

# Oregon's Measure 37 & Communities of Dueling Experts



Alexander Hamilton versus Aaron Burr

# The Situation

- **Measure 37 was passed by 61% of the Oregon voters in 2004**
- **19 Planning Goals that Oregon developed over the past 30 years for land use must be waived unless landowner compensated**

I live next to a Measure 37 claim which, if allowed, might very well “take” my water. The area I live in is a designated “Water Limited Area”. If my neighbor wins, I lose. Where is the justice in that? My neighbor, whom I’ve known for 20 years, is now my adversary. Measure 37 hasn’t solved anything; it just pits neighbor against neighbor, lawyer against lawyer and makes the courts my land-use planning protection.

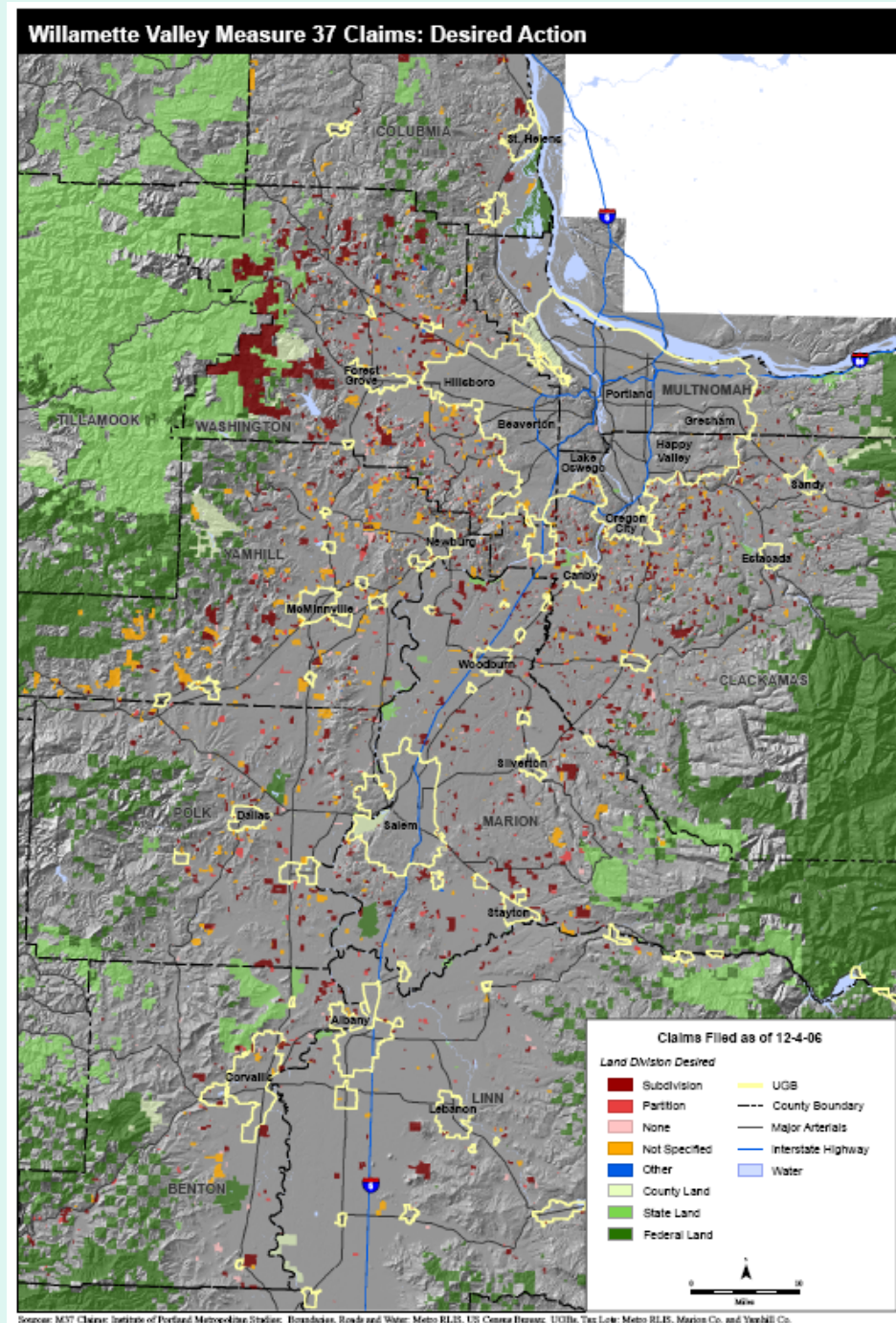
-- Ted Gaty, Salem, letter to the editor, Statesman Journal, May 9, 2007.

# The Situation (continued)

Over 7,500 applications for exemptions have been submitted to local and state government agencies for review

72% of Claims in Willamette River Basin

Most claims are for houses outside Urban Growth Boundaries which will rely on individual wells and septic tanks for water and wastewater.



# Opportunities for Dueling Experts & Measure 37

- Land Appraisers

- Economists

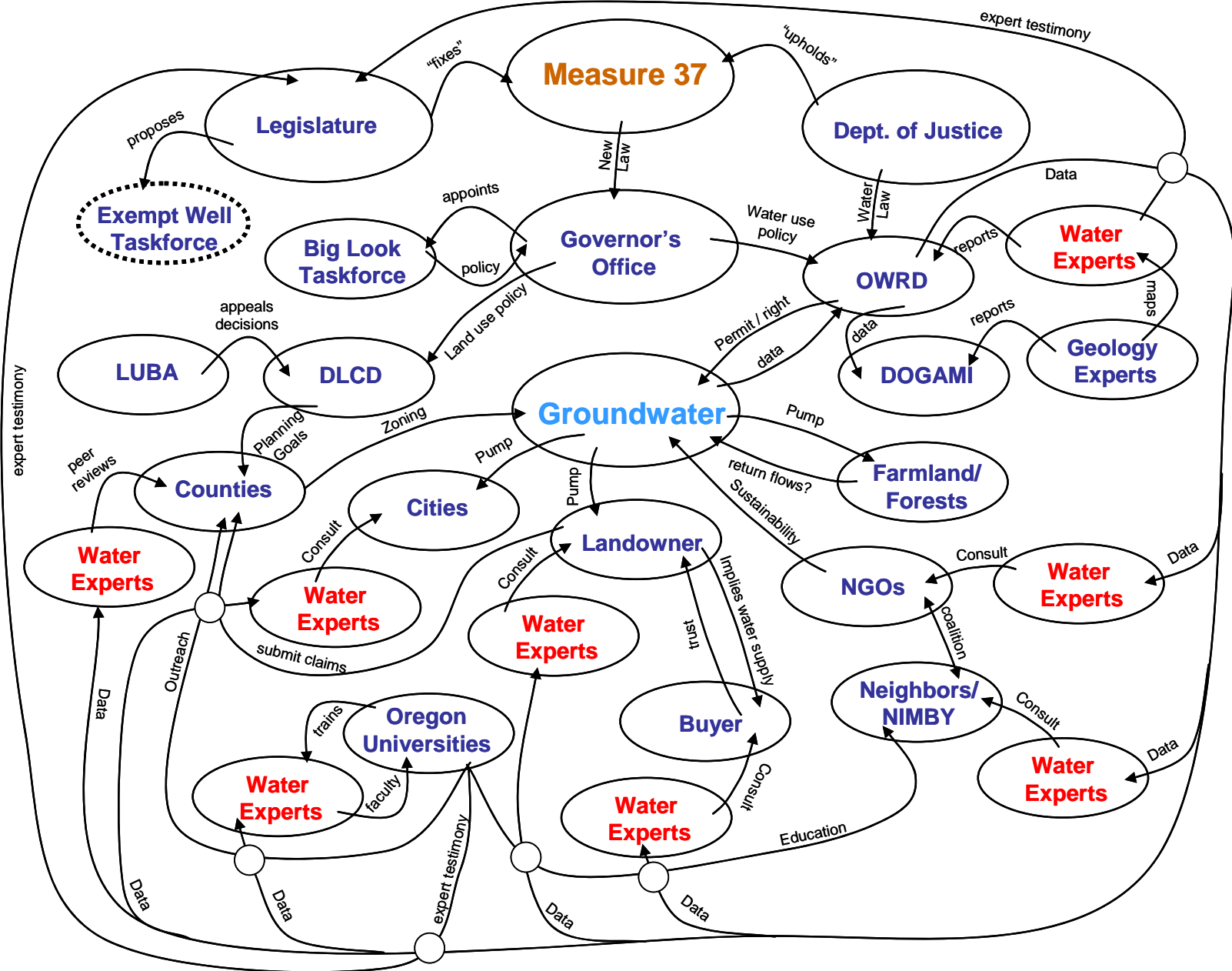
- Traffic Engineers



- Water Experts (Hydrogeologists, Well Drillers, and “Water Witches”)

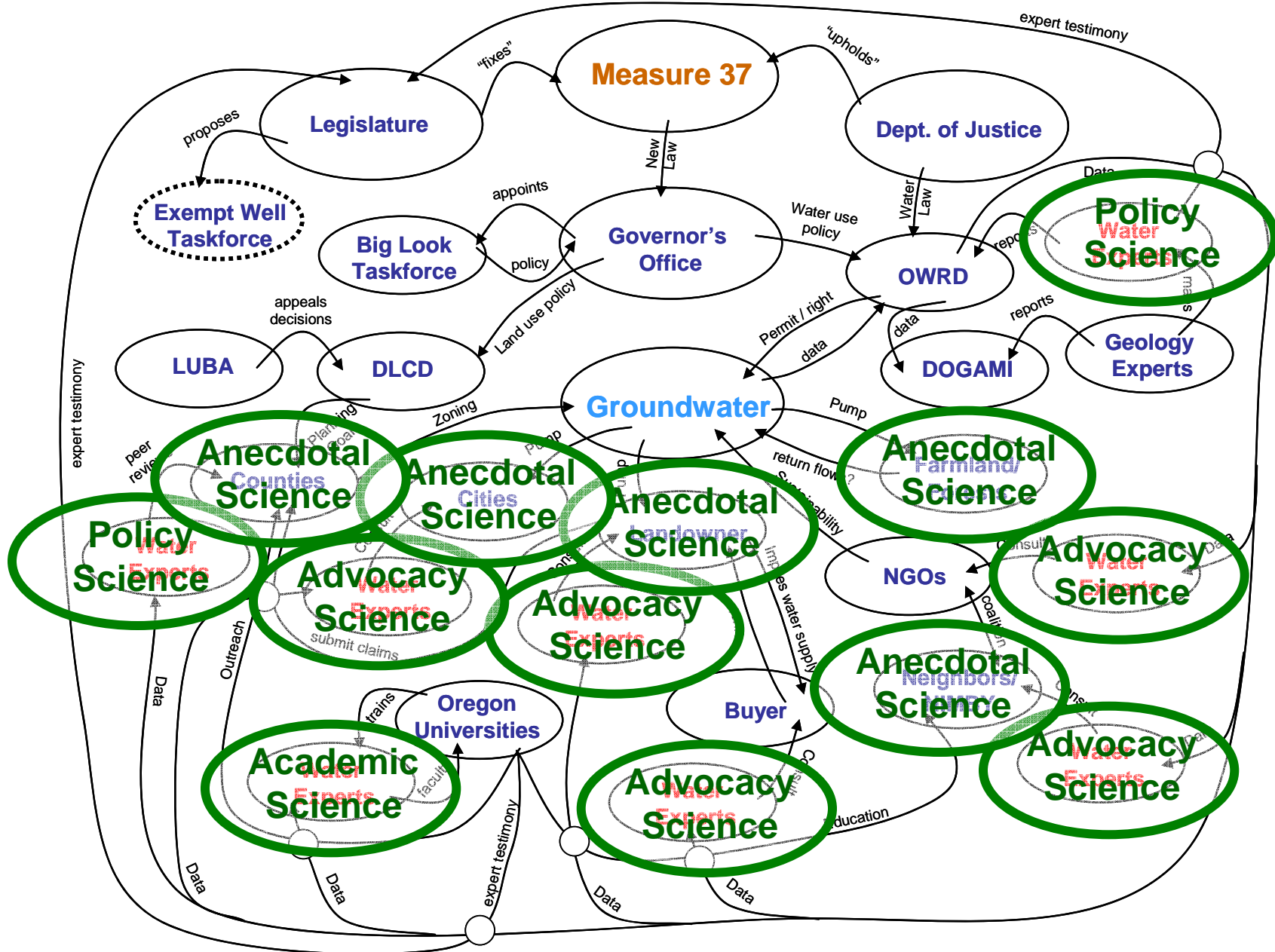
Ballot Initiative I-933 was a property rights initiative in Washington State comparable to Oregon’s Measure 37 in 2006. Lost by 59% of vote.

# SPAGHETTI BOWL WITH M37 MEATBALLS

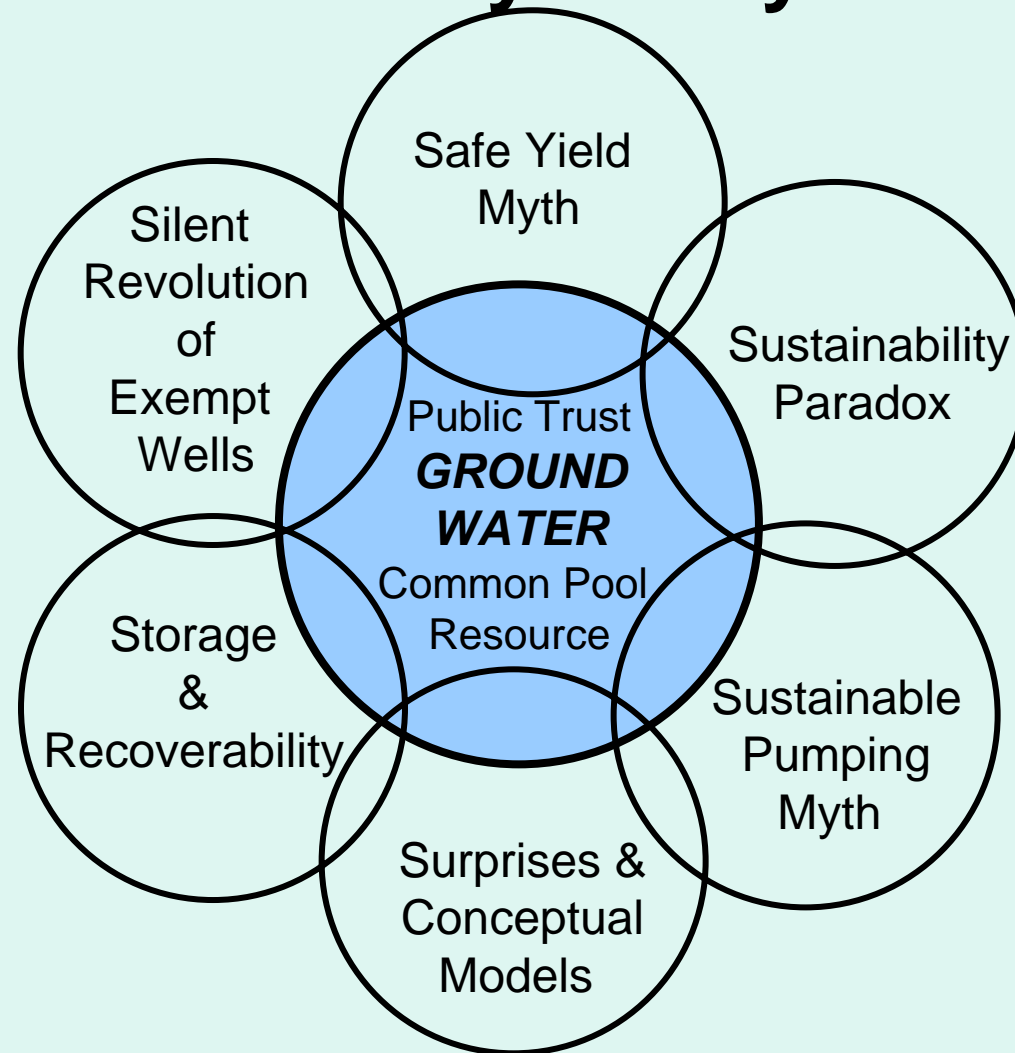




# SPAGHETTI BOWL WITH M37 MEATBALLS



# M37 Dueling Water Experts Issues Map or the “Hydro-Hydra”

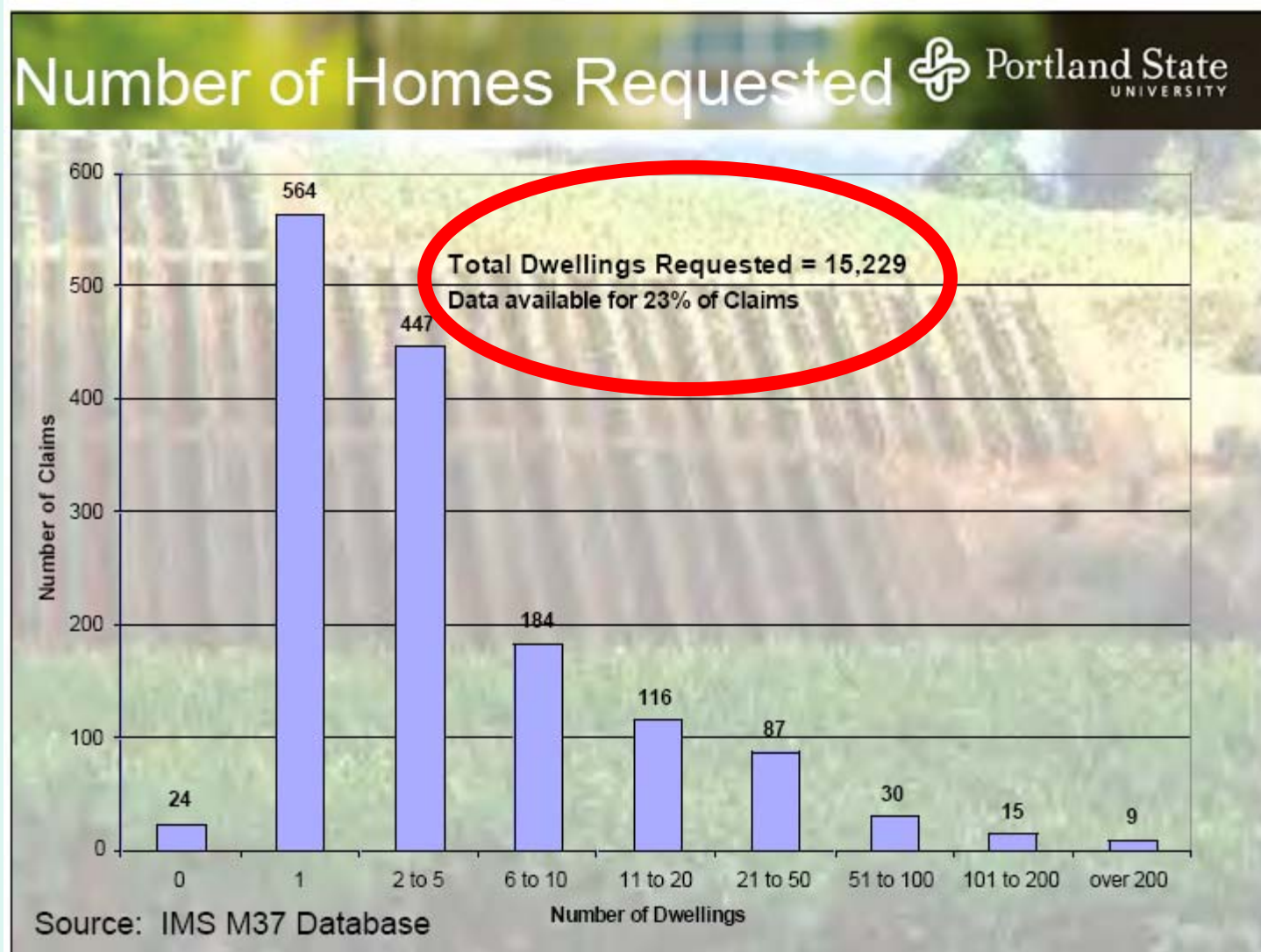


# **The Silent Revolution of “Exempt” Domestic Wells in Oregon**

- 💧 “Exempt” wells for domestic use are allowed to pump 15,000 gallons per day (indoor use only), irrigation of ½ acre permitted under “exempt wells” – “without waste”. 15,000 gallons per day equates to about 10 gallons per minute – every minute of every day.**
- 💧 In Marion County, Measure 37 claim applicants must address exempt well issue in Groundwater Sensitive Overlay Zones to County Planning Commission for consideration of claim.**

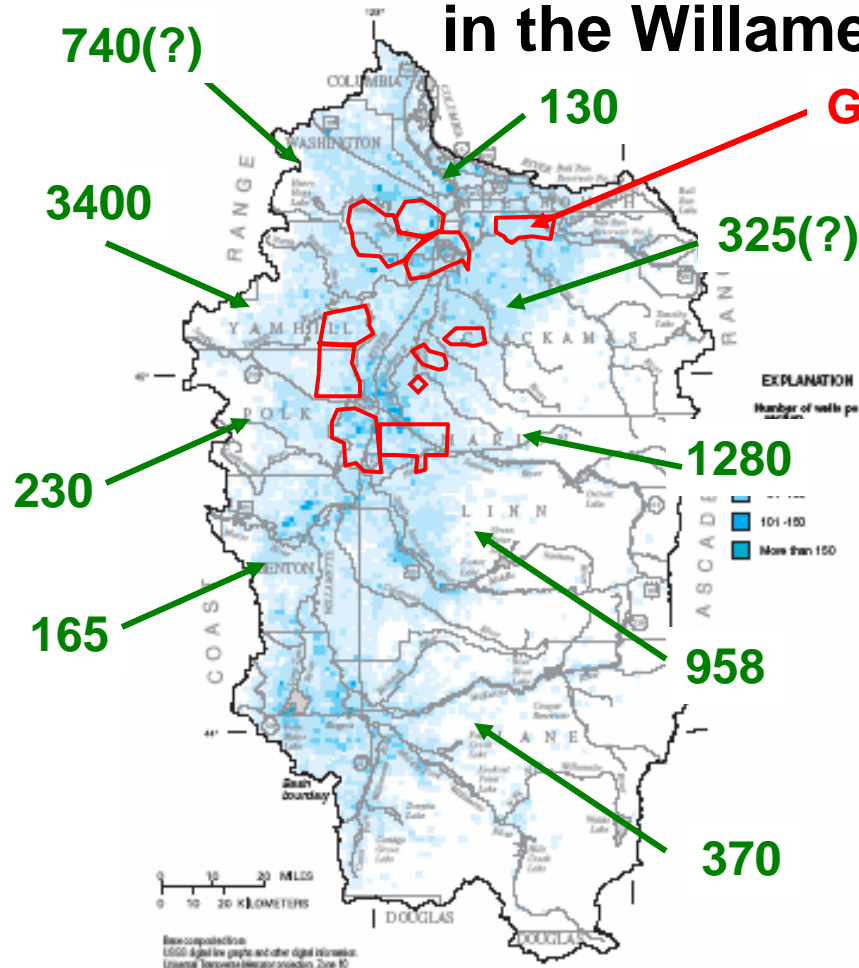


# How many exempt wells?



[http://www.pdx.edu/media/i/m/ims\\_M37pptJan07.pdf](http://www.pdx.edu/media/i/m/ims_M37pptJan07.pdf)

**When Statewide Measure 37 Claims Ranged Between 1,500 to 2,000 in 2005, Estimates of New “Exempt” Wells Ranged Between 7,500 to 10,000 in the Willamette River Basin**



**Groundwater Limited Areas**

*For comparison, Deschutes Water Alliance (2006) estimated an additional 12,000 “exempt” wells by 2025 in Deschutes River Basin.*

*Obvious future potential groundwater problem areas include Yamhill, Washington, and Marion counties.*

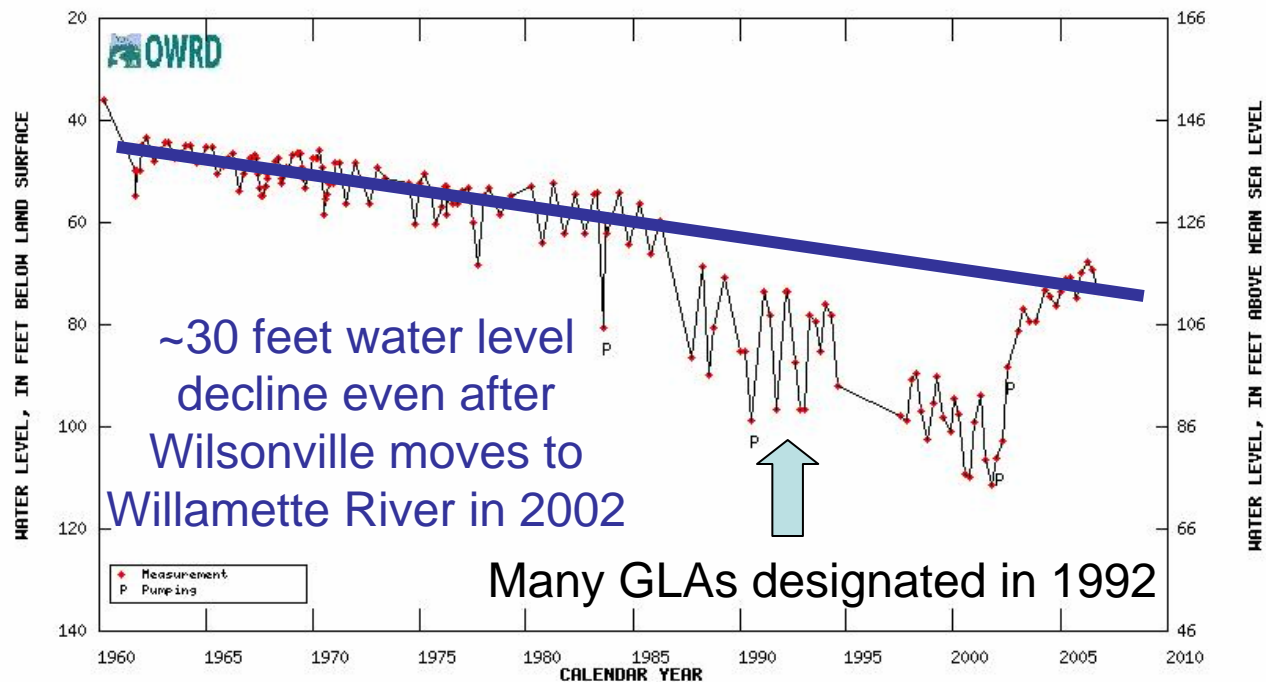
*Base map modified after OWRD and DLCD (2002).*

# Groundwater Limited Areas Generally Based on Water Level Declines

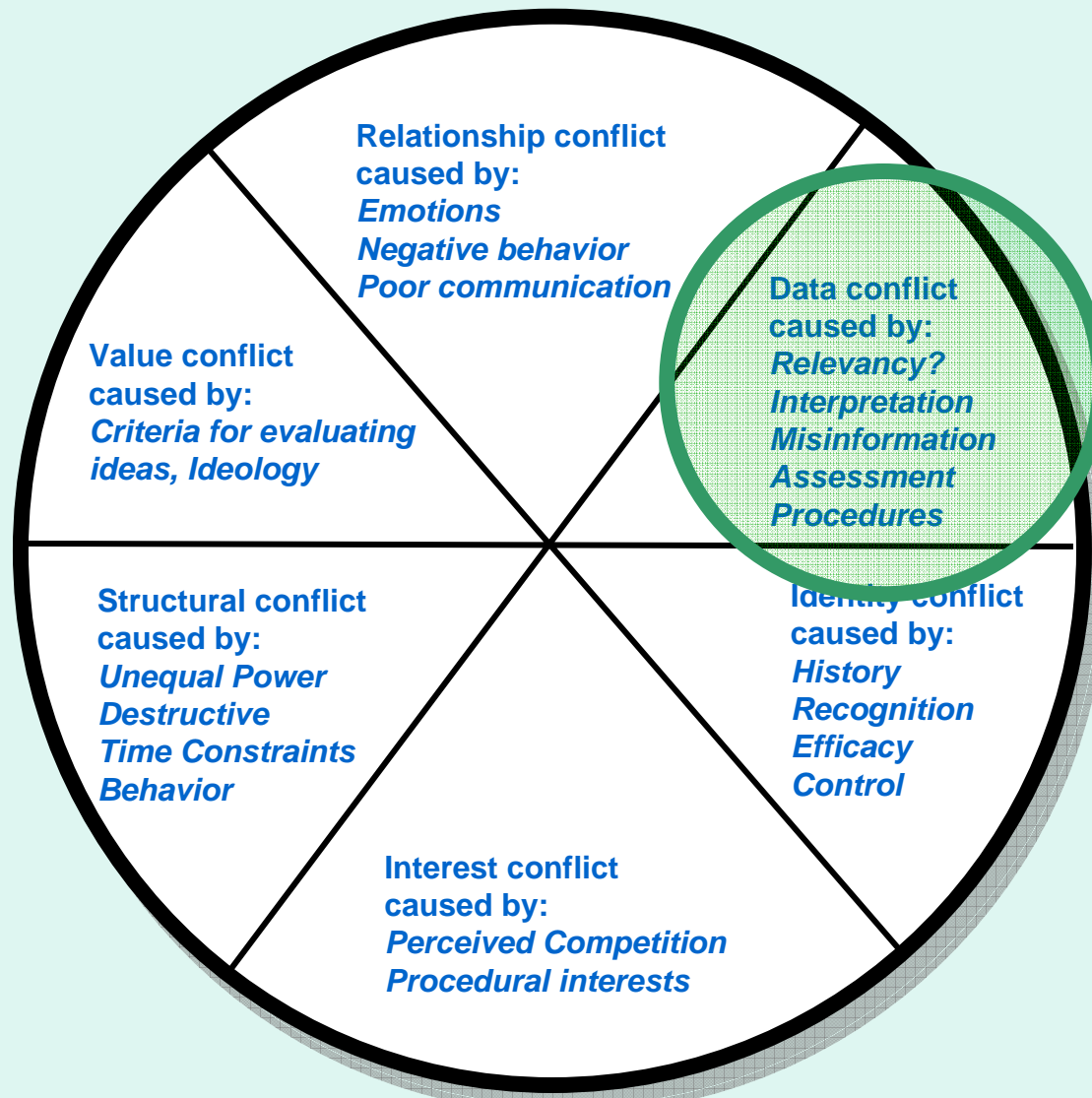
Hydrograph for State Well CLAC 8231, State Observation Well # 40

West of Wilsonville

Mell Location	3.00S1.00W16DDD
Oregon Water Resources Department Well Log ID	CLAC 8231
Oregon Water Resources Department State Observation Well Number	40
Mell depth, in feet below land surface	1000
Land surface elevation, in feet above mean sea level	186
Primary use of well	PUBLIC SUPPLY

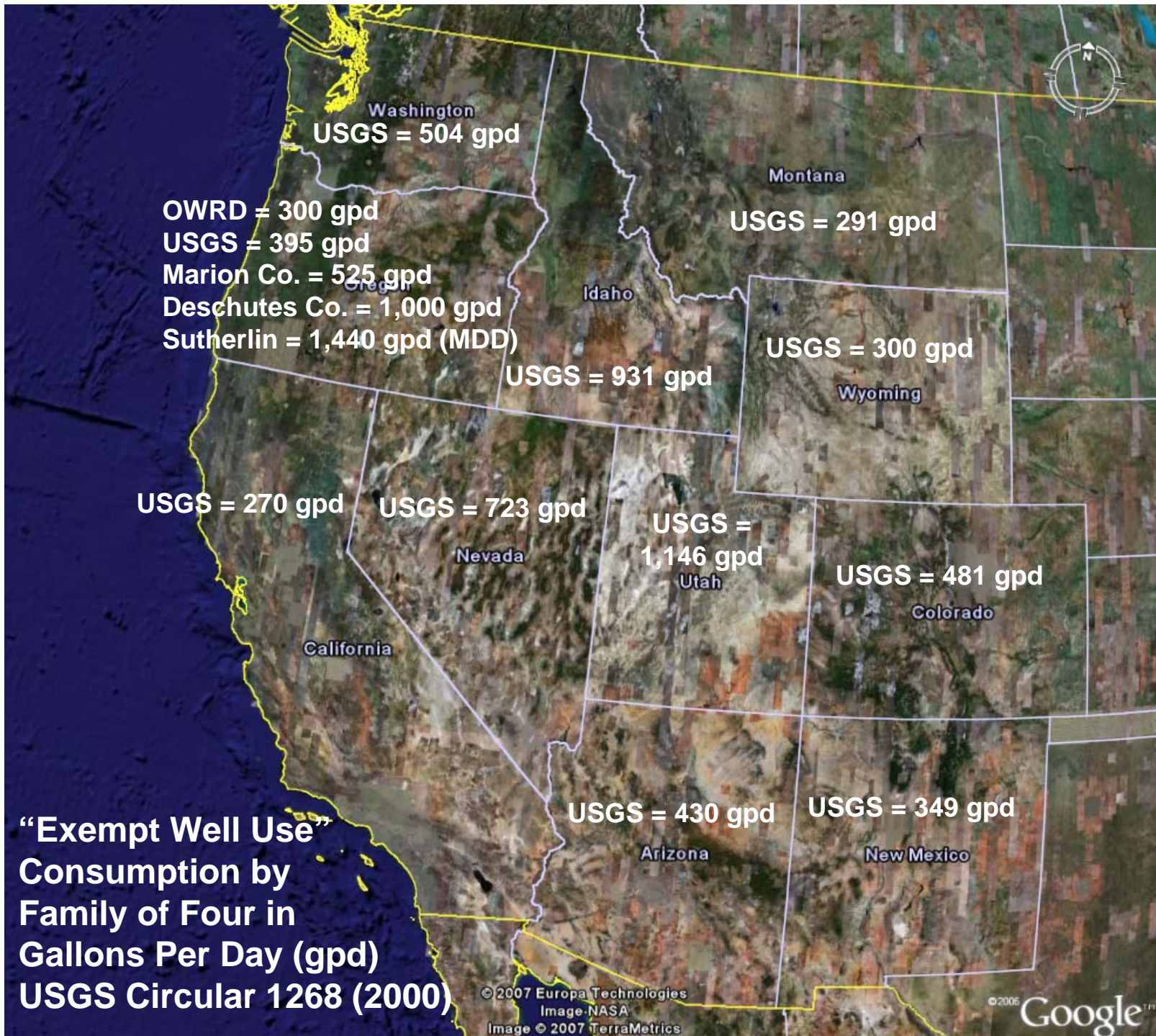


# M37 Spices & The Circle of Conflict



Modified after Moore (2003) using Rothman (1997)





## Land Use & Water Plan Laws?

- Ariz. – Yes, but...
- Calif. – Yes
- Colo. – Yes
- Idaho – Yes, but...
- Mont. – Yes, but...
- Nev. – No
- New Mex. – Yes
- Ore. – Yes, but...
- Utah – Yes, but...
- Wash. – Yes
- Wyo. – Yes, but...

# Groundwater Policy and Management Challenges

- ◆ House Bill 3540 proposes limiting M37 claims in Groundwater Limited or Critical Areas, which is a step in the right direction, **but it only addresses the existing problems** which developed while existing land use laws were in place.
- ◆ Water pumped by “exempt” domestic wells is no longer *de minimis*.
- ◆ What should be used as the **water planning** and policy metric for “exempt” domestic wells in intensively exploited groundwater basins – **“exempt” use, estimated use, actual use?**
- ◆ Questions regarding interference between users will more than likely require wellowners to **collect your own water level data** rather than relying on observation well network monitored by OWRD.
- ◆ What to do about the dueling expert syndrome? Integrate existing or new neutral boards (Board of Geologists, Exempt Well Taskforce of HB 2566) into review process or require developers to “bring water to the table” as required in other states.



**Dueling Experts and Water Mix Well.  
Thank you for your attention.**

