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## Stockwater Rights On & Off Public Land

Alan Schroeder & Laura Schroeder

July 10, 2020

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# Presentation Outline

- **Obtaining Stockwater Rights**
  - Federal Land, Nevada, Idaho, & Oregon
  - Stockwater Exemptions
  - U.S. Ownership of Stockwater
- **Stockwater and Grazing Permits**
  - Status to Hold a Grazing Permit
  - Base Property
  - Water Developments on Public Land
- **Other Federal Stockwater Issues**
  - RS2399 Right-of-Ways
  - Grazing in Wilderness







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# Obtaining Stockwater Rights





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# Obtaining Water Rights on Federal Land

- **Taylor Grazing Act**
  - Expressly recognizes ranchers can obtain water rights on federal land
- **Prior Appropriation Doctrine:**
  - Predecessor in Interest
  - Use dates *prior* to federal reservation of land
- **Winters Doctrine:**
  - Water reserved for purpose of reservation
  - Example:
    - Water reserved prior to 1976 under the Stock Raising Homestead Act





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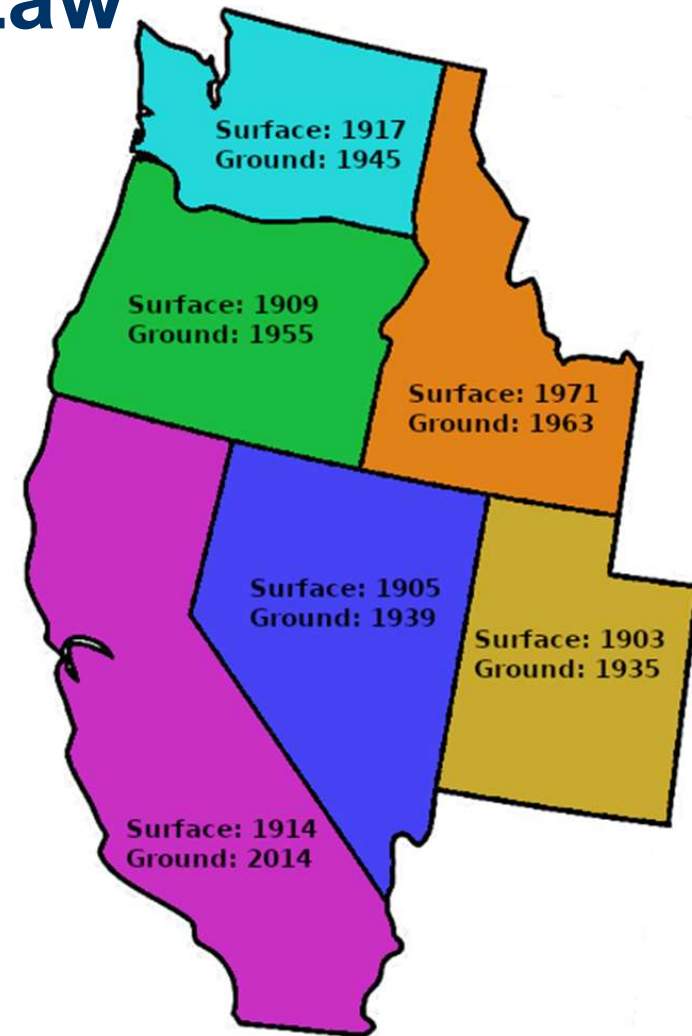
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# Acquisition Under State Law

- Two Methods:
  - Pre-Code Methods
  - Post Code Methods
- Method determined by year right originated
  - Was is before or after enactment of water code?





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# Stockwater in Nevada

- Acquisition
  - On Public Land
    - Applicant must have legal right to place livestock on public land [NRS 533.503](#)
  - On Public and Private Land
    - Same manner as right to use for any beneficial purpose [NRS 533.490\(1\)](#)
    - Pre-Code Right: Vested/Adjudication
    - Post Code Right: Application
- Pre-Code Rights
  - Adjudication [NRS 533.493](#)
  - Vested stock water rights recognized





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## Stockwater in Nevada Cont.

- Post Code Rights
  - Duty [NRS 533.490\(2\)](#)
    - Use measured by number of head
  - Proof of Use [NRS 533.492](#)
    - Public Land: Statement of Priority or License
    - Private Land: Affidavit or Record of Livestock
- Priority on Public Land [NRS 533.495](#)
  - Grazers protected from subsequent stockwater appropriations







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# Stockwater in Idaho

- Water must be for beneficial use [Idaho Code 42-101](#)
  - “stockwater rights” are water rights for the beneficial use of watering livestock [Idaho Code 42-502](#)
- Acquisition
  - Pre-Code: [Idaho Code 42-229](#)
    - Adjudication [Idaho Code Title 42, Chapter 14](#)
  - Post Code:
    - Application, permit and license procedure [Idaho Code 42-103/Idaho Code Title 42, Chapter 2](#)







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# Stockwater in Idaho Cont.

- Instream Stockwater [Idaho Code 42-113](#)
  - Cattle drinking from stream
  - Permit may be issued, but not required
  - Treated same as other water rights
  - May divert water from stream
- Stockwater on Public Land [Idaho Code 42-501\(1\)](#)
  - Water Right held by the grazing permittee





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# Stockwater in Oregon

- Pre-Code Acquisition [ORS Chapter 539](#)
  - Adjudication of any pre-code beneficial use of water [ORS 539.010\(1\)](#)
    - “Beneficial use” includes stockwater [OAR 690-400-0010\(3\)](#)





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# Stockwater in Oregon Cont.

- Post Code Acquisition
  - Any nonexempt use must go through application for permit process [ORS 537.130/ ORS 537.615](#)
    - Application [ORS 537.140/ORS 537.620](#)
    - Permit [ORS 537.211/ORS 537.625](#)
    - Perfection
    - Certificate [ORS 537.250/ ORS 537.700](#)
- Preference over other uses [ORS 536.310\(12\)](#)
- Some stockwater uses are exempt





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# Stockwater Exemptions

- **Nevada** [NRS 534.180/NRS 534.013](#)
  - Domestic Exemption 2.5 acre-feet annually
  - “domestic purposes” include watering livestock
- **Idaho** [Idaho Code 42-227/Idaho Code 42-111](#)
  - Domestic Exemption
  - 13,000 gallons/day for livestock, homes, garden
- **Oregon**
  - Surface water exemption [ORS 537.141\(1\)\(f\)](#)
  - Groundwater exemption [ORS 537.545\(1\)\(a\)](#)





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# United States' Ownership of Stockwater Rights

- Apply State Law for:
  - Acquisition
  - Perfection
  - Maintenance
  - Administration
- Not all states allow the Federal Government to hold stockwater rights





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# Where can the Federal Government Hold a Stockwater Right?

- **Nevada?**

- No, 2013 State Engineer directed BLM not to file new applications for stockwater on public lands

- **Idaho?**

- Maybe.
- 2017 Senate Bill 111 codified 2007 Idaho Supreme Court decision stating federal government cannot appropriate water for livestock unless it owns livestock
- 2020 code revisions leave questions

- **Oregon?**

- Undecided.







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# Stockwater & Grazing Permits





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## Status to Hold Grazing Permit

- US Citizen/Entity
- Livestock Owner
- Base Property





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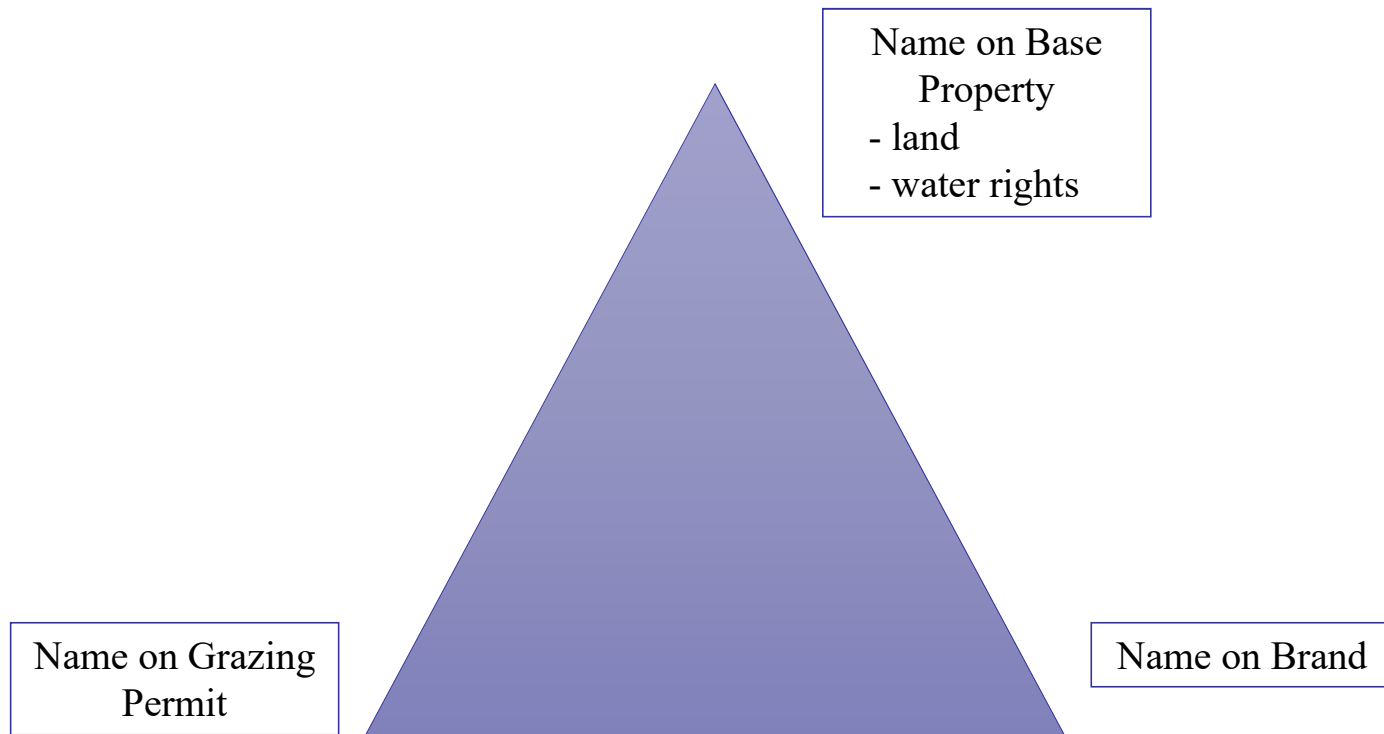
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# The Triangle of Interests





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## “Base Property”



- Land capable to produce crops/forage to support livestock
- Water suitable for consumption by livestock
  - Available & accessible





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# Ownership of Water as Base Property

- Supports permitted use:
  - Serves as base of operation in grazing district; or
  - Is capable of being used in conjunction with operation utilizing public land outside a grazing district
- Preference attaches to Base Property





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# Water Developments on Public Lands

- Permanent Water Improvements
  - Title shared by cooperators and US
    - Spring developments, wells, reservoirs, tanks, & pipelines
- Temporary Water Improvements
  - Title held by cooperator
  - *Removable* improvements
    - E.G. Troughs







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# Range Improvements

- “Range Improvements shall be installed, used, maintained, &/or modified on the public lands, or removed from these lands, in a manner consistent with multiple-use management.” [43 CFR 4120.3-1](#)
- Range Improvement authorization:
  - Documents interest in public land improvements
  - Two Kinds:
    - Nonstructural (e.g. seedings)
    - Structural (e.g. water pipelines)
- Type of Authorization:
  - Cooperative Range Improvement Agreement
  - Range Improvement Permit





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## Cooperative Range Improvement Agreements

- Made with BLM for new permanent range improvements [43 CFR 4120.3-2](#)
  - Improvement owned by U.S. if constructed before March 1984 or after August 1995
    - Permittee compensated if lease cancelled
  - Authorization after August 11, 2006:
    - U.S. & permittee share title in proportion to their contribution
- Some States require cooperative agreement with State Grazing Board/County Commissioner and federal officials
  - e.g. Nevada [NRS 568.140](#)





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# Range Improvement Permit

- After 1995, only authorize construction of temporary range improvements [43 CFR 4120.3-3](#)
- Permittee funds 100% of the construction costs
- Permittee holds title to any improvement constructed before Aug. 1995







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# Other Stockwater Issues on Federal Land





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# Rights-of-Way on Public Lands (RS2399)

- 1866 Mining Act
  - Protected use of water infrastructure used in mining, agriculture, & other purposes prior to withdrawal 43 CFR § 661
- FLPMA eradicated laws creating these rights-of-way
- Existing rights still recognized
  - Must be addressed in Federal Court







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# Grazing in Wilderness

- Grazing, activities, & necessary facilities allowed only if established prior to wilderness classification
- Motorized access limited
  - Designated by Right-of-way
    - Common Issue: Right-of-way or access road in wrong location





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# COVID-19 Webinar Series

- Next week (June 17, 2020): “Easements: Sharing a Well or Ditch and Protecting Access to Infrastructure” with Laura Schroeder and Sarah Liljefelt
- All webinars will be available at:
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- 1) What to Do When the Watermaster Shuts Off Your Water? (April 15, 2020)
- 2) What to Do When You Receive a Notice of Cancellation on Your Water Right? for Oregon water users (April 22, 2020)
- 3) What Options Are Available When You Receive Notice Your Well Construction is Non-compliant? (April 29, 2020)
- 4) Water Rights Due Diligence in Land & Utility Acquisitions (May 6, 2020)
- 5) Adjudications: Filing Your “Vested” Claim & Obtaining a Favorable Decreed Water Right (May 13, 2020)
- 6) Elements of Water Right On-Line Research in Oregon, Nevada and Idaho (May 20, 2020)
- 7) Water Rights for Sale: Know What You’re Selling or Buying (May 27, 2020)
- 8) Water Management Organizations: Irrigation Districts & Utilities (June 3, 2020)
- 9) Stockwater Rights On & Off Public Land (June 11, 2020)
- 10) Easements for Water Use (June 17, 2020)



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- [Wifi Through the Sewers in Anacortes](#) September 26, 2019
- [Shipping in Pacific Northwest Halted Due to Cracked Barge Lock at Bonneville Dam](#) September 12, 2019
- [World Water Week 2019 is Here!](#) August 26, 2019
- [Final Revisions Due for Newlands Project Water Rights](#) August 8, 2019

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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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