

Exempt Wells: Problems and Approaches  
in the Northwest

*Oregon's Exempt Groundwater Uses*

Laura A. Schroeder May 17, 2001



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# Areas of Practice



**Laura A. Schroeder** represents businesses and municipalities in transactions and litigation, including water rights acquisitions, sales, contracts, easements, dam removal/replacement, well share and water delivery agreements, adjudications, permitting, extensions, transfers, certification, regulatory compliance and litigation of water rights disputes before state administrative bodies, State and Federal trial and appellate courts. Laura works on water quality issues related to wetlands compliance and permitting, Endangered Species issues, and hydro-power re-licensing. She also has extensive experience working with the Bureau of Reclamation on behalf of her irrigation district clients in contract negotiations and title transfers. As an international consultant, Laura provides international water law experience to those countries developing decentralized and sustainable water use and wastewater licensing and permitting.



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# Areas of Practice Cont...



**Cortney Duke, JD**: Special districts/agricultural water organizations, formalities, transfers, certificates, contracts, instream leasing/transfers; surface/pond permitting; storage/federal contracts; adjudications/Walton Rights; Bureau of Reclamation



**Wyatt Rolfe, JD**: Water rights review, group systems (domestic, commercial and industrial); municipal water purveyors (permitting, extensions, planning, water management and conservation, water quality, public meeting and public records law) water sales and transactions, water right due diligence, water easements, extensions, water transfers and appeals; Ground Water interference and connection; business incorporation and formalities; nursery and vineyard industry water use



**Therese Ure, JD**: Water use permitting, extensions, transfers, certificates; ground water interference/connection, critical/limited areas; cancellation, forfeiture or abandonment; water right title/recording; special patron rights and responsibilities; public lands (easements/permitting uses/grazing permits BLM, USFS) private easements; agri-business; contracts; administrative appeals; civil litigation

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# Areas of Practice Cont...



**Sarah R. Liljefelt, JD** is an associate attorney a Schroeder Law Offices, P.C. She graduated *cum laude* from Lewis & Clark Law School in Portland, Oregon in June, 2010, and is licensed to practice law in Oregon. Sarah's interests include valuation of water rights, transactional water transfers, water marketing, federal and state regulatory compliance, and litigation.



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# Public Lands

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### W. Alan Schroeder, JD

Public lands administered by BLM, National Forest System lands administered by USFS, reclamation lands administered by BOR, and refuge land administered by USFWS (grazing permits; range improvements, such as water developments and fencing; rights-of-way, such as roads, ditches and pipelines; land tenure, such as purchases, sales, exchanges, and land use permits; special use permits; trespass claims, such as grazing, timber, roads, and ditches; contract disputes; *Endangered Species Act* compliance and disputes, such as listing, Section 7 consultation, BA, BO, and Incidental Take Statements; *Archeological Resource Protection Act* compliance and disputes; *National Environmental Policy Act* compliance and disputes)



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# Oregon's Exempt Groundwater Uses

## [ORS 537.545](#)

- Single or group domestic purposes in an amount not exceeding 15,000 gallons per day
- Any single Industrial or commercial purpose not to exceed 5,000 gallons per day
- Stockwatering
- Watering any lawn or noncommercial garden under ½ acre
- Certain school lawns under 10 acres
- Down-hole heat exchange purposes
- Certain qualified land applications





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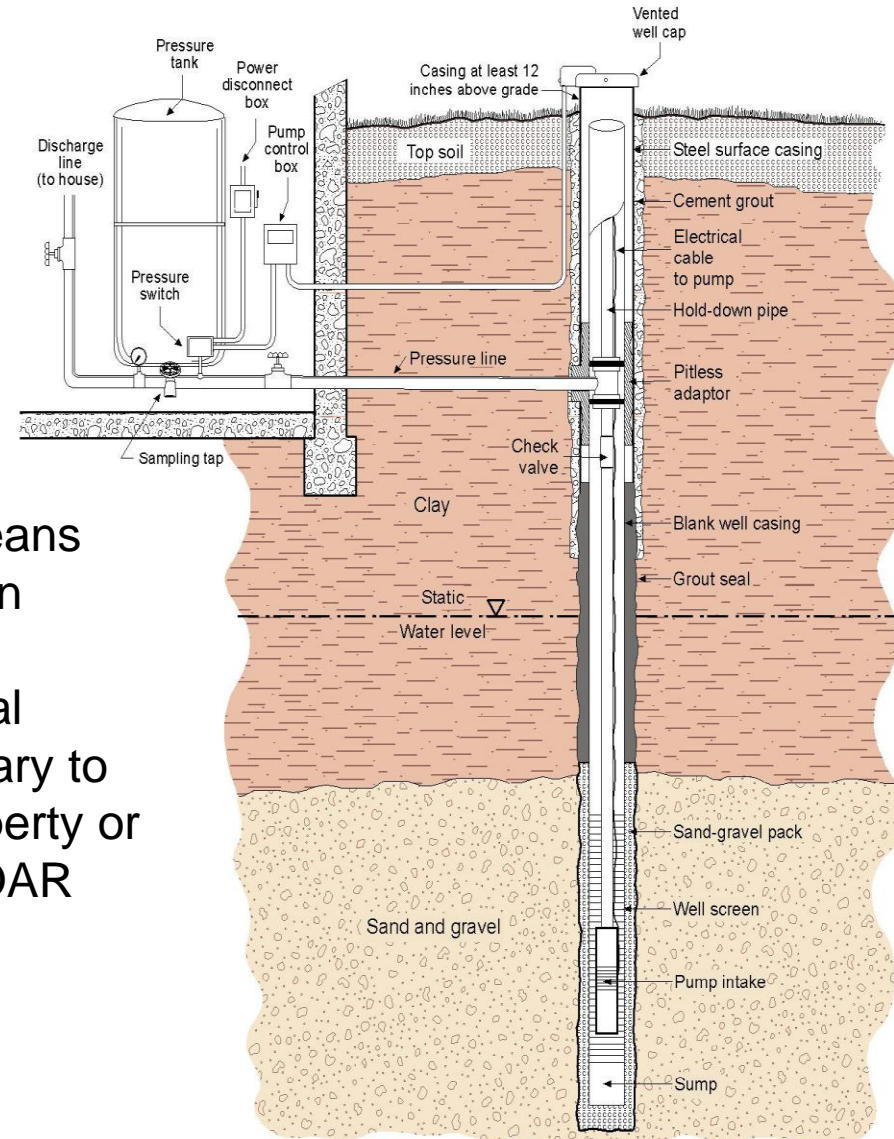
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# Domestic Wells

(15,000 gallons or less per day)

"Domestic Water Use" means the use of water for human consumption, household purposes, domestic animal consumption that is ancillary to residential use of the property or related accessory uses. OAR 690-300-0010(14)







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# Watering School Grounds in Critical Groundwater Areas

(Not exceeding 10 acres)





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# Commercial Use

(Not to exceed 5,000 gallons per day)

"Commercial Water Use" means use of water related to the production, sale or delivery of goods, services or commodities by a public or private entity. These uses include, but are not limited to, construction, operation and maintenance of commercial facilities. Examples of commercial facilities include, but are not limited to, an office, resort, recreational facility, motel, hotel, gas station, kennel, store, medical facility, and veterinary hospital. Examples of water uses in such facilities include, but are not limited to, human consumption, sanitation, food processing, and fire protection. Such uses shall not include the irrigation or landscape maintenance of more than 1/2 acre. OAR 690-300-0010(6)



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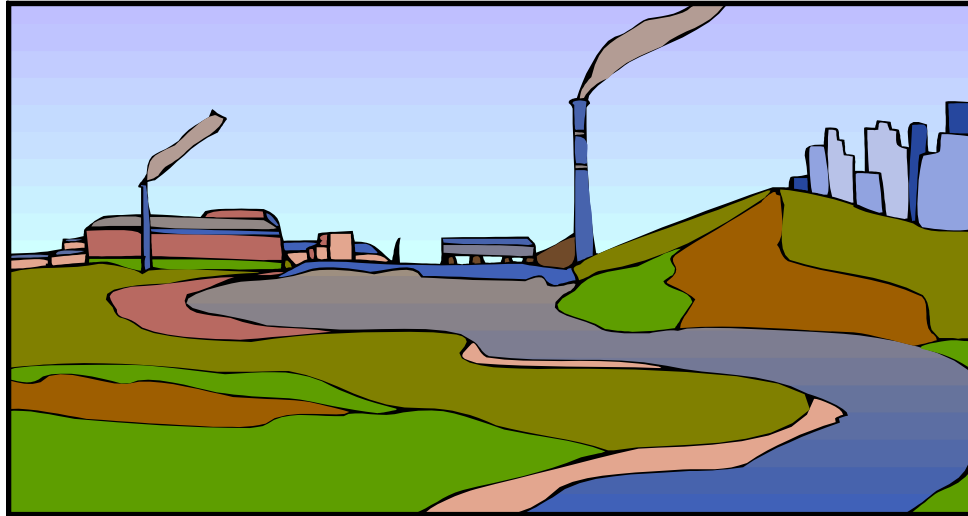
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# Industrial Use

(Not to exceed 5000 gallons per day)



"Industrial Water Use" means the use of water associated with the processing or manufacture of a product. These uses include, but are not limited to, construction, operation and maintenance of an industrial site, facilities and buildings and related uses. Examples of these uses include, but are not limited to, general construction; road construction; non-hydroelectric power production, including down-hole heat exchange and geothermal; agricultural or forest product processing; and fire protection. Such use shall not include irrigation or landscape maintenance of more than 1/2 acre. OAR 690-300-0010(25)



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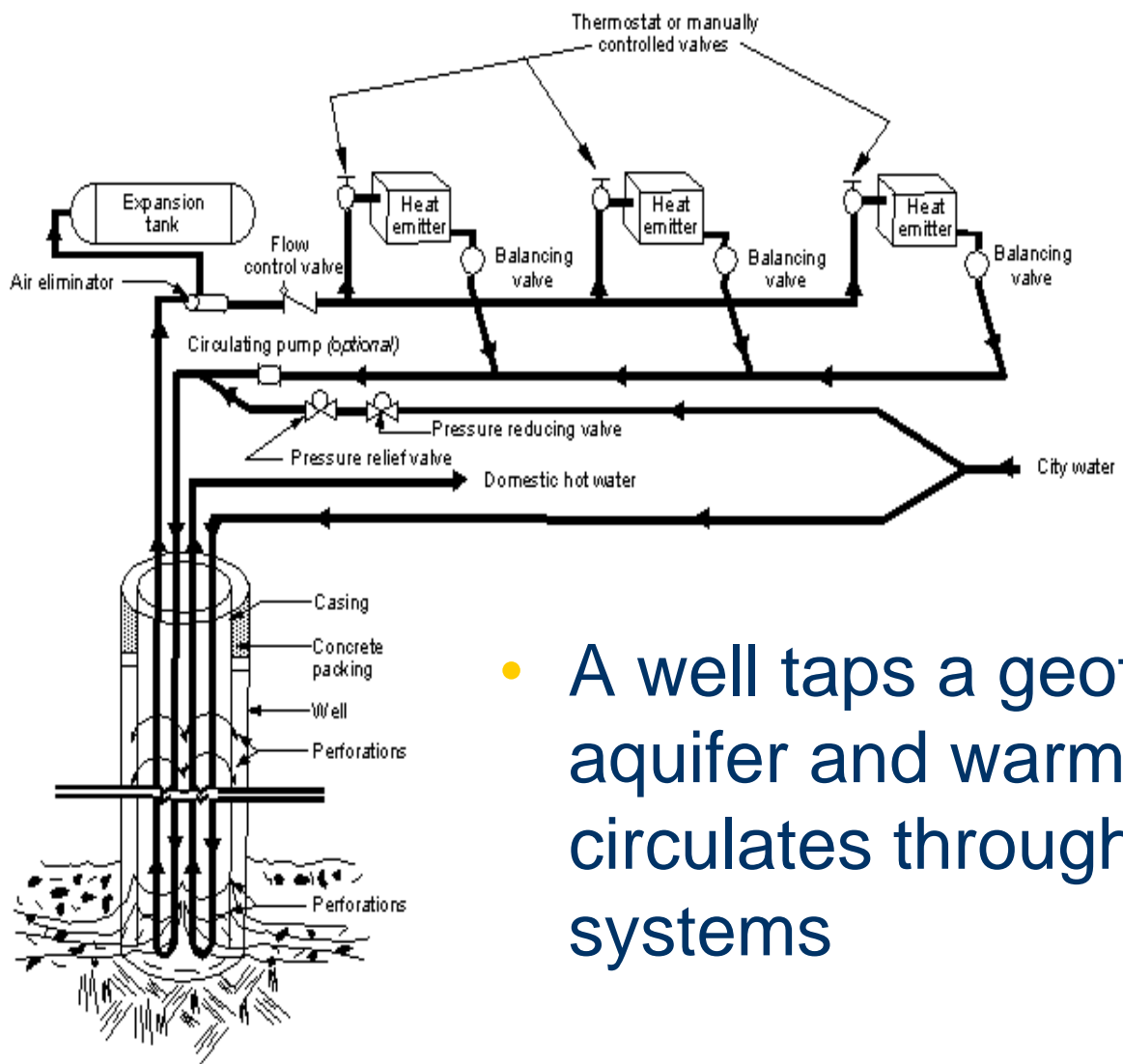
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# Downhole Heat Exchange



- A well taps a geothermal aquifer and warm water circulates through heating systems



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# Stockwatering



"Stockwater Use" means the use of water for consumption by domesticated animals and wild animals held in captivity as pets or for profit. OAR 690-300-0010(46)



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# “Stacking Exemptions”

- An exemption attaches to wells, and applies to tax lots
- The same well can be used for multiple exempt uses, if they are of a different type





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# “Stacking Exemptions”

- Limitations
  - Can’t stack industrial and commercial exemptions to use more than 5,000 gallons per day (OAR 690-340-0010(1)(d))
  - Can’t stack exemptions to allow watering more than ½ acre of lawn from a single well



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# Common Requirements



- Only the use is exempt
- Register/notify the state of the use
- Flow meters & reporting
- Compliance with state well drilling standards
- No injury to existing water rights





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# Effects of Being “Exempt”

- Exempt use rights are rights equal to permitted groundwater rights and are subject to beneficial use requirements (ORS 537.545(2))
- OWRD may require the well owner to submit information about the well use (ORS 537.545(3))
- Exempt users must register with OWRD & pay \$300 fee within 30 days of completion of construction (ORS 537.545(5)-(7))
- Must comply with general standards for construction and maintenance of wells (ORS 537.780(b); OAR 690-205-0175)
- OWRD can enter private land to inspect wells (ORS 537.780(e))



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# Priority of Exempt Use



- Oregon: Date established by well log or other evidence showing when well first used (ORS 537.545(4))



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# Legal Issues





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# Interference with Permitted Uses

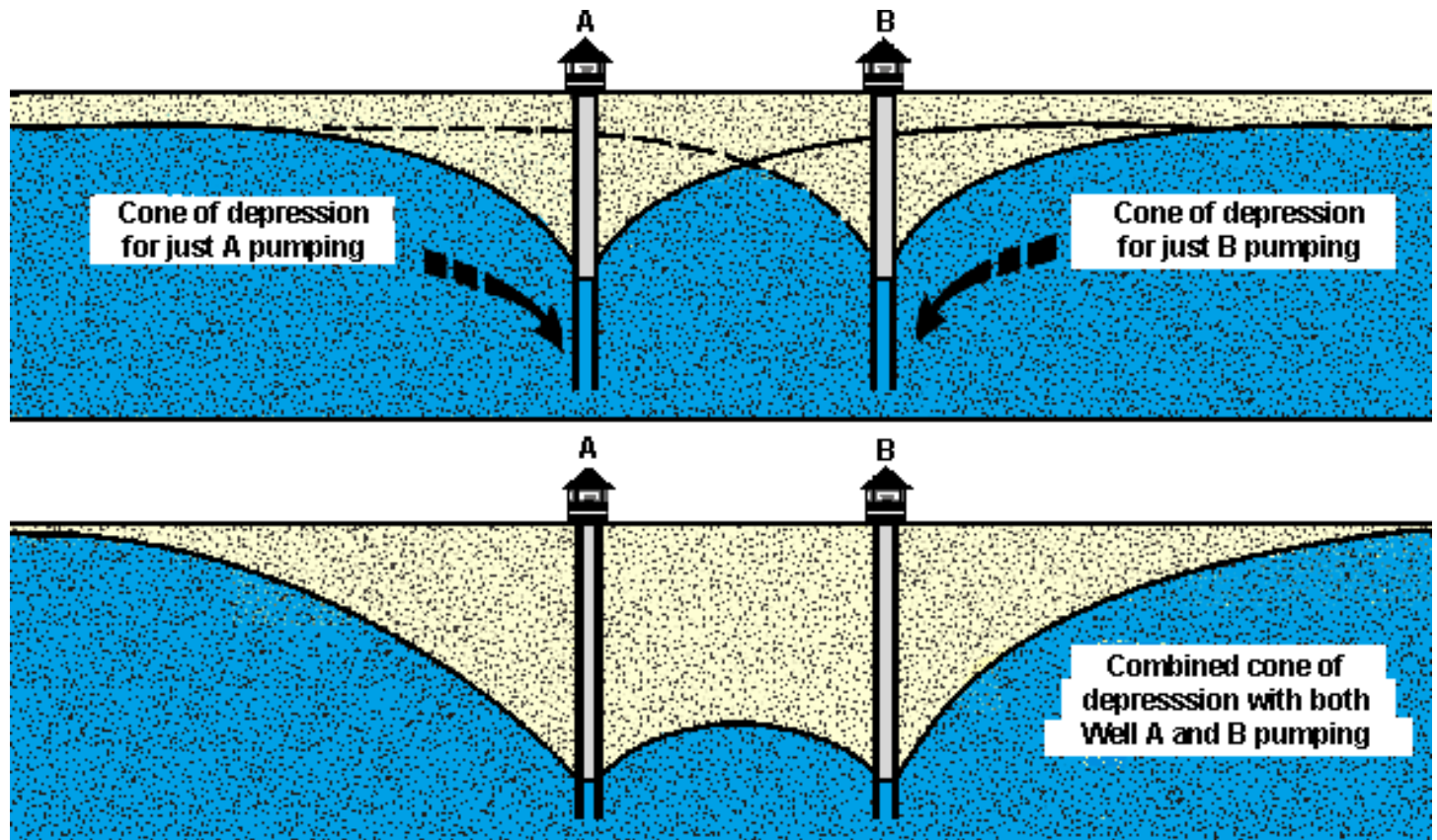
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# Interference with Over-appropriated Surface Water

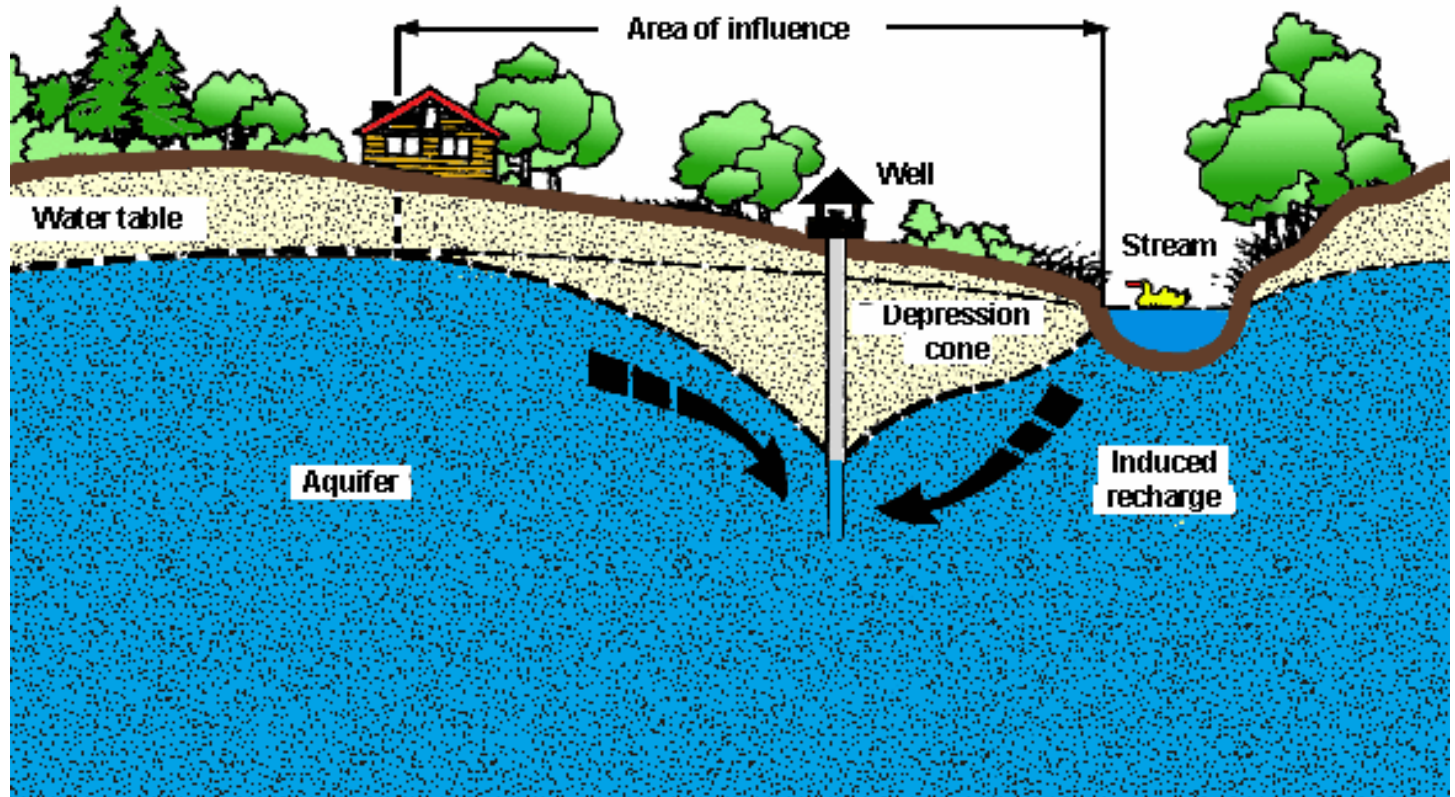
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# Regulation

- **Oregon**: water rights administered according to priority (notwithstanding exempt or non-exempt designation)
  - Regulatory activity of watermaster constitutes a final order
  - Evidence of hydraulic connectivity or aquifer source likely required before regulating an exempt well



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# Changing Land Use Trends

- Western settlement relied mainly on surface waters
  - Increased demand = dependence on new water sources (groundwater)
- Cluster development created large urban cities
- Modern Trend: increasing residential settlement on traditional farmlands
- Effect: increased numbers of domestic exempt wells
  - Sever water rights from the land & sell
  - Supply new residential subdivisions with domestic exempt wells
  - Potential to increase domestic exempt use



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# State Attempts to Restrict Exempt Groundwater Uses

- Voluntary associations of landowners in Critical Ground Water Areas to learn techniques to responsibly manage own use
  - Eola Hills Neighborhood Ground Water Network
- Legislative attempts to limit exempt groundwater uses
  - 2009, HB 2859: would have reduced the amount of water available for group domestic uses from 15,000 gpd to 1,000 gpd
- Designation of Limited and Critical Ground Water Areas – restrict by closing the aquifer to new wells

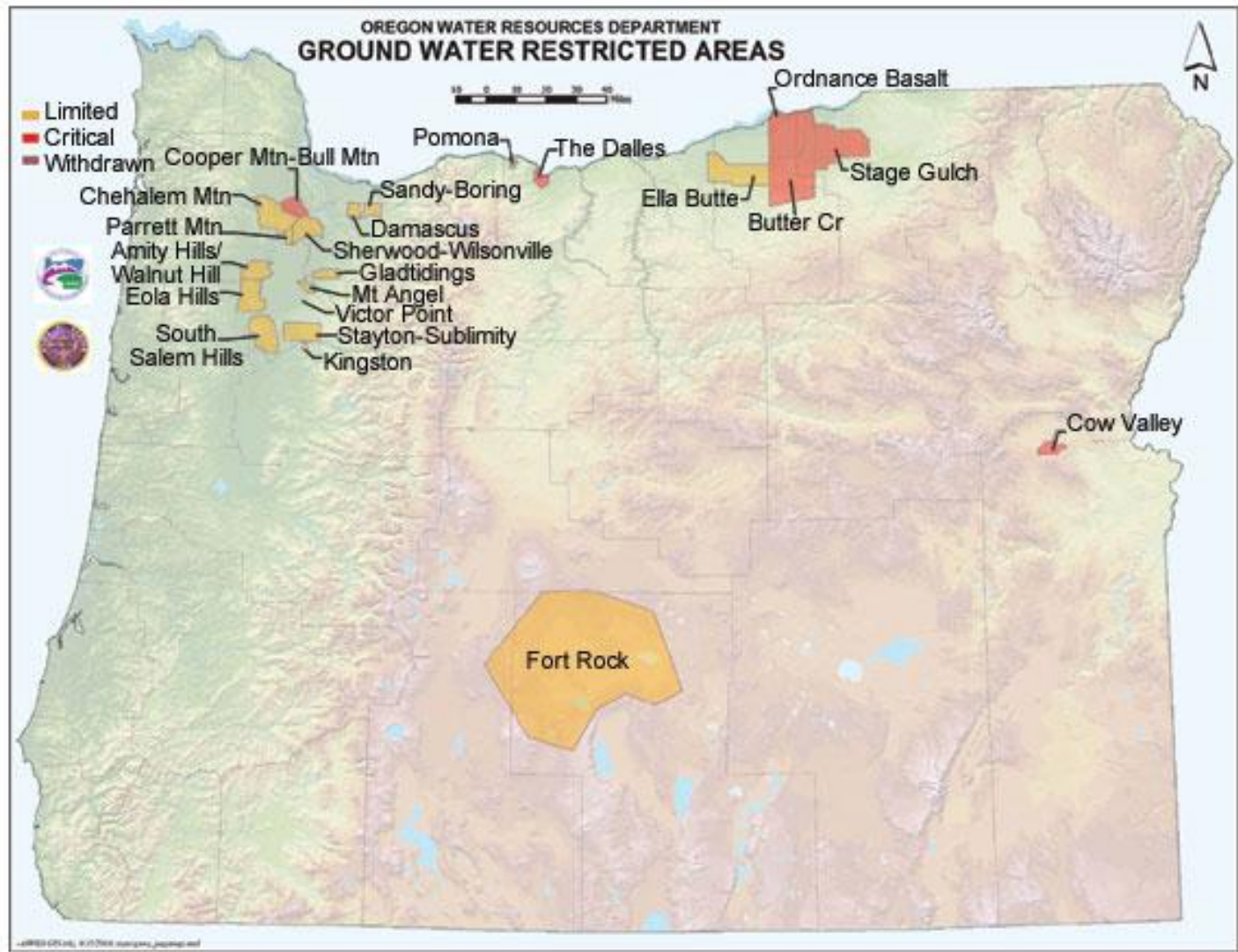




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# Limited & Critical Areas

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# Legal Issues in Practice

- Access/Easement to water source
- Identification of water source as groundwater
- Lending opinions/security
- Jurisdictional disputes
- Refusal by state to permit domestic use
- Unintended consequences of ID conservation
- Creative use of exemptions



# Conclusions

- Exempt uses can create administrative challenges
  - Must regulate exempt uses against permitted and certificated uses
- Exempt uses avoid OWRD review process for interference with:
  - Competing uses
  - Over-appropriated surface waters
  - Protected waters



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# The End



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