

Critical Groundwater Area Designation Rulemaking Process



In order to declare a Critical Groundwater Area (CGWA) under **ORS 537.730(1)(a-g)**, **one** of the following seven conditions must be met:

The groundwater supply is nearly overdrawn

Pattern of substantial interference on senior water rights holders

Groundwater is declining excessively

Patterns of interference on regulated geothermal resources

Pattern of substantial interference between wells

Groundwater temperature is, or has been, extensively altered

Groundwater pollution is impacting public health



If conditions are met for CGWA Declaration under **ORS 537.730(1)(a-g)**, OWRD may initiate the following rulemaking process

(A) CRITICAL GROUNDWATER AREA DESIGNATION

(B) RULE DRAFTING BEGINS

(C) LOCAL GOVERNMENT & INDIAN TRIBES CONSULTED

(D) RAC INITIATED

(E) RULE NOTIFICATION BEGINS

(F) PUBLIC COMMENT/HEARINGS BEGIN

(G) RULES ARE ADOPTED



Critical Groundwater Area Designation Rulemaking Details

(A) Critical Groundwater Designation

Relevant Statute(s) and Rule(s): **ORS 537.730(1)(a)-(g)**

In order for a Critical Groundwater Area (CGWA) declaration; one of the conditions under statute ORS 537.730(1)(a)-(g) need to met. These conditions are:

- Groundwater levels in the area in question are declining or have declined excessively;
- The Oregon Water Resources Department (OWRD) finds a pattern of substantial interference between wells within the area in question;
- OWRD finds a pattern of interference or potential interference between wells of groundwater claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;
- OWRD finds a pattern of substantial interference between wells within the area in question and:
 - An appropriator of surface water whose water right has an earlier priority date; or
 - A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the groundwater appropriation;
- The available groundwater supply in the area in question is being or is about to be overdrawn;
- The purity of the groundwater in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or
- Groundwater temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(B) Rule Drafting Begins

The Critical Groundwater Area Rules (CGWA) must contain the following information.

Defined Boundaries of a CGWA

Relevant Statute(s) and Rule(s): **ORS 537.735(1)(a-b) and OAR 690-010-0130(2)(a)**

The rules must define the boundaries of the critical groundwater area (CGWA) including in groundwater reservoirs located either in whole or in part of (CGWA). Any number of groundwater reservoirs which either wholly or partially overlies one another may be included within the CGWA.

Provisions for periodic review of conditions every 10 years

Relevant Statute(s) and Rule(s): **ORS 537.735(1)(b), OAR 690-010-0130(2)(b), OAR 690-010-0150(4)**

The rules must have a provision for OWRD to conduct a periodic review of the conditions within the critical groundwater area are no less than once every 10 years to evaluate the continuing need for the CGWA.

Corrective Actions (if needed)

Relevant Statute(s) and Rule(s): **ORS 537.735 (3)(a)-(f)/OAR 690-010-0150(2)(a)-(f)**

The rules may include any one or more of the corrective control provisions under **ORS 537.735(3)(a)-(f)**.

Provisions to review the rules every 3 years

Relevant Statute(s) and Rule(s): **ORS 690-010-0150(4), ORS 537.780(3)**

The Rules must contain a provision of a review of the rules if the rule adopted by the commission restricts groundwater every three years.

Assurance of substantial evidence in the rules

Relevant Statute(s) and Rule(s): **ORS 537.730(a-g), OAR 690-010-0130(2)(b)**

The rules must contain the substantial evidence relied upon for the CGWA declaration that meet ORS 537.730(1)(a)-(g)

(C) Local Government & Indian Tribes Consulted

Relevant Statute(s) and Rule(s): **ORS Chapter 197, OAR Chapter 660 Division 30, OAR Chapter 690 Division 005, OAR 690-010-0140.**

OWRD needs to consult with the affected local government to determine whether it's proposed CGWA rules are compatible with the county's acknowledged comprehensive use plan. OWRD will also consult with any federally recognized tribes within the proposed Critical Groundwater Area. OWRD must provide the following information to the affected local government:

- Boundaries of the proposed critical groundwater area;
- List of any groundwater reservoirs located either in whole or in part within the proposed critical groundwater area;
- Copies of any evidence relied upon for the designation;
- List of any proposed corrective control provisions to be included in the proposed critical groundwater area rule under ORS 537.735
- A copy of the report presented to the commission in OAR 690-010-0130(4)(c).

(D) RAC Initiated

Relevant Statute(s) and Rule(s): **ORS 183.407**

OWRD selects Rules Advisory Committee (RAC) members from among those who are likely to be affected by the proposed new rule or rule change. We gain valuable feedback on the draft rules and any fiscal impacts from the RAC members. Meetings are generally 2-3 hours but may last longer.

(E) Rule Notification Begins

Relevant Statute(s) and Rule(s): **ORS 183.335, ORS 537.730(3)(a), ORS 537.730(3)(b), OAR 690-010-0130(5)-(6)**

In addition to the requirements under ORS 183.335, OWRD must notify the owner of record of all groundwater registrations, permits and certificates for water user with CGWA by regular mail. Additionally, any water well constructor licensed under ORS 537.747 by regular mail.

(F) Public Comment/ Public Hearing Begin

Relevant Statute(s) and Rule(s): **ORS Chapter 183.335(b), ORS 537.730(2), OAR 690-010-0130(5)**

OWRD must hold a hearing within the basin 60 days after initial notification.

(G) Rules Are Adopted