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Water Rights for Sale: Know What You're Selling or Buying

Laura Schroeder & Catherine Hansford

May 28, 2020

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- Catherine Hansford, Principal
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 - Over 20 years experience in municipal finance; practice in California, Nevada & Oregon
 - Specializes in water utilities public finance
 - Works with attorneys, financial advisors, bond counsel, engineers, planners

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Presentation Outline

- Real Estate Components Value of Water Rights
 - How elements of a water right determine value
- “Legal” Value of Water Rights
 - Comparing licenses, permits, & certificates
- Water Right Valuation
 - Determining market value of water right
- Water Markets
 - Developing water markets & banking





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Real Estate Components & the Value of Water Rights



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Surface vs Groundwater Sales

- Size of the identifiable market
- Severance of use for transfer easier





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Basics of Value: Water Rights Elements



- Source (surface or ground water)
- Beneficial Use
- Place of Use
- Point of Diversion or Appropriation
- Rate
- Volume/Duty
- Conditions



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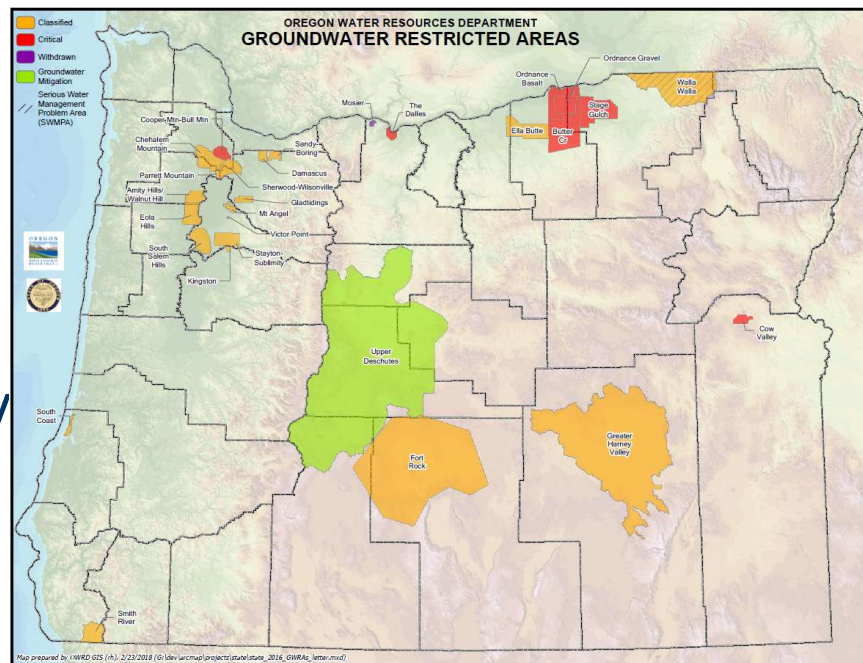
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How Elements Related to Value

- Older priority dates – more valuable (limited “calls”)
- Larger POU, rate, & duty – more valuable
- POU location – certain regions, more value





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Abandonment & Forfeiture

- **Forfeiture (Most States)**
 - Presumption for nonuse for 5 years
 - Incorrect POU
 - Incorrect beneficial use
- **Abandonment**
 - Intent to disregard a known right





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“Legal” Value of Water Rights



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Types of Recognized Water Uses

- Exempt Uses – *Low Value*
 - No requirement to obtain state recognized water use
 - Exception: Development Rights
 - Subject to regulation
 - Not Severable
- Non-exempt – *Higher Value*
 - Applications
 - Temporary Uses/Limited Licenses
 - Permits/Vested Claims
 - Decreed/Certificates/License





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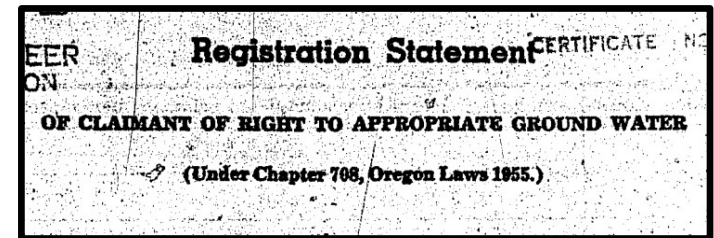
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No-Low Value Water Use Authorizations

- Recent Priority Dates
- Residential spring uses
- Exempt groundwater uses (in other than residential settings)
- Unregistered water right claims
- Rainwater collection systems
- Limited licenses





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Medium Value Water Use

- Permits
- Water use rights leased instream
- Water rights within a district
- Water rights associated with BOR storage contract
- Water rights subject to rotation agreement
- “Late” priority dates
- Registered water right claims (in unadjudicated basin)





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High Value Water Use

- “Early” priority date certificates
- Decreed water rights
- Water rights in “closed” basins
 - Basin plans
 - Water availability analysis

BEFORE THE STATE WATER RESOURCES BOARD OF OREGON	
In the matter of formulating an)	
integrated, coordinated program)	Mid-Coast Basin
for the use and control of the)	
water resources of the Mid-Coast)	March 26, 1974*
Basin)	

5. The waters of Olalla Creek and its tributaries are classified for human consumption, livestock consumption, industrial, and instream uses for recreation, wildlife, and fish life purposes.



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Pricing Drivers: Water Available

- Actual Scarcity
- Regulatory Scarcity
- Urban Demand





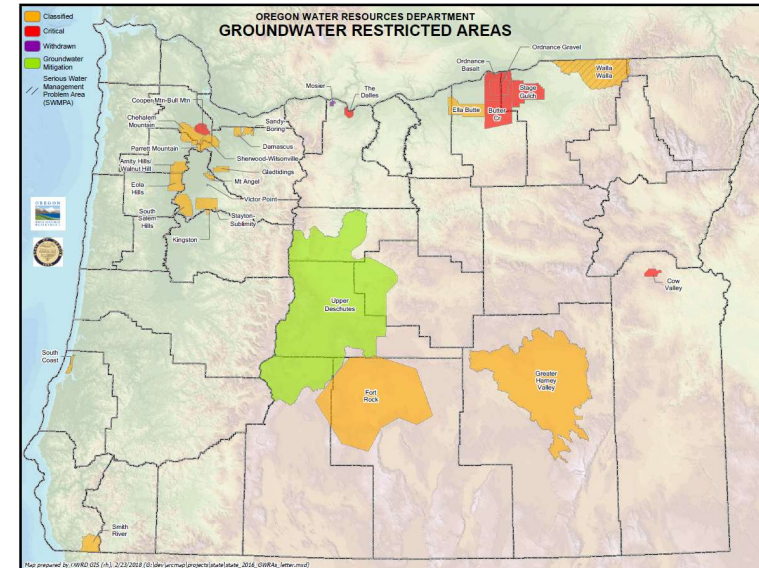
“Closed” Basins: Oregon

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Figure 1-3: Available Streamflow in August
(calculated at 80 percent exceedance)





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“Closed” Basins: Idaho

- Eastern Snake Plain Aquifer



Ground Water to Surface Water Conversions	Approximately 100 kaf/year annual average (by acquiring water supplies below Milner Dam to replace water required from the Upper Snake River for salmon flow augmentation).
Aquifer Recharge	Approximately 150-250 kaf/year (using the Board's natural flow water permit and storage water when available).
Demand Reduction	Approximately 250-350 kaf/year (using voluntary mechanisms based on the principle of willing seller/willing buyer to reduce aquifer and spring flow demands, including CREP, purchases, subordination agreements, fallowing and crop mix changes, and other mechanisms).
Pilot Weather Modification Program	Implement a 5-year pilot weather modification project in the Upper Snake River Basin and potentially the Wood River system, with state, local and other agency support. Include a detailed monitoring program for the weather modification program.



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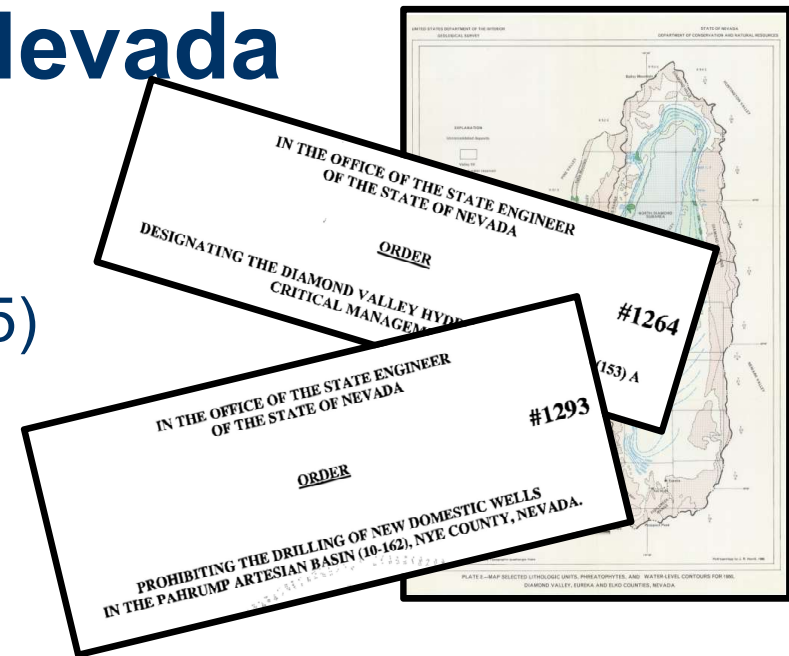
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“Closed” Basins: Nevada

- Diamond Valley CMA
 - Order 1264 (August 25, 2015)
 - Market-based GMP adopted
- Pahrump
 - Order 1107 (November 8, 1994) – Denying most new appropriations
 - Order 1293 (December 19, 2017) - No new domestic well development





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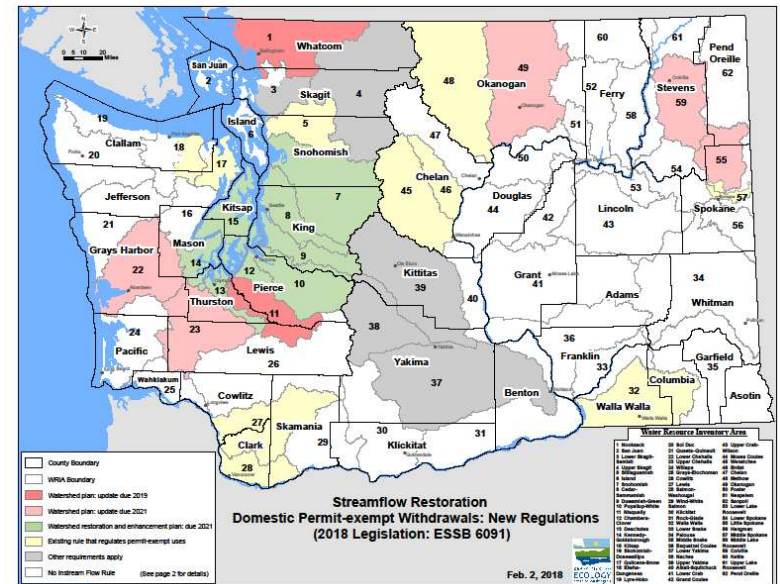
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“Closed” Basins: Washington

- *Hirst* Decision (2016)
 - Growth Management Act – required counties to limit growth to “available water resources”
- ESSB 6091 (2018)
 - Allows permit-exempt well development
 - Counties required to develop watershed plans & mitigate new development





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Valuation of Water Rights



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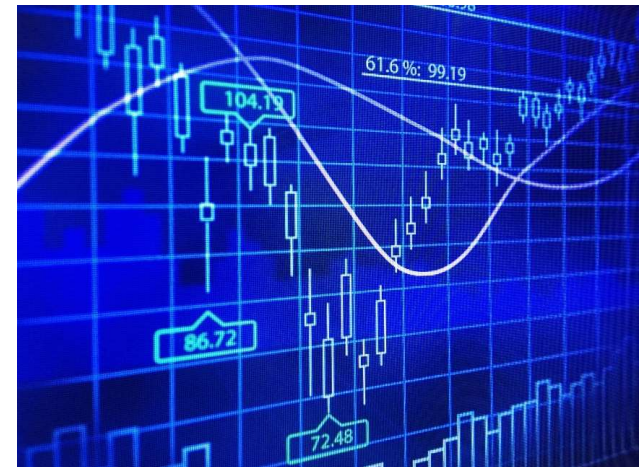
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Factors That Determine Value

- “Location-Location” (basin specific)
- Current infrastructure production capacity
- Growth management plans
- Demand & supply
- Individual circumstances





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Information Used to Determine Value

- Similar sales
- Market information & demand projections
- Informal conversations – a “reality check”
- Economic modeling





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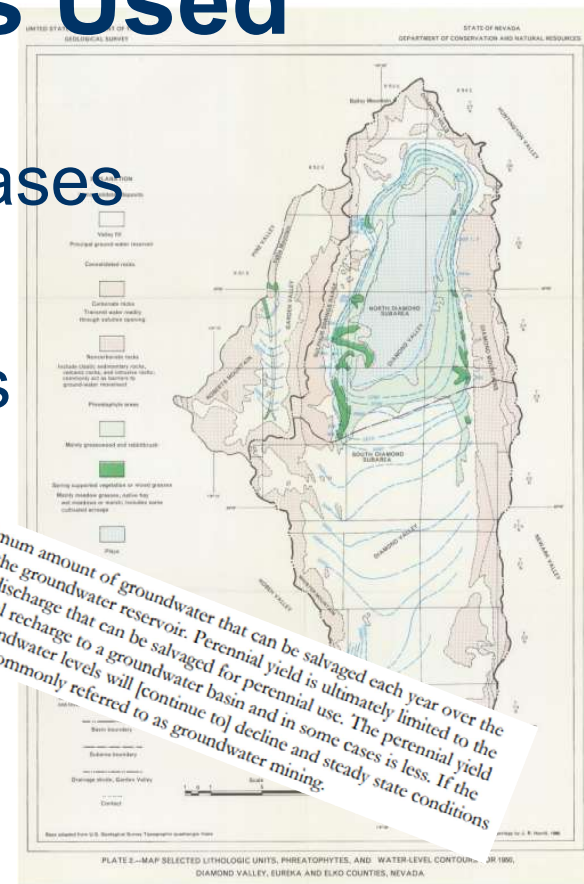
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How This Information is Used

- Individual sales & agency/purchases
- Valuation of water utilities
- Groundwater management plans
- Basin water allocations
- Legal damages?
- Water policy decision-making
- Viability of economic production

Perennial Yield: The maximum amount of groundwater that can be salvaged each year over the long term without depleting the groundwater reservoir. Perennial yield is ultimately limited to the maximum amount of natural recharge to a groundwater basin and in some cases is less. If the perennial yield is exceeded, groundwater levels will [continue to] decline and steady state conditions will not be achieved, a situation commonly referred to as groundwater mining.





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Water Markets & Banking



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Issues with Developing “Water Markets”

- “Water Markets” –
Temporary or permanent
exchange of use, market
sets “value” of a unit of
water
 - Australian experimentation:
https://www.youtube.com/watch?time_continue=98&v=RphVEKeLplk&feature=emb_logo





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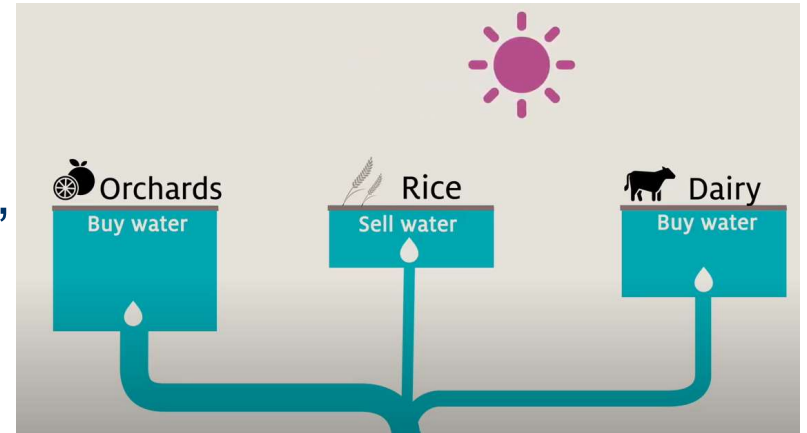
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Issues with Developing “Water Markets”

- Issues in western US/OR:
 - Water isn’t “fungible” – all water is different (location, quality, specific rules of use)
 - Transfer process & “red tape” slow process (often longer than irrigation season)
 - Public interest & environmental considerations (interbasin transfers?)



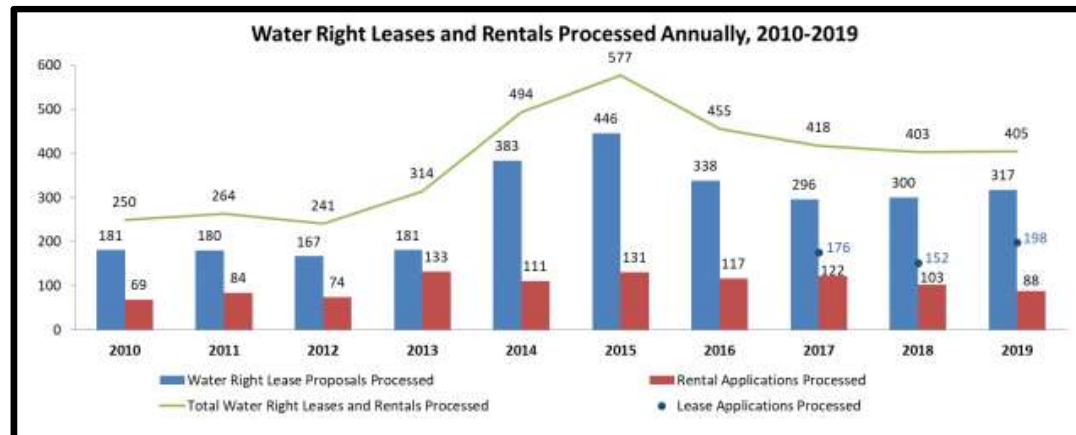


Idaho Water Supply Bank

- Two Exchange Markets
 - Rental Pools
 - Water Supply Bank



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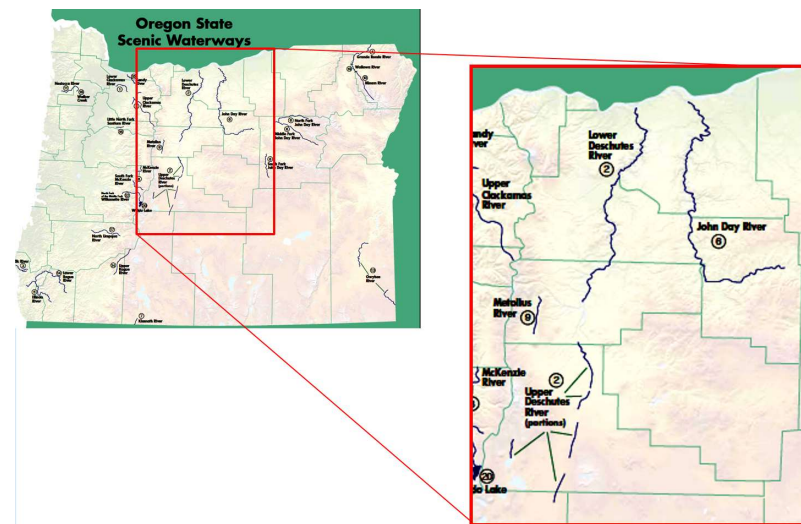
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Deschutes Groundwater Mitigation

- Scenic waterway – limits upstream development
- Program allows development of new groundwater uses that might not otherwise be allowed due to hydraulic connectivity in area
- Surface water is fully appropriated in the area





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Concurrency Laws & Development

- Requires developers to show a reliable water source prior to development



The Place to Buy, Sell & Lease Water in the West

[Search the Market](#)



- New online platform connecting water right buyers & sellers locally across the West
- Launched in Feb. 2020 with the Washington market
- Growing network of water right professionals available to assist with every step of the transaction & transfer process
- \$49/month to list water rights for sale or lease, or to list as a buyer

westernwatermarket.com

- Kristina@westernwatermarket.com

Kristina Ribellia



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

Written October 2, 2019 by Rachel Harman

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

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



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...

Wifi Through the Sewers in Anacortes

Written September 26, 2019 by Brian Fairbanks

Categories: [International](#), [Washington](#)

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



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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- Next week (June 3, 2020): “*Water Management Organization for Ag and Domestic Delivery*” with Laura Schroeder, Scott Revell & Michelle Owen
- All webinars will be available at:
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