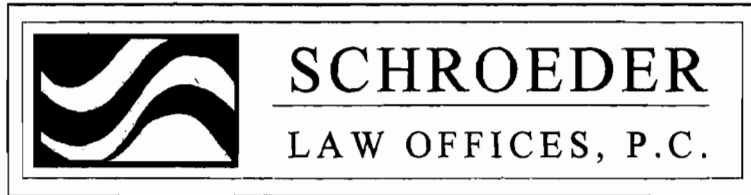


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February 29, 2008

VIA U.S. CERTIFIED MAIL

Water Resources Commission
725 Summer St NE, Ste A
Salem, OR 97301

RE: Petition related to Well Alterations

Dear Commissioners:

Altering a well¹ includes a multitude of items that are often performed on a well after its initial construction. These may include, but are not limited to: deepenings, casing extensions or reductions, liner height adjustments, pitless adaptor or unit installations, partial or complete seal replacement, and perforating.

For many decades, it was the practice and expressed policy of the Water Resources Department ("WRD") that any alteration to a well must be in accordance with OAR 690-200 through 690-240, rules derived from statutory authority (ORS 537.780) granted to the Water Resources Commission. The statute and rules are void of any discussion or requirement which provides that performance of an alteration triggers a requirement to bring the whole well up to current code. In addition, the applicable statute and rules are void of any requirement that the person performing the alteration then triggers his own liability not simply for his own work in the alteration, but for the existing well construction and condition.

Until recently, the expressed policy and practice of WRD was that a well alteration did not trigger an automatic requirement that the whole well construction be brought up to current code and did not trigger automatic liability on the contractor completing the alteration for the whole well's design and construction. The expressed policy and practice was that the obligation and liability of the contractor was only for the work currently performed, i.e. the alteration must be performed in accordance with the current standards. This has been verified by some of our members from historical conversations and meetings with, and at, the WRD. This is also

¹See OAR 690-200-0050 (7) ("Altering a Well" means the deepening, reaming, hydrofracturing, casing, re-casing, perforating, re-perforating, installation of liner pipe, packers, seals, and any other material change in the design or construction of a well.)

See OAR 690-240-0010 (3) ("Altering a Well" means the deepening, installation of seals, adding, removing or replacing casing, and any other material change in the design or construction of a well.)

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MAR 03 2008

**WATER RESOURCES DEPT
SALEM, OREGON**

evidenced by the WRD's furnished well report forms that contain a certification designed to limit liability on the constructor during an alteration. The certification states: "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."² [emphasis added]

In October, WRD (in a presentation at the fall meeting of the 2007 Oregon Ground Water Association) expressed a contrary policy. In the new staff interpretation the position was expressed that the state now believes that "If the casing depth, seal or depth of an existing well is altered then upon completion of the alteration the well must meet or exceed the minimum well construction standards in place at the time. Basically, any material change in the well's construction requires that the well meet current standards when completed."³

Such a contrary policy is akin to requiring a building remodeler changing out a light switch in 2008 to bring the entire home constructed in 1940 up to all current electrical codes. Certainly, that can be required in certain instances by the applicable jurisdiction for health and safety reasons, but there is no automatic trigger that requires it. Such an automatic trigger cannot be the law in well construction.

The groundwater construction industry does not agree with this contrary policy nor the subsequent publication of this policy change in the WRD's October 2007 'Well Said Newsletter'. The Department has opened dialogue with the industry and has expressed willingness to work on the issues. We are concerned that without an open process we are limiting the audience and distribution of this policy.

In addition to the above, the published wording (i.e. "When a licensed well constructor..."), appears to limit the WRD contrary policy application only to licensed well constructors, rather than to anyone that may alter a well, thus subjecting licensed individuals to a different, more stringent, standard than non-licensed individuals. This could be considered a violation of due process and equal protection.

Of major concern to the industry is that the WRD's new policy shift will result in a reduction of resource protection since many, if not all, constructors will not make any well alterations if this contrary policy is sustained. The liability will be far too great to risk one's livelihood. It will be less risky to simply move over and construct a new well, leaving the well

² The same language is contained on the monitoring well report form except "Oregon monitoring well construction standards" is substituted for "Oregon water supply well construction standards".

³ Quote from slide #20 notes used in the October 12, 2007 presentation at the OGWA meeting; notes as provided by the WRD pursuant to a public records request.

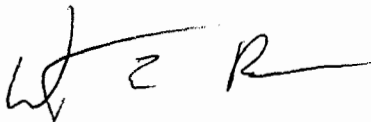
needing repair a health and resource risk. It is also unreasonable to shift responsibility for previous construction, usually work performed by others, often done years or decades earlier, and often in an unknown condition, onto someone that is trying to fix or resolve a single issue with the well that will make it safer for the public and the resource. Additionally, it is not in the public interest to permit non-licensed individuals (e.g. landowners and pump installers) to be exempt from complying with construction rules, whether they perform the work legally or not.

In order to bring clarity and order to the situation, we are petitioning the Water Resources Commission to: A) Promptly repeal WRD's contrary policy and issue a correct policy statement and agency guidance that permanently clarifies and states the historical policy; and B) Initiate rulemaking to address the issue so that the public policy regarding well alterations is formally adopted with the proper input and consideration by all its interested and affected citizens.

Thank you for your prompt and courteous consideration of this petition.

Very truly yours,

SCHROEDER LAW OFFICES, P.C.

A handwritten signature in black ink, appearing to be 'L A S' followed by 'W E R', representing the signatories.

Laura A. Schroeder
Wyatt E. Rolfe

LAS:tjj

Enclosures: *Petition for Rule Making*

cc: Client
Phillip C. Ward, Director

BEFORE THE WATER RESOURCES COMMISSION
STATE OF OREGON

In the Matter of the Adoption of a Rule
Identifying the Duties and Liabilities of
Well Contractors that Perform Well
Alterations

Petition to Adopt New Rule (Well
Alterations)

1. Petitioner is the Oregon Ground Water Association, a domestic non-profit corporation organized under the laws of the State of Oregon, P.O. Box 21285, Keizer, OR 97307.
2. Petitioner is operated by and through its Board of Directors and represents its members in promoting ground water development and management for maximum beneficial use without waste or contamination.
3. Petitioner's membership includes well drillers, pump contractors, water treatment specialists, technical organizations, associate members, student members and manufacturers and suppliers.
4. When conducting alterations to a well, Petitioner's membership must conduct the work in accordance with OAR 690-200 through 690-240, rules that are derived from statutory authority granted to the Water Resources Commission.¹

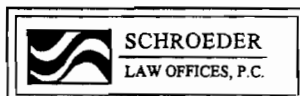
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¹ See (ORS 537.780)



5. Pursuant to the Commission's rules, a multitude of management tasks performed on a well after its initial construction are deemed to be "altering a well".² These include, but are not limited to: deepenings, casing extensions or reductions, liner height adjustments, pitless adaptor or unit installations, partial or complete seal replacement, and perforating.

6. Petitioner asserts that the historical practice and expressed policy of the Oregon Water Resources Department ("OWRD") is to allow performance of a well alteration without automatically requiring that the entire existing well construction be brought up to current minimum well construction standards.

7. Petitioner asserts that the historical practice and expressed policy of OWRD is to require well contractors to certify only that the work performed in furtherance of the well alteration meets or exceeds minimum well construction standards.

8. Petitioner asserts that the historical practice and expressed policy of OWRD is to limit the well contractor's liability for well alterations to the current work performed, not the condition of the existing well construction in its entirety.

9. Petitioner asserts that OWRD has altered its historical practice. OWRD now requires that upon completion of a well alteration, "the well must meet or exceed the minimum well construction standards in place at the time. An administrative process exists for well contractors that want to alter a well without bringing the well up to current standards. The

²See OAR 690-200-0050 (7) ("Altering a Well" means the deepening, reaming, hydrofracturing, casing, re-casing, perforating, re-perforating, installation of liner pipe, packers, seals, and any other material change in the design or construction of a well.)

See OAR 690-240-0010 (3) ("Altering a Well" means the deepening, installation of seals, adding, removing or replacing casing, and any other material change in the design or construction of a well.)



contractor can submit Special Standards for the Department to consider.”³

10. Petitioner requests that the Water Resources Commission engage in rulemaking to clarify that when altering a pre-existing well: 1) Only the current well alteration and associated work performed by the well contractor is required to be in accordance with the current minimum standards; 2) The well contractor, following performance of a well alteration, is not required to ensure that the well, in its entirety, conforms to current standards, *unless* the owner is required to accomplish the same pursuant to an order from the Department, of which the contractor has received written notice; and 3) The well contractor, by virtue of performing a legal alteration, is not liable for other construction, components, or conditions unrelated to the well alteration.

11. Petitioner proposes the following rule for inclusion in OAR Chapters 690-200 to 690-240:

Well Alterations: Well alterations or work performed in furtherance of altering a well shall be conducted in accordance with OAR Chapters 690-200 to 690-240. Legal well alterations that abide by minimum construction standards may be performed irrespective of the well’s existing overall compliance with OAR Chapters 690-200 to 690-240. A well contractor that performs a well alteration shall not be required to update, warrant or ensure that the existing well construction, components, or other conditions unrelated to the alteration meet minimum construction standards, unless written notice of a specific order from the Department requiring the owner to complete such additional work is received by the well contractor.

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³ See Well Said Newsletter, Volume 1, Issue 26, at 1, October 2007, Oregon Water Resources Department.



12. Adopting the rule is in accordance with OWRD's historical policy and practice that requires the well contractor making a well alteration to warrant only that work performed in the process of making the alteration meets or exceeds the current standards.⁴

13. Adopting the rule will vacate a recent OWRD shift in policy which requires licensed well contractors who alter the casing depth, seal or depth of an existing well to ensure that the entire existing structure and facilities meet or exceed current standards.⁵

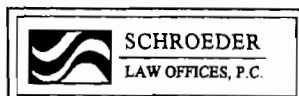
14. The proposed rule will protect the ground water resource by:

- a. Retaining the historical policy and practice implemented by OWRD.
- b. Encouraging well contractors (and owners) to swiftly service wells that pose a health and resource risk, as opposed to avoiding alterations on such wells for fear of incurring liability for defects that are unknown, latent, or caused by the actions of others.
- c. Facilitating well contractors' (and owners') ability to quickly service wells that pose a health and resource risk by reducing the burdensome and sometimes unpredictable practice of obtaining a "Special Standard" from OWRD.
- d. Encouraging increased reporting of older wells not currently documented.

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⁴ See OWRD's furnished well report forms which contain a certification designed to clearly limit liability on the contractor during an alteration; the certification states: "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." [emphasis added]

⁵ See Well Said Newsletter, Volume 1, Issue 26, at 1, October 2007, Oregon Water Resources Department (When a licensed well constructor alters the casing depth, seal or depth of an existing well then upon completion of the work the well must meet or exceed the minimum well construction standards in place at the time.); See also Quote from slide #20 notes used in the October 12, 2007 presentation at the OGWA meeting; notes as provided by the OWRD pursuant to a public records request.



15. Existing well owners, as well as other well contractors, licensed and unlicensed, that are not members of Oregon Ground Water Association will have an interest in the proposed rule.

Wherefore, petitioner requests the Oregon Water Resources Commission to adopt the aforesaid proposed rule.



Laura A. Schroeder, OSB 87339
Wyatt E. Rolfe, OSB 064926
Attorney for Oregon Ground Water
Association