Fish Persistence and Permit Extensions: Three Oregon Case Studies

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Topics

- Municipal Water Supply Planning – State of Oregon
- Municipal Permit Extension 101
- Three Oregon Case Studies:

-Willamette River Water Coalition
-Clackamas River Water Users
-City of Cottage Grove

Municipal Water Supply Planning Legislative Recognition

- ORS 540.610(4) – water for reasonably anticipated growth
- ORS 540.610(1) – not subject for forfeiture for non-use
- ORS 540.510(3) – water use on lands to which the right is not appurtenant
- ORS 537.260(4) – partial perfection
- ORS 537.230(2) and 537.630(2) - 20 years to commence and complete construction

Municipal Water Supply Planning
State of Oregon Planning Tools

- Water right permits
- Basin Programs and "classifications"
- Reservations – reserve un-appropriated water for future economic development (multi-purpose storage)

Municipal Water Supply Planning Lulled into Complacency

- Permits for Planning
- 100 years of history
- In 2006 over 100 "undeveloped" municipal permits

Municipal Permit Extension 101

- Water right permits have development time lines
- “Permit Extensions” allow more time
- Once fully developed and beneficially used, a water right certificate can be issued

Municipal Permit Extension 101

- Permit extensions for 5-years were routine
- AG advice 1997 - competing demands and length of time
- Community Water Supply Work Group, November 1998
- New permit extension rules for municipal permits, November 2002

Municipal Permit Extension 101
New Rules (2002)

- Extension for the time needed to fully develop the permit
- Green Light Water - access to future increments of water based on Water Management and Conservation Plan (WMCP)
- Updated WMCP rules

Municipal Permit Extension 101

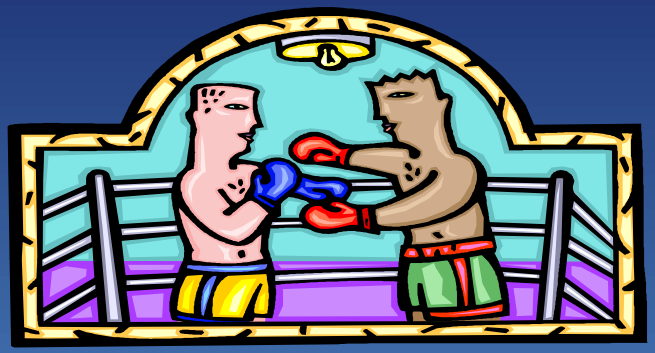
- Coos Bay 2004 – actual construction

- HB 3038 (2005) addressed Coos Bay, but added fish-protection provision
- The "undeveloped portion of the permit" must "maintain the persistence" of listed fish species
- Authorized use – maximum beneficial use = "undeveloped portion"

Municipal Permit Extension 101
How is it going?

Disagreement over:

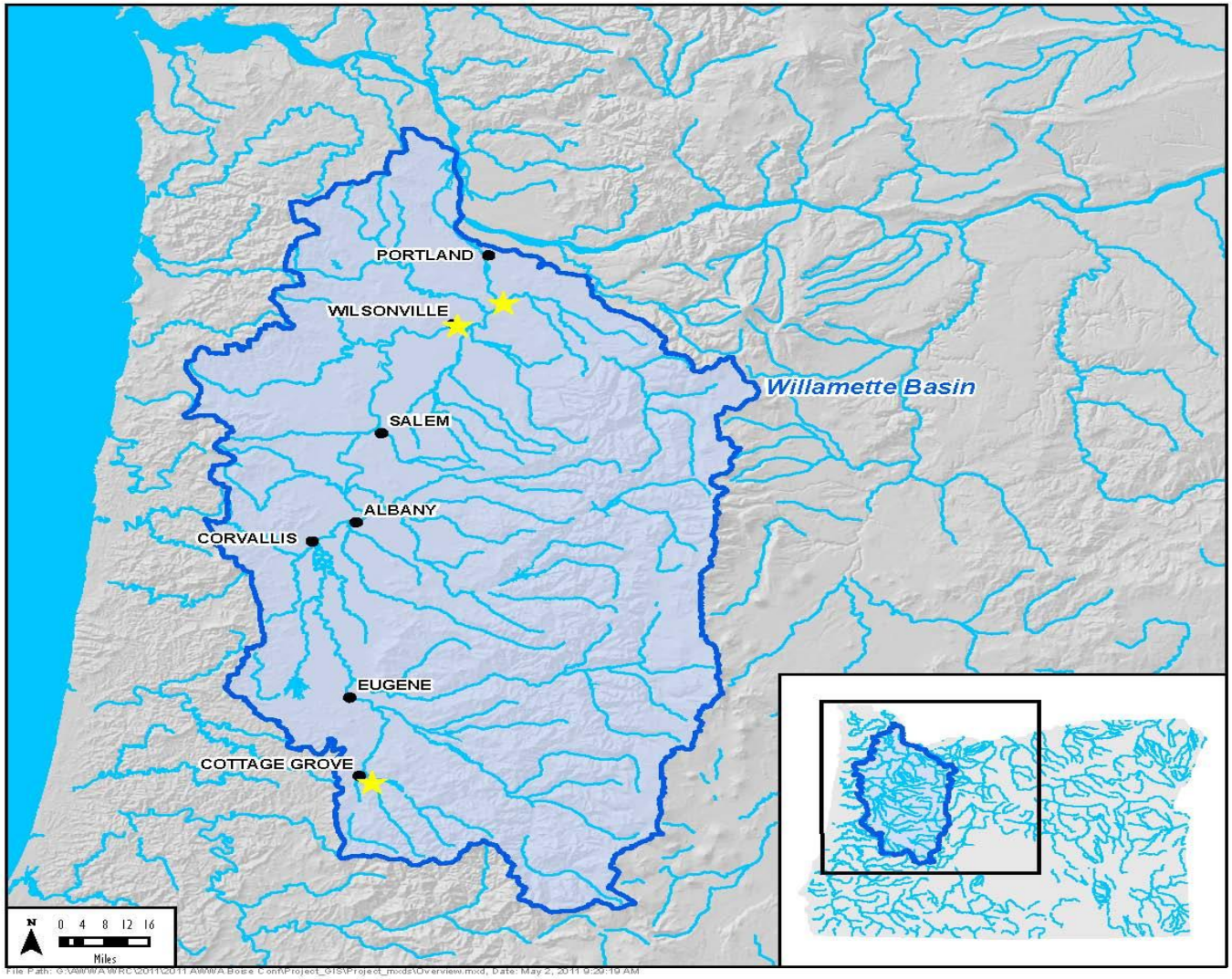
- legislative intent
- statutory terms
- fish protections conditions



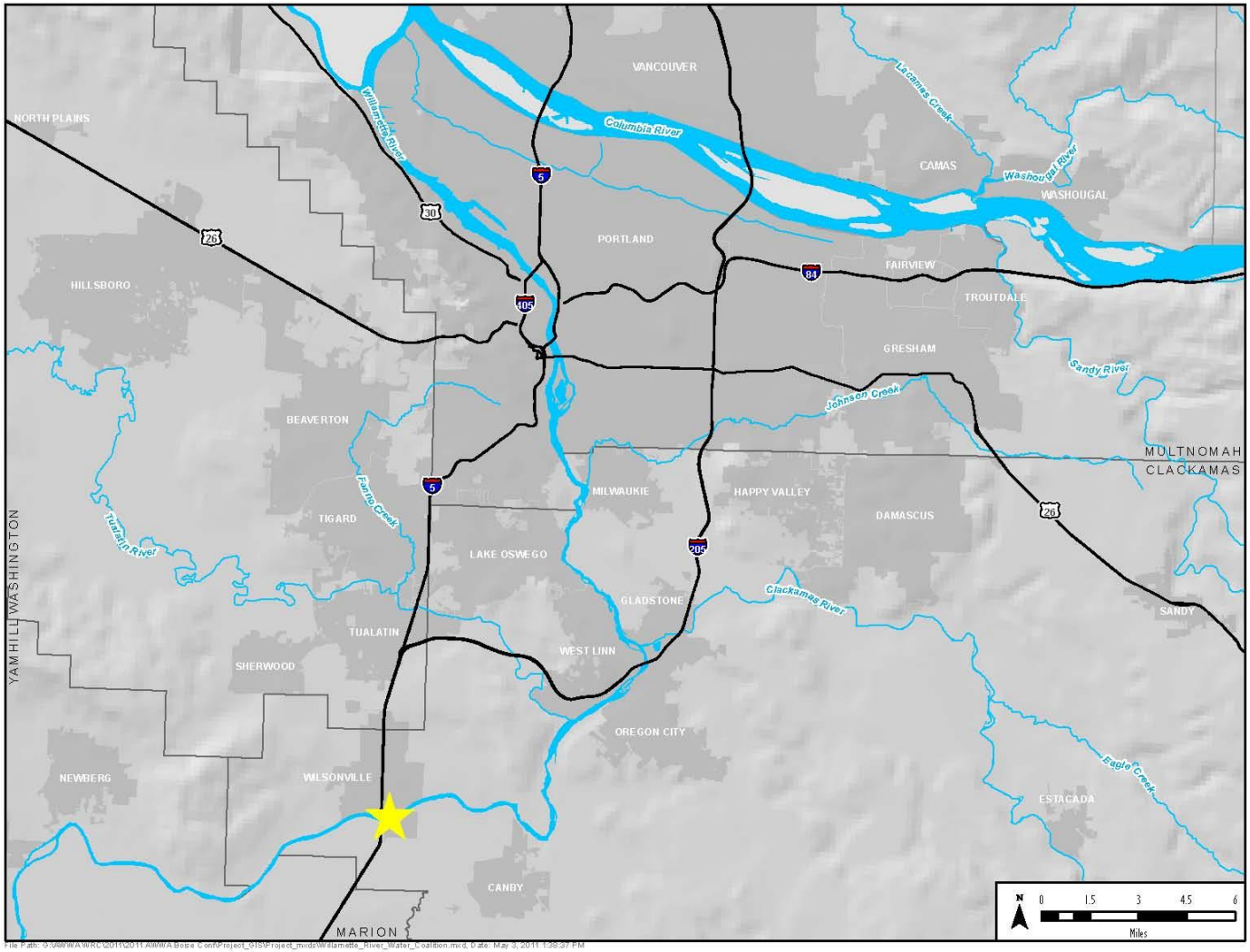
Same old same old….

- duration of extension
- demand projections
- WMCP

Three Oregon Case Studies



Willamette River Water Coalition



Willamette River Water Coalition

- Permit S-49240, 202 cfs from the Willamette River
- Priority date of 1973
- Multiple extensions granted by OWRD
- No water use under permit to date
- Extension request to 2047 based on demand of multiple coalition members

Willamette River Water Coalition
ODFW Advice

Recognizes that:

-ACOE storage projects "drive" the system

-water is available for new appropriations

Existing data:

-Instream water rights

-recommendations for release of stored water

-TMDL flow targets

-ODFW internal analysis (Winter Steelhead)

"Share the shortfall" – severity of the measure should be reflective of overall streamflow impact

ODFW Advice

Minimum Fish Flow Needs at Salem

Month	Flow (cfs)	Source
July - October	5,630	TMDL
November - March	6,200	ISWR
April - May	15,000	ODFW
June 1 - 15	12,600	ODFW
June 16 - 30	8,500	ODFW

Willamette River Water Coalition OWRD Proposed Order

- Grant extension until 2047
- No access to water until a WMCP seeking green light water is approved
- Amount of water that can be legally diverted shall be reduced by the percentage by which flow targets are not met

Willamette River Water Coalition Third Party Protest

- Conditions are not adequate to maintain persistence of fish
- Fails to consider other pending extensions in basin
- No diligent development
- Demand projections are faulty
- Extension duration is too long

Willamette River Water Coalition Protest Settlement

- Future users of the permit must develop a WMCP and seek green light water
- All WMCPs must have a special section "Willamette River Fish Flows: Public Education and Voluntary Conservation
- Conservation public message required

Willamette River Water Coalition

City of Sherwood WMCP submitted and approved 2008

Access to 23 cfs

Preparing to use Willamette River water

CITY NEWS, UPDATES & EVENTS

Sherwood and the Willamette River

Later this year, the City of Sherwood will begin drawing water from the Willamette River. Since some of Sherwood's water supply will come from this source, the City encourages its customers to conserve water to help fish as April and May are important months for fish spawning and migration. The State of Oregon established fish flow targets in the Willamette River which vary throughout the year. In April and May, the fish flow target is to protect high flows to help juvenile fish with out-migration.

Quick Facts

- Sherwood's water sources are groundwater and surface water, soon to include the Willamette River
- The Willamette River has fish species listed as threatened by state and federal agencies including:
  - Winter Steelhead trout
  - Spring Chinook salmon
  - Coho salmon
  - Bull trout
  - Oregon chub
- The Willamette River supports a variety of other native fish species, including Pacific lamprey, northern pike minnow, mountain whitefish, and redside shiners

What can you do to conserve water?

While 2011 is shaping up as a good water year, in future years, if fish flow targets aren't met, Sherwood may need to reduce the amount of Willamette River water it diverts. The most gains in water conservation in April and May will likely be found indoors. A variety of options are available to help you conserve more water indoors. For example, take shorter showers, check for water leaks, and install low-flow showerheads and faucet aerators. Indoor conservation items and information are available for free at the Utility Billing Department.

For more water conservation ideas and details, check out:

- http://www.sherwoodoregon.gov/utility-billing-department
- www.tvwd.org
- www.conserveh2o.org

While water conservation is important year-round, it is especially important when fish flow targets are not being met. As a condition of Sherwood's permit to use the Willamette River, the City is required to provide its water customers with this information.

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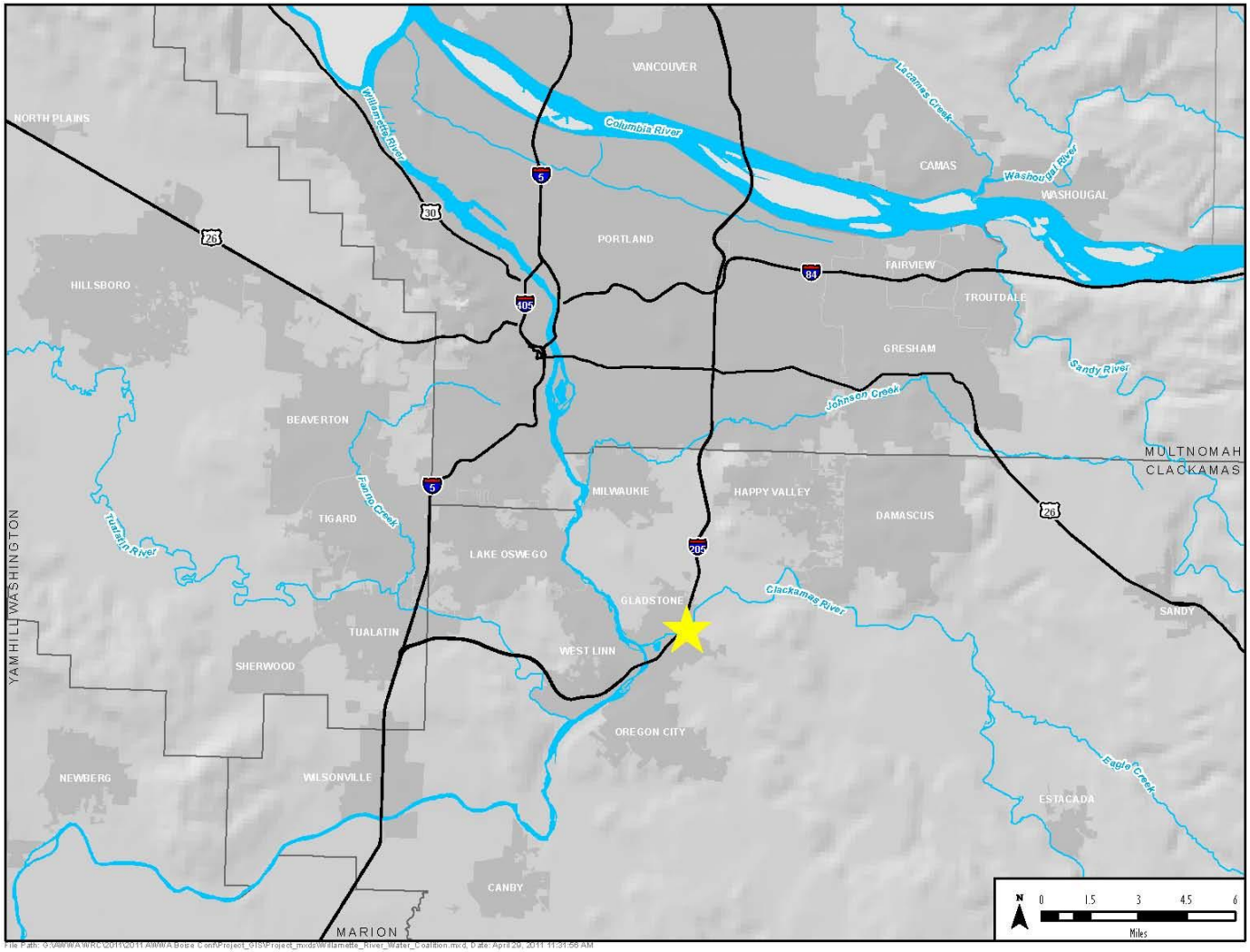
Clackamas River Water Users



Clackamas River Water Users

- Multiple water users, lower 3 miles of the Clackamas River
- Approximately 147 cfs of “undeveloped” permits
- Approximately 146 cfs of “developed” water rights/permits
- Priority dates ranging from 1918 to 1981
- Majority of the water rights “senior” to ODFW instream water right

Clackamas River Water Users

- Proactive approach to permit extensions (lets make this work):

-streamflow modeling by Portland State University

-intergovernmental organization “Clackamas River Water Providers”

-Timothy Lake releases

-meetings with ODFW

-development and sharing of information

Clackamas River Water Users
ODFW Advice

Existing data: 1964 Basin Investigation

Habitat value - lower 3 miles avoided by salmonids in July and August

Severity of measures should be reflective of available summer rearing habitat

Annual meeting with ODFW to “shape” release of stored water from Timothy Lake

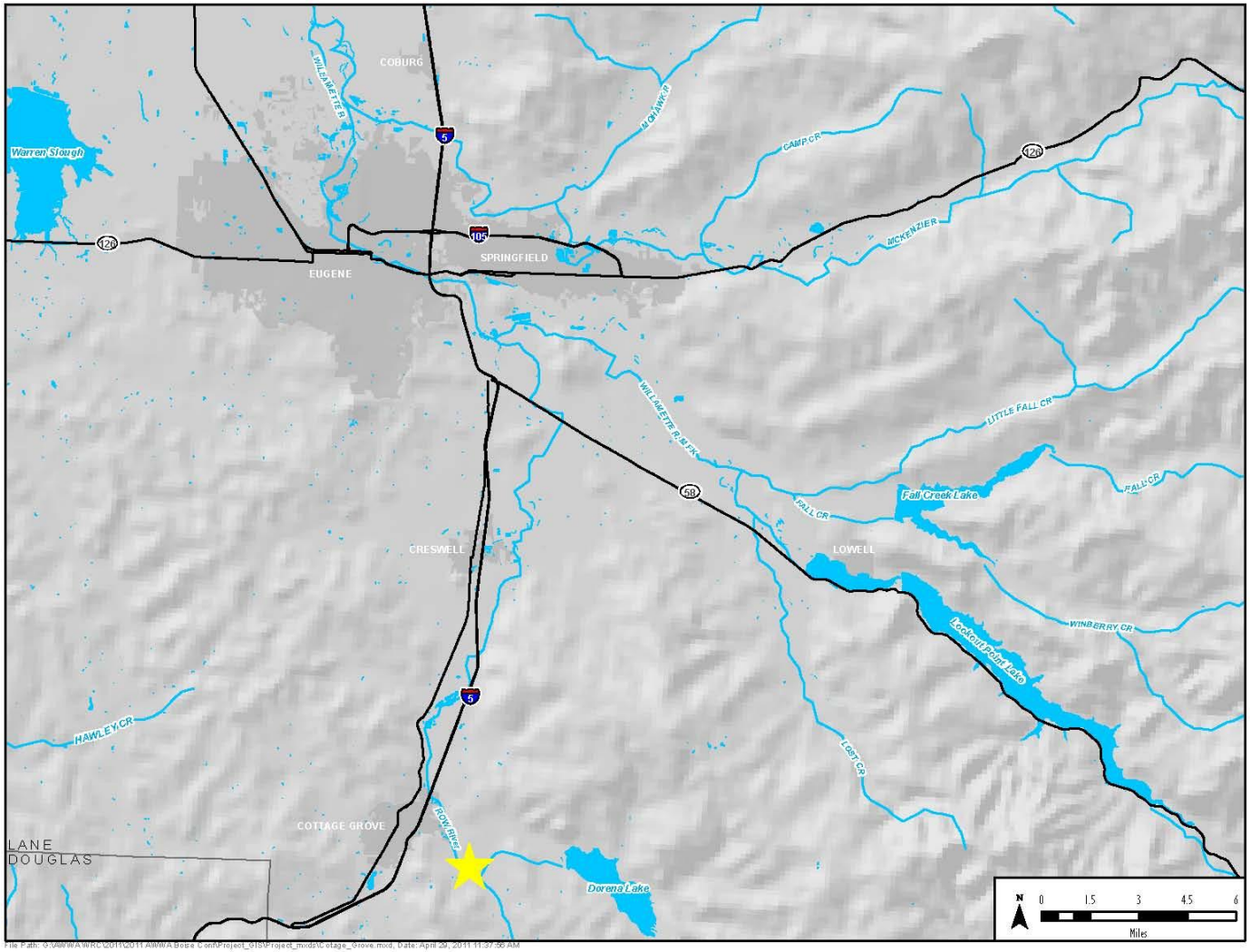
Clackamas River Water Users
OWRD Proposed Order

- NO surprises approach
- Propose to grant extensions for time requested
- Incorporates ODFW suggestions – share the shortfall, ODFW annual meeting etc.

Clackamas River Water Users Third Party Protests

- The kitchen sink!
- Protest January 4, 2008
- OWRD/ODFW defend the Proposed Order
- Negotiation, hearing, proposed order, amended proposed order, final order April 2011
- Way too much time and $$$

City of Cottage Grove



City of Cottage Grove

- Permit S-42117, 6.2 cfs from Row R.
- Priority date of 1977
- Four previous extensions
- Last extension expired October 1999

City of Cottage Grove

- 2006 Row River WTP expanded from 3.1 cfs to 6.2 cfs
- 2007 Bi-Op “no jeopardy”
- Extension submitted
- 2008 WTP completed, full beneficial use documented
- Aug. 2008 Proposed Final Order- no “undeveloped portion of the permit”

City of Cottage Grove
Third Party Protests

- "Undeveloped portion of the permit"
- Requires ODFW "fish persistence" review and WMCP
- Permit development after extension has expired
- Demonstration of beneficial use

City of Cottage Grove Third Party Protests

- Lawyers, briefs, hearing, final order, judicial review, court of appeals, amicus briefs
- Is this really about fish?
- Small communities don’t have extra $$

Conclusion

- Lack of meaningful state-level planning tools resulted in complacency
- Undeveloped municipal water right permits are a “key” future water supply
- Alternatives exist but are they affordable?

Conclusion

There is only one way to make “new” water and it is not very predictable