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Water Rights Due Diligence in Land & Utility Acquisitions

Laura Schroeder & Wyatt Rolfe

May 6, 2020

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Washington



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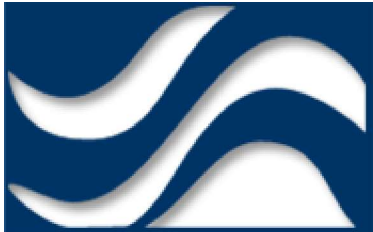
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Presentation Outline

- Researching your water rights





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Managing and Protecting Water Rights

Step 1: Research Your Water Rights



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Researching Water Rights

- Start with Oregon Water Resources Department website
 - <https://www.Oregon.gov/OWRD/>
 - Choose “Find Water Rights” tab at lower left & then “Water Rights Information System (WRIS)”
 - <http://www.apps.wrd.state.or.us/apps/wr/wrinfo/>



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Water Rights

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[Find Water Rights](#)

[Water Rights Public Notice](#)

[Water Use Reporting](#)



Groundwater & Wells

[Groundwater Use Recording Fee](#)

[Find a Well Report](#)

[Find Groundwater Data](#)

[Resources for Well Constructors](#)

[Well Identification Program](#)



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[Estimation of Peak Discharges](#)

[Historical Streamflow Data](#)

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Water Right Information Search

[Home](#) > [Programs](#) > [Water Rights](#) > [Water Right Information Search](#)

Water Right Information Search

WATER RIGHT TOOLS

[WRIS Query](#)

[Platcard](#)

[POU Summary Report](#)

[POD Summary Report](#)

[Interactive Water Right Maps](#)

[WRIS Code Key](#)

[Access the Vault](#)

The [Water Rights Information System \(WRIS\)](#) is a warehouse of information pertaining to water right applications, permits, certificates, transfers, leases and related information.

The information reflected on these pages is derived by interpretations of paper records. Please refer to the actual water rights records for the details on any water right. Care was taken in the creation of the data but it is provided "as is". The Water Resources Department cannot accept any responsibility for errors, omission, or accuracy of the information. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this information. [However, notification of any errors would be appreciated.](#)



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Oregon Water Resources Department Water Rights Information Query

Search by File ID

Search by Location

Search by Name

Search by Stream

Search by File ID

Application:

Permit:

Certificate:

Transfer: T

Claim:

Decree:

Order: Vol

Page

Page Char

Search

Reset



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Search by Location

Location Filters		Water Right Filters	
Type of location:	Points of Diversion ▾	Starting priority date:	mm/dd/yyyy
Basin:	▾	Ending priority date:	mm/dd/yyyy
Meridian:	Willamette Meridian ▾	Type of use:	▾
Township:	number ▾ South ▾	Type of right:	▾
Range:	number ▾ East ▾	Display canceled rights?	<input type="checkbox"/>
Sections			
6 <input type="checkbox"/>	5 <input type="checkbox"/>	4 <input type="checkbox"/>	3 <input type="checkbox"/>
7 <input type="checkbox"/>	8 <input type="checkbox"/>	9 <input type="checkbox"/>	10 <input type="checkbox"/>
18 <input type="checkbox"/>	17 <input type="checkbox"/>	16 <input type="checkbox"/>	15 <input type="checkbox"/>
19 <input type="checkbox"/>	20 <input type="checkbox"/>	21 <input type="checkbox"/>	22 <input type="checkbox"/>
30 <input type="checkbox"/>	29 <input type="checkbox"/>	28 <input type="checkbox"/>	27 <input type="checkbox"/>
31 <input type="checkbox"/>	32 <input type="checkbox"/>	33 <input type="checkbox"/>	34 <input type="checkbox"/>
<input type="button" value="Find T-R-S by Address"/>			

Search by Name

Name Filters		Water Right Filters	
Search for:	Water Rights ▾	Starting priority date:	mm/dd/yyyy
Last Name:	Enter all or part	Ending priority date:	mm/dd/yyyy
Company Name:	Enter all or part	Type of use:	▾
Basin	▾	Type of right:	▾
		Display canceled rights?	<input type="checkbox"/>



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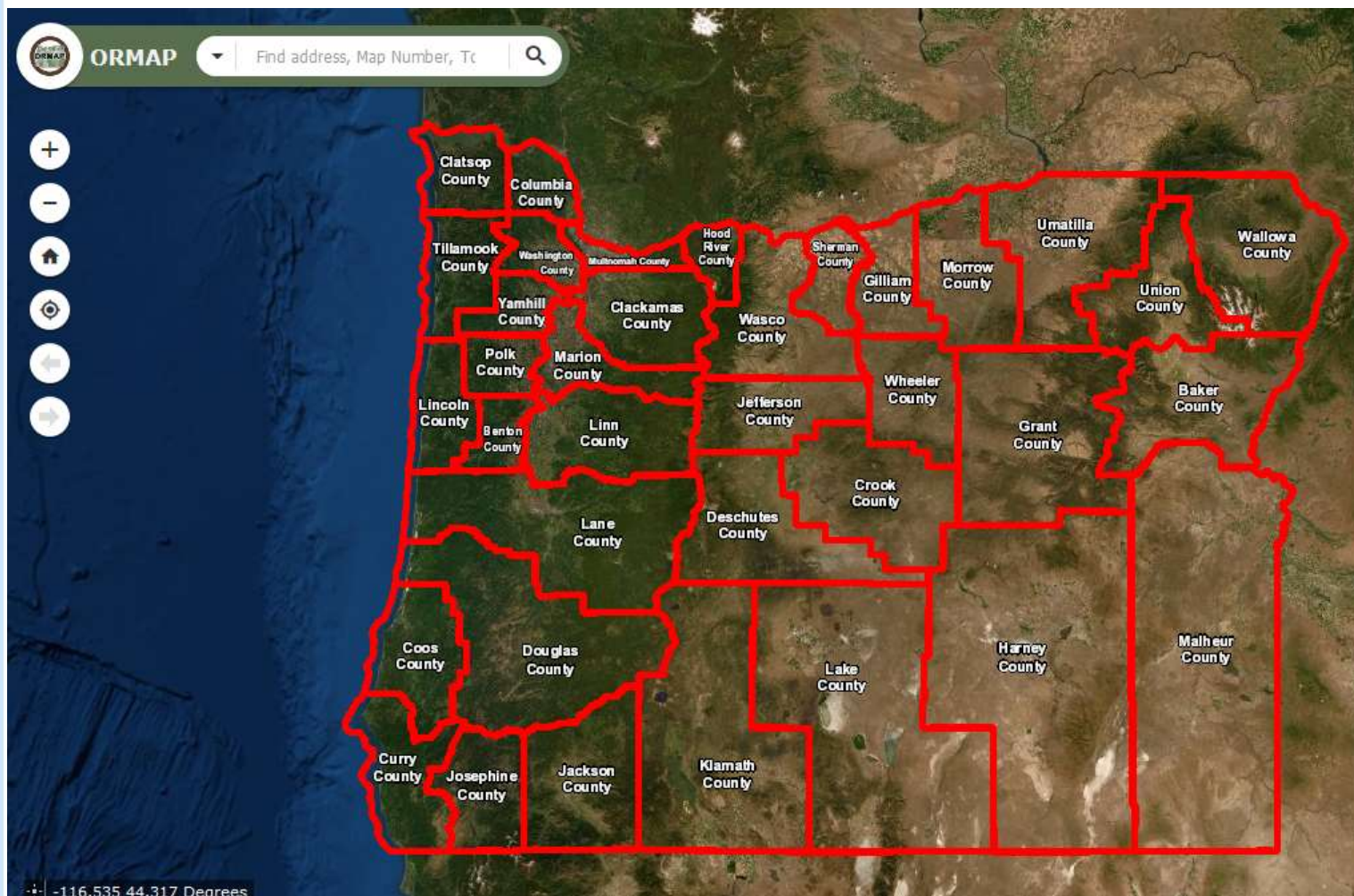
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Oregon Water Resources Department Water Rights Information Query Results

Records/Page: 10

25 records found

	<u>Contacts</u>	<u>Application</u>	<u>Permit</u>	<u>Certificate</u>	<u>Claim</u>	<u>Decree</u>	<u>Transfers</u>	<u>Status</u>
Select	OWNER: ▷ CITY OF KLAMATH FALLS PO BOX 237 KLAMATH FALLS, OR 97601	G7695	G7362					NC
Select	OWNER: ▷ CITY OF KLAMATH FALLS PO BOX 237 KLAMATH FALLS, OR 97601	G11654	G10854					NC
Select	OWNER: ▷ CITY OF KLAMATH FALLS PO BOX 237 KLAMATH FALLS, OR 97601	G13335	G12799					NC
Select	OWNER: ▷ CITY OF KLAMATH FALLS KLAMATH FALLS, OR 97601	U675	U617	24682				NC
Select	OWNER: ▷ CITY OF KLAMATH FALLS 226 S 5TH ST KLAMATH FALLS, OR 97601	S55977	S42539	67078				NC
Select	OWNER: ▷ CITY OF KLAMATH FALLS PO BOX 237 KLAMATH FALLS, OR 97601	G10185	G10320	67562				NC



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Oregon Water Resources Department
Water Rights Information Query

Cert:80755 (T 6852 RR) *

[Main](#) [Help](#)
[Return](#) [Contact Us](#)

Contact Information (Click to Collapse...)

Current contact information

OWNER:
CITY OF KLAMATH FALLS
PO BOX 237
KLAMATH FALLS, OR 97601

Water Right Information (Click to Collapse...)

Status: Non-Cancelled
County: Klamath
File Folder Location: Salem
Watermaster District: 17

Processing History (Click to Collapse...)

- Application: G 1679
- Permit: G 1541 [document](#) , [paper map](#)
- Certificate: 80755 [document](#) , [paper map](#)
- Order(s)

Order Origin	Volume-Page	Signature	Description
Special	60-245	6/7/2004	APPROVING T-6852
- Transfer(s)

Transfer	Transfer type	Status
T6852 (Remaining)	Regular	Completed
- [View right with Web Mapping](#)
- [View Places of Use from Water Rights in the Same Area](#)
- [View Reported Water Use](#)

Scanned Documents (Click to Expand...)

Point(s) of Diversion (Click to Collapse...)

- POD 1 - A WELL > KLAMATH RIVER ([View Groundwater Site KLAM0012107](#))
- POD 2 - A WELL > KLAMATH RIVER ([View Groundwater Site KLAM0012119](#))
- POD 3 - A WELL > KLAMATH RIVER ([View Groundwater Site KLAM0012102](#))

Place(s) of Use (Click to Collapse...)

[Add TRS grouping](#)

- Use - MUNICIPAL USES
(Primary); Priority Date: 2/15/1960

Water Right Genealogy (Click to Collapse...)

- Cert:32193 OR CN
 - Inchoate: T 6214 CF (REG)
 - Cert:80655 CF CN
 - Inchoate: T 6852 RR (REG)
 - Cert:80755 (T 6852 RR) *
 - Inchoate: T 6852 CF (REG)
 - Cert:94666 CF *



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 Oregon Water Resources Department
Water Rights Mapping Tool

725 Summer St NE, Salem, OR 97301
Return Contact Us

Search

Search: Water Right by File

Application:

Permit:

Certificate:

Claim:

Transfer:

POD Source: Equals

Include Municipal: ☐

(Draw box on map.)

Places of Diversion: (Count: 1)

Places of Use: (Count: 1)

Identify Non-Water Right Features

Tax Lots

Layers

Tools

POD POU

Q: All Fields Search...

#	ID (select)	WRIS	Zoom	Water Right	Water Type	First Name	Last Name	Company	Use Desc.	Priority Date	Supp.	Duty	Rate
1	89016	(Details)	Map WR	Cert:67562 OR * AH	GW			CITY OF KLAMATH F...	AIR CONDITIONING OR HEATING	02/24/1982	-		



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Researching Water Rights

- Obtain copies of your water right files from OWRD
- Public records request
 - In person or written request to Salem office
 - OWRD will provide quote for scanning or you can copy in person

8

Application No. 18098
Permit No. 8509
Certificate No. 7837

Name John Williams Susan C. Warner
By _____
Address 4935 S.W. 7th, Portland, Ore
Stream Index, Page No. _____
Application Record, Book No. _____
Date filed _____
Action suspended until _____

Returned to applicant _____
Date completed _____
Date of approval _____

CONSTRUCTION
Date for beginning _____
Date for completion _____
Extended to _____
Date for application of water _____
Extended to _____

PROSECUTION OF WORK
Form "A" filed _____
Form "B" filed _____
Form "C" filed _____

FINAL PROOF
Blank mailed _____
Proof received _____
Date certificate issued _____

FEES PAID
Date Amount Receipt No.
Total _____

FEES REFUNDED
Date Amount Check No.
Total _____

ASSIGNMENTS
Date To whom Address Volume Page

REMARKS



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Researching Water Rights

Compile a Water Right Inventory:

- Status of each water right
 - Permit, certificate, inchoate transfer, limited license, etc.
 - Details of each water use right (holder, source, beneficial use, priority, season, etc.)
 - Current? Cancelled?
- Any necessary action
 - Perfection
 - Water right conditions
 - Type of use (Example: domestic use for lawn & garden)
 - Place of use → UGB, Corporate Limits, Extraterritorial Deliveries, Overlapping Jurisdictions



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Managing and Protecting Water Rights

Step 2: Develop an Action Plan to Get Water Right Certificates



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Certificate

STATE OF OREGON

WATER DIVISION NO. 2 COUNTY OF UNION.

CERTIFICATE OF WATER RIGHT

(For Rights which have been confirmed by the Courts)

This is to Certify, That OTTO JOHNSON,
of Cove, State of Oregon, has a right to the use of
the waters of HILL CREEK, a tributary of Catherine Creek and the Grande Ronde
River, in Union County, Oregon,

for the purpose of irrigation from June 1st to October 1st of each year;

and that said right has been confirmed by decree of the Circuit Court of the State of
Oregon for Union County, and the said decree entered of record at Salem,
in the Order Record of the Board of Control of the State of Oregon, in Volume 1, at
page 207; that the priority of the right hereby confirmed dates from 1896;

that the amount of water to which such right is entitled and hereby confirmed for the
purpose aforesaid, is limited to an amount actually beneficially used for said pur-
pose, and shall not exceed 0.2 cubic feet per second.

A description of the lands irrigated under such right, and to which the water
hereby confirmed is appurtenant, or, if for other purposes, the place where such water
is put to beneficial use, is as follows:

10 a. in NE¹/₄ Sec. 27; 6 a. in NW¹/₄ Sec. 26, Tp. 3 S. R. 40 E. W.M.,
in Union County, Oregon.

The right to the use of the water aforesaid hereby confirmed is restricted to the
lands or place of use herein described.

WITNESS the seal and signature of the Board
of Control, affixed this 1st day
of May, 1912.

BOARD OF CONTROL

(Seal of Board)

By JOHN H. LEWIS,
State Engineer, President

Attest:

H. B. Wann,
Secretary

Recorded in State Record of Water Right Certificates, Volume 1, page 359



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Permit/Transfer → Certificate

- Permits & transfers create licenses to put water to beneficial use
 - “Inchoate” right
- To obtain a vested water right, a permittee must perfect the right and obtain a certificate

WORD OF THE DAY

JUNE 21, 2016

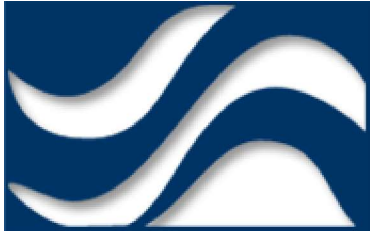
inchoate

adjective | in-KOH-ut

imperfectly formed or formulated



m-w.com/word-of-the-day



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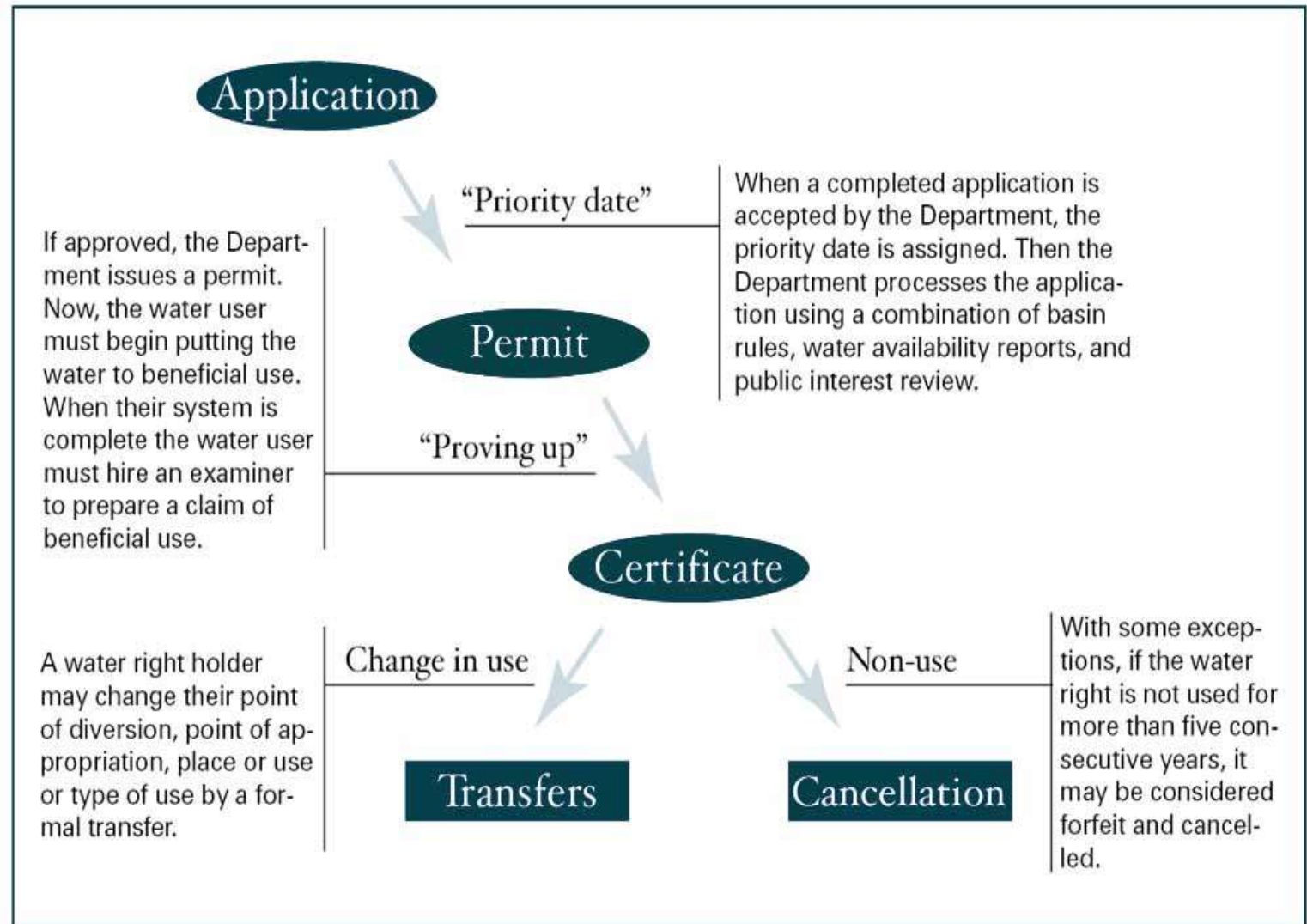
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Certification Process





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“Proving Up”

- Reasonable diligence required in construction of water works - **ORS 537.230**
- 5 years allowed to complete construction unless granted an extension (20 years for municipal permits)
- Hire a Certified Water Rights Examiner to submit the Claim of Beneficial Use within one year of completion
 - Older permits did not require COBUs
- OWRD reviews the COBU & issues a water right certificate
 - Reimbursement Authority Program to “fast track” certificate issuance



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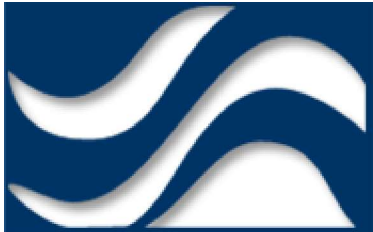
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Partial Completion

- **Standard Rule – “All or Nothing”**
 - If permit is not completely developed, permittee can either:
 - Apply for a certificate for the amount perfected, losing the ability to develop the rest; OR
 - Apply for an extension of time to completely develop
- **Municipal Permits – Incremental Perfection**
 - Issued certificate for the portion of the permit perfected (at least 25%)
 - Can apply for an extension of time to develop the remainder, maintaining the original priority date – **OAR 690-320-0040**





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Action Plan

- What activities are necessary for each water use right?
 - File a COBU?
 - Use the Reimbursement Authority Program?
 - Identify the portion of a municipal permit that is ready for certification?
 - Identify the need for an extension of time?
 - Permit conditions
 - Complete construction or perfection
 - Identify the need for permit changes?



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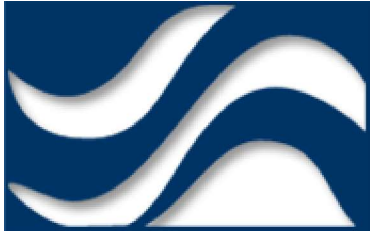
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Step 3: Extensions of Time



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Extensions

- Allow more time for completing construction and/or beneficial use
- May be granted if due diligence and good cause are demonstrated - **ORS 537.230(3)/OAR 690-315-0020(3)(d)(A)**
- The deadline to begin construction (physical work) cannot be extended





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Extensions of Time

- Showing “Good Cause” is a requirement that covers a broad array factors, including:
 - Reasonable diligence
 - Costs to appropriate
 - Good faith
 - Amount of money or water required to provide a fair and reasonable return on investment
 - The market and present demands for water to be supplied
 - Unforeseeable/uncontrollable events causing delay
 - Hardship to the appropriator



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Municipal Extensions

- Treated differently than other extensions
- 1990s – municipal permit extensions granted as a matter of course
- 2002 – New rules for municipal extensions
 - Requires Water Management & Conservation Plans
- HB 3038 (2005) – **ORS 537.230**
 - 20 years to begin and complete construction
 - Extensions: further development conditioned to “maintain the persistence” of listed fish species
 - Includes GW when OWRD determines GW has the potential for substantial interference with surface water



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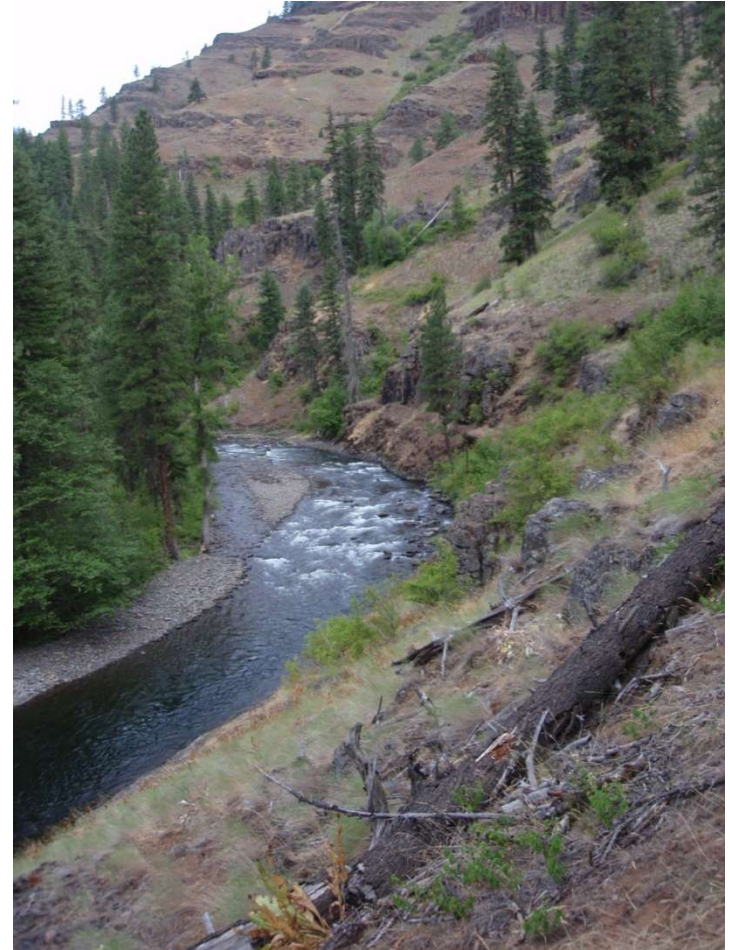
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Implications of HB 3038

- Cannot develop undeveloped portion until OWRD approves WMCP
- ODFW and OWRD review impacts related to streamflow that will result from using the previously undeveloped portion of the permit
- If an extension will not maintain persistence of threatened fish species, ODFW recommends conditions for OWRD to impose on applicant to ensure persistence





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Water Management and Conservation Plans

- OAR 690-315-0090
- Applicable to quasi-municipal systems if:
 - a population of 1,000 or more is served
 - Quasi-municipal permit holder cannot demonstrate that perfection will occur within 5 years of receiving the extension
 - OWRD determines a plan is necessary





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Step 4: Anticipate Future Demand



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Municipal Water Issues

- Increased demand
 - Water conservation measures/ordinances
 - Recycled water
 - Develop additional water
 - Unperfected portion of municipal right
 - Development of new water use rights (next slide)
 - Delivery outside POU (**ORS 540.510(3)**)
- Junior priority status
 - Pre-code adjudications
 - Preferences for livestock and human consumption during drought
- Dated infrastructure
 - Improvements to increase water efficiency



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Acquire Additional Water Interests

- New water use applications
 - Limited surface water and groundwater availability
 - Groundwater's potential for substantial interference with surface water sources
- Transfers to municipal/quasi-municipal uses (next)
 - Oftentimes agricultural transfers
- Reservations of water (**ORS 537.356**)
 - State agencies may petition to reserve for future purposes up to 20 years (+ extensions)



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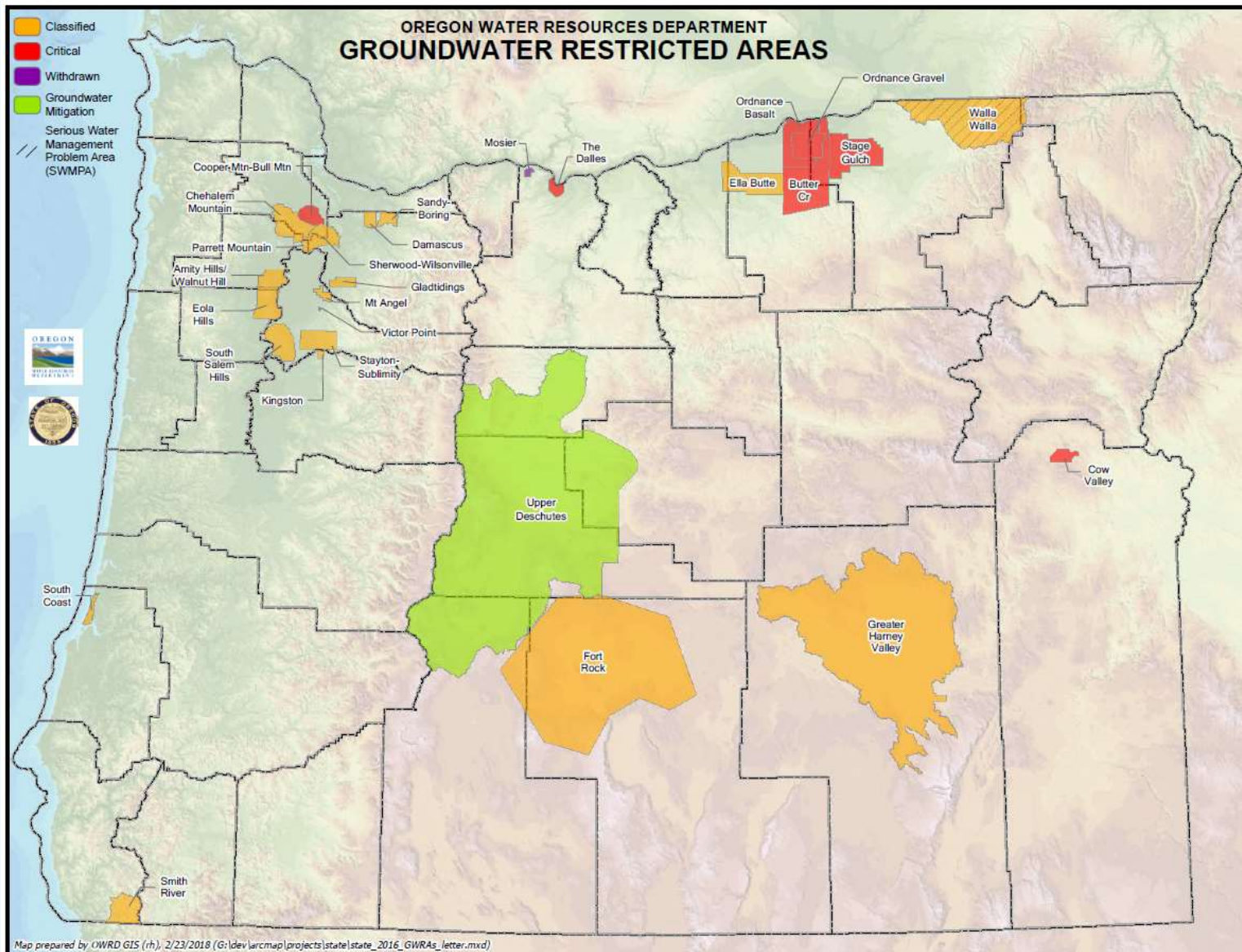
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Additional Considerations

- Anticipate employee/leadership turnover and avoid matters “falling through the cracks”
- Create an inventory that can be easily used by future
- Approach issues with a “75 year” perspective
 - What steps should you take now, in 10 years, in 20 years, etc.?





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Step 5: Modifications



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Permit Amendments & Transfers

- Permit amendments
 - POU & POD/POA
- Permanent transfers
 - POU, POD/POA, SW → GW, Supplemental → Primary, Substitution, Character of Use
 - Reimbursement Authority Program
- District transfers (temporary or permanent)
 - Simplified transfers within districts



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Example

- Domestic use & outdoor landscaping
 - Varying interpretations of “domestic” use over time
 - None allow large-scale irrigation or garden use for 100 homes
 - Options:
 - No new GW use in Basin
 - Cancel SW irrigation rights as mitigation of new GW use
 - Transfer domestic use to quasi-municipal
 - Must prove up on permit first



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Step 6: Access Rights



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Types of Access Rights

- State statutory rights
- Federal right of ways
- Private easements
 - Express (written)
 - Prescriptive
 - Implied by prior use, necessity, or plat
- Licenses
- Leases
- Profits





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Step 7: Avoid forfeiture & abandonment



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Forfeiture & Abandonment

- “Use it or lose it”
 - Nonuse for 5 years creates presumption of forfeiture
 - Presumption rebutted for municipal rights (special treatment) – **ORS 540.610 (a)&(b)**
- Abandonment – intentional relinquishment of a known right



**Use It
or
Lose It**



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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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Wifi Through the Sewers in Anacortes

Written September 26, 2019 by Brian Fairbanks

Categories: [International, Washington](#)

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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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Schroeder Law Offices, P.C.

503-281-4100

775-786-8800

schroeder@water-law.com

t.ure@water-law.com

www.water-law.com