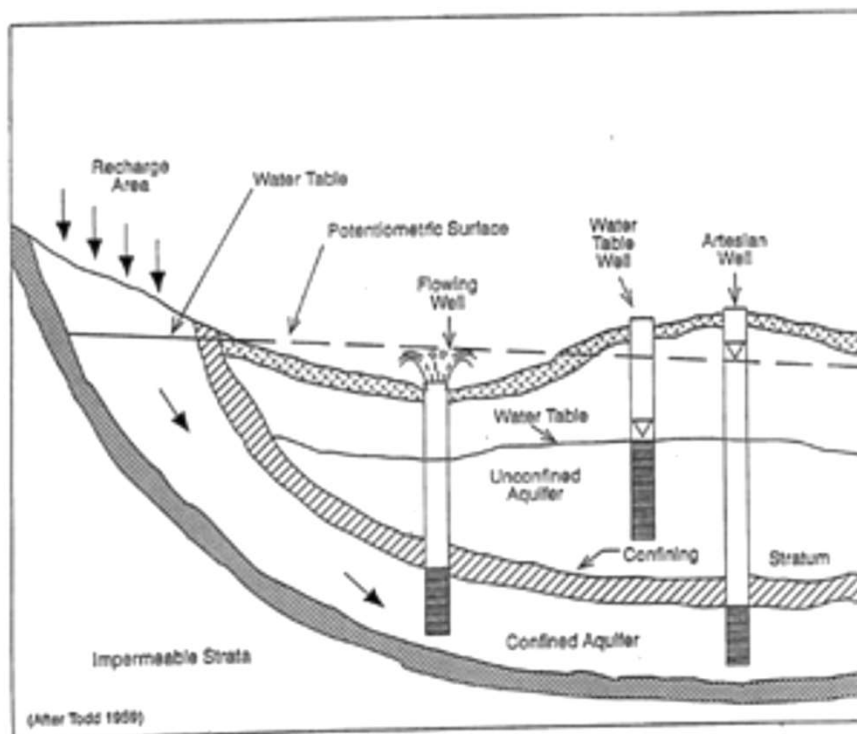
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# Permits to Develop in Particular “Aquifer”

- Source = specific “aquifer”
- Permits *sometimes* describe the “aquifer” to be accessed





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# Condition to Fix a Well

- PFO may include condition to fix a well before a permit/transfer will be issued
- Options to consider:
  - Reconstruct well
  - Drop offending well from application
  - Legally challenge determination

6. The Department has determined that Well . ( ) does not meet current minimum well construction standards because the well is not cased and sealed to the correct depth. In order to meet the minimum well construction standards, the well must be re-cased and re-sealed to a minimum depth of 161 feet below ground surface. Prior to the issuance of a permit, evidence demonstrating compliance with well-construction standards must be submitted and approved by the Department. In repairing the well, you should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. You are encouraged to contact Joel Jeffrey of the Department's Well Construction and Compliance Section at 503-986-0852 to determine how to proceed.

Please also note that regardless of the outcome of this application, you will need to work with the Department to either repair or abandon the well(s) to comply with the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's ground water supply (OAR 690-200).



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# OWRD Review of Well Logs

- Typically occurs many years after the well is constructed
- Common triggers for OWRD review:
  - Application for permit using existing well
  - Permit amendments
  - Process to obtain a certificate (COBU)
  - Transfer applications

BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON		
In the Matter of Permit Amendment	)	FINAL ORDER
T- , County	)	APPROVING ADDITIONAL POINTS
	)	OF APPROPRIATION
<b>Authority</b>		
Oregon Revised Statute (ORS) 537.211 establishes the process in which a water right permit holder may submit a request to change the point of appropriation and/or place of use authorized under an existing water right permit.		



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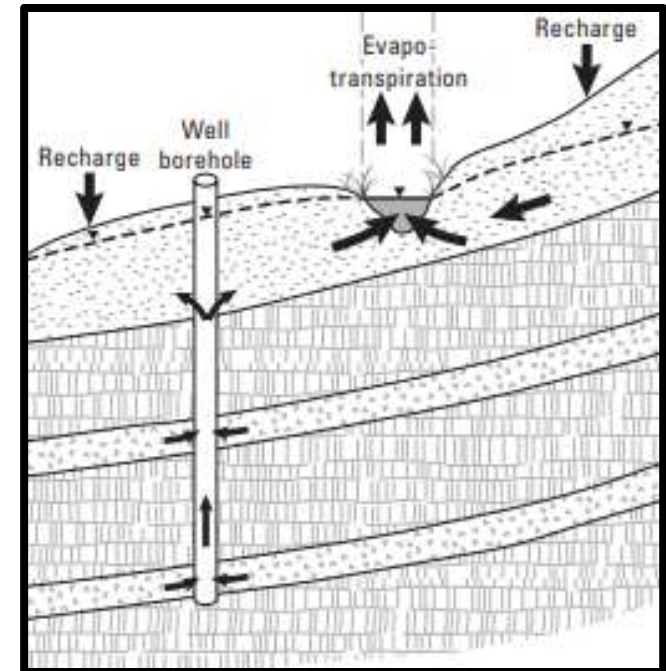
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# Transfers

- Conditions related to developing wells from the same “aquifer”
- Commingling rules
  - OWRD might require reconstruction of existing wells that access multiple “aquifers” (aka, water-bearing zones)





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# Options Available in Response to Well Construction Concerns



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# Options to Remedy Construction Issues

- Challenge the order/decision
  - Hire an expert to contest scientific conclusions
- Require the company to fix the illegal well or pay for the reconstruction
- Abandon the well (as required by OWRD)
- Reconstruct the well at your own cost
- Drill a new well





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- Next Week: *“Water Right Due Diligence in Land and Utility Acquisitions”*
- Registration Link for May 6, 2020 12:00 PM to 1:00 PM available in the email following the webinar
- Go to our website: [www.water-law.com](http://www.water-law.com) or sign up for our blog for registration information!



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Written October 2, 2019 by Rachelq Harman

Categories: [Legislation, Oregon, 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...

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Written September 26, 2019 by Brian Fairbanks

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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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