

Individual Oral and Written Comments Received

Below is a tabulation of the written and oral comments received during the public comment period for the Groundwater Allocation Rulemaking (March 1 through June 14, 2024). This list includes only individual comments and not those submitted through automated forms. Any stated affiliation and/or location is noted. Any stated support or opposition is also noted as is any recommendation to either pause or revise the rules as opposed to stating a position. In some instances, support or opposition might be inferred, but we opted not to make that inference and have indicated apparently neutral or indeterminate positions as “N/A.” If the commenter suggested specific rule language revisions, that is also noted. The Department also received

Name	Stated Affiliation	Location	Support/ Oppose/ Pause/ Revise	Propose Rule Language Changes	Written (W)/Oral (O) Comments
A. Brooks	N/A	N/A	Oppose	No	W – May 29, 2024
Aimee Travis	Food & Water Watch	Statewide	Support	No	W – June 14, 2024
Alan Bellanca	Pete's Mountain Water Company	Durham (Washington State)	Support	No	W – April 25, 2024
Alex Clark	Neskowin Farmers Market	Tillamook	N/A	No	W – May 30, 2024
Allen Hallmark	N/A	Medford	Support	No	W – May 14, 2024
Anne Squier	Former Board Member of Water Policy Review Board	Portland	Support	No	O – May 21, 2024 (Salem/Zoom)
Anonymous	N/A	Portland	Oppose	No	W – June 3, 2024
April Snell	RAC Member; Oregon Water Resources Congress	Statewide	Revise	No	W – June 14, 2024
Art Robinson	Oregon State Senate	District 2	Oppose	No	W – May 5, 2024
Austin Smith Jr	Confederated Tribes of the Warm Springs Indian Reservation	Warm Springs			W – June 14, 2024
Babs Alvernaz	N/A	Junction City	Support	No	W – May 10, 2024
Barbara Boyer	Yamhill Soil & Water Conservation District	McMinnville	Revise	No	W – May 29, 2024
Barry Shullanberger	Lake County Board of Commissioners	Lake County	Oppose	No	O – April 4, 2024 (Bend)
Bart Barlow	Barlow Environmental Consulting	La Grande	Support	No	W - June 14, 2024
Benjamin Ben-Baruch	N/A	Ashland	Support	No	W – May 15, 2024
Berthe Palmrose	N/A	Corvallis	N/A	No	W – April 11, 2024

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Bill Bold	N/A	N/A	N/A	No	W – May 20, 2024
Bob Hunter	N/A	Jackson County	Support	No	O – May 16, 2024 (Central Point)
Bonnie New	N/A	Hood River	Support	No	O – May 21, 2024 (Salem/Zoom)
Brian von Dedenroth	N/A	N/A	Support	No	W – June 14, 2024
Brock Nation & Jodi Hack	Oregon Realtors; Oregon Home Builders Association	Statewide	Oppose	No	W – June 5, 2024
Bruce Anderson	N/A	Eugene	Support	No	W – March 29, 2024
Carla Keene	Cow Creek Band of Umpqua Tribe of Indians	Roseburg			W - June 12, 2024
Carol Dutton	N/A	Harney County	N/A	No	O – May 21, 2024 (Salem/Zoom)
Casey McClellan	RAC Member; Oregon Winegrowers Association; 7 Hills Winery	Umatilla County	Support	Yes	W – May 17, 2024
Catherine Kordes	Retired Pediatrician; The Nature Conservancy Board Member	Eugene	Support	No	W – April 18, 2024
Charles Froelich	N/A	Portland	N/A	No	O – May 21, 2024 (Salem/Zoom)
Chris Marks	Confederated Tribes of the Umatilla Indian Reservation	N/A	Support	No	O – April 18, 2024 (La Grande) W – June 14, 2024
Christine Goodwin	Oregon House of Representatives	District 4	Pause	No	W – June 11, 2024
Christine Larson	B & C Development	Tumalo Irrigation District	N/A	No	W – April 3, 2024
Christopher Hall	Water League	Statewide	Support	Yes	W – May 16, 2024 O – May 16, 2024 (Central Point) O – May 21, 2024 (Salem/Zoom) W – June 12, 2024
Clair Klock	Retired farmer; conservation specialist	Corbett	Support	No	W – June 5, 2024
Claire Sykes	Freelance writer	Portland	Support	No	W – April 22, 2024
Craig Horrell	Deschutes Basin Board of Control	Deschutes County	N/A	Yes	W – June 14, 2024
Craig Lacy	N/A	Bend	N/A	No	W – April 4, 2024

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					O – April 4, 2024
Craig Miller	Oregon Natural Desert Association	Bend	Yes	No	O – April 4, 2024 (Bend)
Curt Howell	Local landowner	N/A	N/A	No	O – April 18, 2024 (La Grande)
D.B. Steadman	N/A	Tigard	N/A	No	W – March 31, 2024
Danette Faucera	Oregon Department of Fish and Wildlife	Statewide	Support	No	W – June 11, 2024
Daniel Bonham	Oregon State Senate	District 26	Pause	No	W – June 14, 2024
David Felley	N/A	La Grande	Support	No	W – May 22, 2024
David Stone	N/A	Springfield	N/A	No	W – March 13, 2024
Dean Runyan	N/A	N/A	N/A	No	W – June 14, 2024
Delores Porch	N/A	Albany	Support	No	W – June 14, 2024
Dennis Linthicum	Oregon State Senate	District 28	Pause	Yes	W – June 12, 2024
Diane Hoobler	N/A	Lake Oswego	Support	No	W – June 9, 2024
Dominic Carollo	Upper Klamath Landowners	Klamath County	Revise	Yes	W – June 14, 2024
Donna Beverage	Union County Board of Commissioners	Union County	Oppose	No	O - April 18, 2024 (La Grande)
Doug Riggs	Central Oregon Cities Organization	Deschutes County	Oppose	No	O – April 4, 2024 (Bend)
Duncan Kerst	N/A	N/A	Support	No	W – June 12, 2024
Dwayne Yunker	Oregon House of Representatives	District 3	Pause	No	W – May 13, 2024
E. Werner Reschke	Oregon House of Representatives	District 55	Oppose	No	W – June 13, 2024
Ed Fitch	City of Redmond; Central Oregon Cities Organization	Deschutes County	Oppose	Yes	O – April 4, 2024 (Bend) W – April 19, 2024 W – June 6, 2026 O – June 14, 2024 (Bend – WRC)
Elisabeth Parco	N/A	N/A	N/A	No	W – April 4, 2024
Emily Klepper	Clackamas County Board of Commissioners	Clackamas County	Revise	No	W – June 10, 2024
Emily McIntire	Oregon House of Representatives	District 56	Revise	Yes	O – May 16, 2024 (Central Point) W – June 11, 2024
Eric Dittmer	N/A	Medford	Support	No	W – May 22, 2024
Erika Fitzpatrick	Rancher	Juntura	Oppose	No	W – April 4, 2024
Gail Barton	N/A	N/A	N/A	No	W – March 25, 2024

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Gail Sabbadini	Retired Biologist	Bend	Support	N/A	W – April 15, 2024 W – June 11, 2024
Gary Sumrak	N/A	Medford	Support	No	W – May 21, 2024
Gary Young	N/A	Paulina	N/A	No	W – May 13, 2024
Gavin Leslie	N/A	Bend	N/A	No	W – June 4, 2024
Glenn Barrett	Water for Life	Statewide	Revise	Yes	O - April 4, 2024 (Bend) O – May 16, 2024 (Central Point) O – May 21, 2024 (Salem/Zoom) W - June 14, 2024 O – June 14, 2024 (Bend – WRC)
Greg Kupillas	RAC Member; Pacific Hydro-Geology, Inc.; Oregon Groundwater Association	Molalla	Revise	No	O – May 21, 2024 (Salem/Zoom) W – June 13, 2024 O – June 14, 2024 (Bend – WRC)
Holli Morton	Josephine County Republican Party	Josephine County	N/A	No	O – May 16, 2024 (Central Point)
Ilona Frost	N/A	Roseburg	N/A	No	W – April 10, 2024
Irene Gilbert	N/A	La Grande	N/A	No	W – May 13, 2024
J. Johansen	Irrigator	Wallowa County	Support	No	W – June 3, 2024
Jack Fay	N/A	Ashland	Support	N/A	O – May 16, 2024 (Central Point)
Jana McKamey	Oregon Winegrowers Association	Statewide	N/A	No	W – May 31, 2024
JD	N/A	N/A	N/A	No	W – March 30, 2024
Jean Quinsey	N/A	Lake Oswego	Support	No	W – April 18, 2024 O – May 21, 2024 (Salem/Zoom)
Jeremy Austin	Central Oregon LandWatch	Bend	Support	No	W – June 14, 2024
Jesse Edwards	Oregon resident	N/A	Oppose	No	W – June 4, 2024
Jesse Robbins	Angler/ Boater/ Outdoorsman	Springfield	Support	No	W – June 12, 2024
Jill Jolly	N/A	N/A	Support	No	W – May 15, 2024
Jim & Jean Buck	N/A	Eagle Point	Support	No	W – May 21, 2024
Jim Powell	N/A	Bend	N/A	No	W – June 12, 2024
Joanne Fanucchi	N/A	Cheshire	N/A	No	W – May 10, 2024
John & Diane Butler	N/A	Redmond	Support	No	W – May 28, 2024
John Hamburg	N/A	Eugene	Support	No	W – June 3, 2024

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John Hillock et al.	Wallowa County Board of Commissioners	Wallowa County	Oppose	No	W – May 15, 2024
John O'Connor	N/A	N/A	N/A	No	W – June 11, 2024
John Thelan	N/A	N/A	N/A	No	W – May 16, 2024
John West et al.	Josephine County Board of Commissioners	Josephine County	Pause	No	W – April 4, 2024
Judy Todd	N/A	Portland	Support	No	W – May 21, 2024
Judy Trego	Sisters Chamber of Commerce	Sisters	N/A	No	O – April 4, 2024 (Bend)
Julie Carte	N/A	Jackson County	N/A	No	W – March 23, 2024 O – May 16, 2024 (Central Point)
Karen Lewotsky	RAC Member; Oregon Environmental Council	Statewide	Support	Yes	O – May 21, 2024 (Salem/Zoom) W – June 14, 2024 O – June 14, 2024 (Bend – WRC)
Kari Duncan, Rebecca Geisen, Jim McCauley, Michael Martin, Mark Landauer, Jason Green	Oregon Water Utility Council; Special District Association of Oregon; League of Oregon Cities; Oregon Association of Water Utilities	Statewide	Oppose	No	W – May 30, 2024
Kate Fitzpatrick	RAC Member; Deschutes River Conservancy	Deschutes County	N/A	No	O – April 4, 2024 (Bend) W – June 12, 2024
Kay Cusick	N/A	N/A	N/A	No	W – April 1, 2024
Kelley Minty	Klamath County Board of Commissioners	Klamath County	Pause	No	W – May 6, 2024
Kelly Warren	N/A	Pilot Rock	Oppose	No	O – April 18, 2024 (La Grande)
Kevin Christman	Rancher	Jackson County	N/A	No	O – May 16, 2024 (Central Point)
Kevin Gill	Clouser Drilling	Grants Pass	Oppose	No	O – May 16, 2024 (Central Point)(W – June 13, 2024
Kevin Mannix	Oregon House of Representatives	District 21	Pause	No	W – May 20, 2024
Kyle Smith	Oregon Water Partnership	Statewide	Support	No	O – June 14, 2024 (Bend – WRC)

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Kristina Bennett Cheney	N/A	Eugene	Support	No	W – June 14, 2024
Laura & Richard Secord	N/A	Cottage Grove	Revise	No	W – June 9, 2024
Lauren Link	The Nature Conservancy	Statewide	Support	Yes	O – May 21, 2024 (Salem/Zoom) W – June 14, 2024
Lauren Poor	RAC Member; Oregon Farm Bureau	Statewide	Oppose	No	W – June 14, 2024
Leslie Bach	Professional hydrologist	Portland	Support	No	W – May 30, 2024
Lisa Brown	RAC Member; WaterWatch of Oregon	Statewide	Support	Yes	O – April 4, 2024 (Bend) W – June 11, 2024 W – June 14, 2024 O – June 14, 2024 (Bend – WRC)
Malia Kupillas	Board Member of Nestucca, Neskowin and Sand Lake Watershed Council; Co-Chair of Oregon Geology Map Advisory Committee for the Department of Geology and Mineral Industries	Molalla	Oppose	No	O – May 21, 2024 (Salem/Zoom) W – June 11, 2024 O – June 14, 2024 (Bend – WRC)
Marc Liverman	N/A	Portland	Support	No	W – June 14, 2024
Margaret Townsend	Center for Biological Diversity	Statewide	Support	Yes	W – June 12, 2024
Marilyn Tate Koenitzer	N/A	Bend	Support	No	W – April 4, 2024 W – June 14, 2024
Mark Hutto	N/A	Medford	Oppose	No	W – May 16, 2024
Mark Morgan	City of Hermiston	Hermiston	N/A	No	W – April 9, 2024
Mark Rogers	Oregon Chapter, Trout Unlimited	Statewide	Support	No	W – May 24, 2024
Mark Salvo	Oregon Natural Desert Association	Statewide	Support	No	O – April 4, 2024 (Bend)
Martin Millard	N/A	N/A	Oppose	No	W – April 4, 2024
Mary Becky Powell	Deschutes County League of Women Voters	Deschutes County	N/A	No	O – April 4, 2024 (Bend) W – April 4, 2024 W – June 14, 2024 O – June 14, 2024 (Bend – WRC)

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Mary Logalbo	Clackamas River Basin Council	Clackamas	Support	No	W – May 16, 2024
Maynard Freemole	N/A	N/A	Support	No	W – June 7, 2024
Melanie Keebler	City of Bend	Bend	Oppose	No	O – June 14, 2024 (Bend – WRC)
Micah Wait	Wild Fish Conservancy	Statewide	Support	No	W – May 21, 2024
Michael Beaty	Landowner/water user	Halfway	Support	No	W – May 28, 2024
Michael Preedin	City of Sisters; Central Oregon Cities Organization	Deschutes County	Oppose	No	O - April 4, 2024 (Bend)
Michele Jones	N/A	Eugene	N/A	No	W – March 22, 2024
Mickey Killingsworth	Jefferson County Farm Bureau	Jefferson County	N/A	No	W – June 14, 2024
Mike Buettner	City of Bend	Bend	Oppose	No	O – April 4, 2024
Molly Collins	Willamette Valley farmer	N/A	N/A	No	O – May 21, 2024 (Salem/Zoom) W – June 14, 2024
Multiple signatories	Grace Memorial Church	Portland	Support	No	W – June 9, 2024
Myron Redford	Redford/Wetle Farms	Amity	Support	No	W – June 11, 2024
Ned Austin	Domestic well user	Bend	Support	No	W – June 5, 2024
Neil Brandt	WaterWatch of Oregon	Statewide	Support	No	O – April 4, 2024 (Bend) O – May 21, 2024 (Salem/Zoom)
Nigel Von Hruska	N/A	N/A	N/A	No	O – May 16, 2024 (Central Point)
Noah Robinson	Senate Candidate	Cave Junction	Oppose	No	W – May 5, 2024 O – May 16, 2024 (Central Point)
Nunzie Gould	N/A	Bend	Support	No	O – May 21, 2024 (Salem/Zoom) W – June 14, 2024
Paul Lipscomb	Oregon Land and Water Alliance	Sisters	Support	No	W – April 7, 2024
Penelope Kaczmarek	N/A	Lincoln County	Support	No	O – May 21, 2024 (Salem/Zoom)
Peter Tronquet	N/A	Lake Oswego	Support	No	W – May 16, 2024
Peter Wiese	N/A	N/A	Oppose	No	W – June 4, 2024

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Phil Chang	Deschutes County Board of Commissioners	Deschutes County	N/A	No	O – April 4, 2024 (Bend) W – April 21, 2024
Phillip Callaway	Domestic well user	Crawfordsville	Support	No	W – June 2, 2024
R. Matthew Scarfo et al.	Union County Board of Commissioners	Union County	Oppose	No	W – May 15, 2024
Rachel O'Connor	Environmental Defense Fund, Oregon Water Partnership	Statewide	Support	No	O – May 21, 2024 (Salem/Zoom)
Rand Dawson	Residential water right holders	Oregon Central Coast	Support	No	O – May 21, 2024 (Salem/Zoom)
Randall Koch	N/A	Neskowin	N/A	No	W – May 31, 2024
Randy White, Jon Elliott	Jackson County Stockmen's Association	Jackson County	Oppose	No	W – May 28, 2024
Rebecca Gladstone & Peggy Lynch	League of Women Voters of Oregon	Statewide	Support	No	W – May 21, 2024
Richard Benner	N/A	N/A	N/A	No	W – June 1, 2024
Richard Thompson	Resident of Chahalem Mountain Groundwater Limited Area	Newberg	N/A	No	W – June 12, 2024
Richard Wininger	N/A	Bend	Support	No	W – June 13, 2024
Rick Bastasch	N/A	Salem	Support	No	W – June 10, 2024
Rob Kirschner	The Conservation Angler	Statewide	Support	No	W – May 21, 2024
Robert Bumstead	Former OWRD staff	N/A	Support	No	W – May 19, 2024
Rodney Case	Private landowner	N/A	N/A	No	O – April 18, 2024 (La Grande)
Ryan Carson	N/A	N/A	NA	No	W – May 23, 2024
Ryan Gill	Clouser Drilling	N/A	Pause	No	W – June 14, 2024
Scott & Sue Pollard	Farm family	N/A	Oppose	No	W – June 4, 2024
Stephanie Tidwell	Water Climate Trust	Statewide	Support	Yes	O – May 21, 2024 (Salem/Zoom) W – June 14, 2024
Steve Goldberg	Deschutes Redbands, Trout Unlimited	Deschutes County	Support	No	W – June 12, 2024
Steve Lanigan	N/A	Portland	Support	No	W – June 14, 2024
Steven Bruce	Snookum Water Associates, Inc.	Eugene	Oppose	No	W – April 2, 2024

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Sue Safford	N/A	Portland	Support	No	W – June 2, 2024
Susan Smith	RAC Member; Sustainability/Water Law, Willamette University	Salem	Support	No	W – June 13, 2024
Tammy Dennee	Oregon Cattlemen's Association	Statewide	Oppose	No	W – June 14, 2024
Tiffany Price	Farmer	N/A	N/A	No	O – May 21, 2024 (Salem/Zoom)
Tim & Sam Gilmer	Farmer	Oregon City	N/A	No	W – May 30, 2024
Tim Wallender	N/A	La Grande	Oppose	No	W – April 17, 2024
Tommy Hough	N/A	Washington County	Support	No	O – May 21, 2024 (Salem/Zoom)
Troy Jen Rossetti	N/A	N/A	N/A	No	W – March 20, 2024
Vikki Breese- Iverson	Oregon House of Representatives	District 59	Oppose	No	W – June 13, 2024
Wade Nkrumah	N/A	Portland	Support	No	O – May 21, 2024 (Salem/Zoom)
Yancy Lind	N/A	Bend	Support	No	W – May 6, 2024
Zach Freed	RAC Member; The Nature Conservancy	Statewide	Support	No	O – April 4, 2024 (Bend) W – June 11, 2024 O – June 14, 2024 (Bend – WRC)
Zach Freed et al.	Oregon Water Partnership	Statewide	Support	No	W – June 13, 2024
Zoe Fenton	Oregon Resident	N/A	Oppose	No	W – June 7, 2024

Laura Hartt
ORE. Water
Resources Dept.

To Laura Hartt:

5/29/2024

Please do not implement more restrictive regulations in evaluating and issuing new groundwater rights as they adversely affect growing your own food, sharing, and small dairies.

As COVID has taught us supply chains can be interrupted and this would make it harder if not impossible for neighbors to help neighbors in adversity. Government can only do so much, it is limited in resources and your common citizen can fill in the gaps that the government is not equipped to handle.

Currently, economic downturns are occurring and diverse avenues of coping with those challenges is needed.

What small benefit the changes would make is not in line with the negative effects that would occur.

Big Agriculture will survive the rules, but small businesses and hobby gardeners will not.

Please do not let Oregon be viewed negatively as a place unfriendly to the small guy. It goes against our culture of live and let live.

We are at the point of diminishing return in regulations. Please reconsider pursuing this avenue of rules.

Sincerely, A. Brooks

Received

MAY 31 2024

OWRD



1616 P Street, NW
Suite 300
Washington, DC 20036
T +202.683.2500
F +202.683.2501
foodandwaterwatch.org

June 14th, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

RE: Food & Water Watch comments on OWRD's proposed rules

Dear Oregon Water Resources Commission,

Food & Water Watch (FWW) submits the following written testimony in support of the Oregon Water Resources Department's (OWRD's) proposed rules, which are an important step to ensure Oregon's scarce water resources are not over allocated in the future. FWW is a national, non-profit organization that mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW uses grassroots organizing, media outreach, public education, research, policy analysis, and litigation to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. FWW submits these public comments on behalf of its more than 38,000 members and supporters across Oregon.

Oregon is long overdue in revising its water permit regulations. We have long seen the harms caused by the overallocation of groundwater resources in the state. Oregon is experiencing chronic well decline and increased drought brought on by climate change. Bringing OWRD's rules into accordance with the 1955 Ground Water Act will help us to protect the more than 36,000 miles of streams, nearly half of all wetlands, and almost two-thirds of all lakes in Oregon that rely on groundwater.

We support OWRD's proposed rules as an important first step in protecting our environment and finite natural resources used by communities across the state, but also recognize that additional steps are needed to ensure that our groundwater resources are allocated in a sustainable and equitable way. OWRD should do everything within its authority to account for the historical racial and socioeconomic barriers to land ownership, especially within agriculture, when allocating new or transferring existing water rights. Additionally, we must prioritize water uses that build resilient communities and promote sustainable, local food systems in the face of climate change.

The proposed rules, coupled with the new groundwater protections established in SB-85, have the potential to make Oregon's groundwater use far more sustainable, protecting both aquifers and rivers and streams. Industrial livestock operations have long benefited from lax water permitting rules and are disproportionately contributing to water level declines. We encourage OWRD to finalize the proposed rules without delay.

Thank you for taking this important step to protect our water resources.

Sincerely,

Aimee Travis

Oregon Organizer, Food & Water Watch

HARTT Laura A * WRD

From: Alan Bellanca <bellancaen@aol.com>
Sent: Thursday, April 25, 2024 1:33 PM
To: HARTT Laura A * WRD
Cc: Eric@Schneiderwater.com
Subject: New groundwater rules in Oregon

You don't often get email from bellancaen@aol.com. [Learn why this is important](#)

Dear Oregon Water Resources Department:

I am a member of the Board of Directors of Pete's Mountain Water Company (PMWC). The water supply to our wells is vital to the 80 members of our water system. The drilling of future wells in our area could threaten our water supply.

Oregon's water resources are critical to our rivers, safe drinking water and state economy, and they deserve our protection.

The static water levels in the PMWC wells has been consistently dropping over recent years. Your new rules should plan for the future and ensure there is enough water for people and nature.

I urge you not to let Oregon run dry. I support new groundwater rules in Oregon that will secure a strong water future for nature and protect independent water systems like ours.

*Alan Bellanca
Treasurer
Pete's Mountain Water Company*

HARTT Laura A * WRD

From: Alex Clark <callinstead@gmail.com>
Sent: Thursday, May 30, 2024 12:07 PM
To: HARTT Laura A * WRD
Subject: Public Comment Water Rights - Neskowin Farmers Market Board

[You don't often get email from callinstead@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Hello Laura-

I wanted to log a public comment on behalf of the Neskowin Farmers Market, of which I sit on the Board, as well as a member of the community of Neskowin who relies on Farmers Markets and local farms for fresh produce.

We have a local farm, Odonata Farm, located in Hebo, OR, in South Tillamook County, who was told to stop commercial operations based on enforcement of this policy by the State Water Master.

While this enforcement makes sense from a viewpoint somewhat removed from the realities of fresh food scarcity and food deserts, the closing of small forms like Odonata significantly impacts residents of underserved areas like Tillamook County. Odonata Farm was scheduled to be a weekly vendor at the Neskowin Market, one of only three farms, serving a huge swath of South Tillamook County. Their absence significantly reduces access to healthy vegetables to the residents here, who are already underserved and now have to rely on places like Safeway and Grocery Outlet outside of the county.

We would like to see consideration given to small farms like this providing critical food supplies to underserved communities, particularly due to the fact that 1. They are small and their water usage is minimal when compared to larger users, and 2. They are in the Coast Range, an area known for having more than enough water. Why not extend the loophole of allowing 5000 gal/day to irrigation as well?

Thank you for your consideration, and I hope there is a way to protect our water supply without hurting those of us that need the products of that water supply the most.

Alex Clark
Neskowin, OR
Neskowin Farmers Market Board Member

From: Allen Hallmark <hallmark3843@gmail.com>
Sent: Tuesday, May 14, 2024 10:23 AM
To: WRD_DL_rule-coordinator
Subject: My comment on new ground water rule making

Some people who received this message don't often get email from hallmark3843@gmail.com. [Learn why this is important](#)

To the staff of the Oregon Water Resources Dept:
I support these comments recommended by The Nature Conservancy:

- **Fish and Farmers:** Pumping too much groundwater can dry up streams and rivers in Oregon. The proposed new rules will protect rivers from unsustainable groundwater use—benefiting both fish and farmers who rely on that water to thrive.
- **Drinking Water Access:** Hundreds of Oregonians each year are losing access to safe, secure drinking water because groundwater levels dropped too low for their domestic wells to function. These new rules could prevent 35,000 domestic wells from going dry across Oregon.
- **Vulnerable Communities:** Drought is projected to become more frequent and more severe in Oregon in the next several decades due to climate change. These new rules will protect Oregon's frontline communities most vulnerable to drought.
- **Water Smart Oregon:** Oregon is facing an uncertain water future and must make smart

water choices. The proposed new rules will create safety measures to ensure new water-use permits rely on evidence that groundwater is available to support that use.

Thank you,

Allen Hallmark

Medford, OR 97504

458-226-6970

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Anne Squier (Portland)

I am Anne Squier. I reside in Portland. I'm speaking tonight to urge adoption of the new groundwater rule package as well as rapid and precise implementation of those rules. In 1975, Oregon Governor Bob Straub appointed me to the then new newly created Water Policy Review Board, which later became the Water Resources Commission. At that time, water right administration gave no weight to potential impacts of groundwater use on surface water flows and use. During my service in that policy role, as well as through several years teaching water law, I advocated for integrating state administration of ground and surface water use. Doing so would reflect reality as well as growing scientific knowledge. But treating surface and groundwater as utterly unrelated systems was deeply ingrained across the West over the ensuing half century. There has been progress, but not enough. This proposed rule package is a strong step towards seamless administration of human interventions into what is in fact a seamless resource, the water cycle. It's a good step forward. I urge its adoption and I thank you. I would like to reserve the possibility of submitting some further detailed comments in writing before the deadline next month.

Water Resources Department
Attn: Ms. Laura Hartt, Rules Coordinator
725 Summer Street NE, Ste. A
Salem, OR, 97301

May 2024

Subject: Comments for the proposed 2024 Ground Water Allocation Rulemaking

To Whom It May Concern,

This letter is written anonymously because I work in the water right sector and am certain that OWRD staff will punish me if they found out who I am. I am sure that hundreds of water users and other water right professionals agree with much of the following letter, but have not and will not bring such issues up because of fear of backlash from OWRD. While this letter may come from one source, it represents the thoughts of hundreds of people that are experienced with OWRD. OWRD has become very difficult to deal with, perhaps the worst state agency to work with. Many people within OWRD agree with things in this letter, but don't dare speak about it.

This bill is a just another way for OWRD to stop water use and make it more expensive to use. It seems OWRD believes all water needs to be replaced back into the ground and back into the streams as it was before white man came to Oregon. But we all know that water can be managed wisely and we can get much more use out of the resource if managed properly. Wise water management requires the use of the water, not leaving it where it would go naturally without management, and the latter is what OWRD seems to be pushing for on all fronts.

Below is specific comments on the Groundwater Allocation Rulemaking, followed by other matters that shown a pattern at OWRD.

There has not been enough time for people to review these proposed rules. While I am right in the middle of this industry, I have only recently heard of the proposed rules, but not from OWRD. Again, although I work in the industry, I have not been made aware of these proposed changes. OWRD has not given people enough time to figure out what the rules will mean, and how to respond in a reasoned manner. Most everyone I know in the industry has no idea of these changes and feel they have had no say whatsoever in the rules.

In fact, it seems OWRD has already been implementing the rules because applications have already denied only because there was no proof that water was available. Because of this, *I had assumed the rules had already been approved.* For example: a recent ground water application was crafted to meet all of the current OWRD rules and regulations and OWRD agreed to that, but despite every other criteria being met, OWRD denied the application because there is insufficient evidence to prove if the ground water resource has water available. This means to me that OWRD is already implementing the rules. OWRD typically changes rules and interpretations without notifying the water right community.

In the document that is up on the website, the Affect on Racial Equity section appears to be full of odd assumptions and erroneous claims. Even though I find this section is very one-sided, I waste no time in addressing these issues. It seems they will have no impact on whether OWRD implements these rules or not.

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In the document that is up on the website, the Cost of Compliance section does not consider the costs to Oregon taxpayer and Oregon industries. The long-term costs to not allowing industries start or expand is huge. This cannot be overstated. Denying most new (probably all) ground water applications and denying transfers of ground water will stop growth of farming, industry and commercial activities. These businesses use other businesses and the multiplier effect to hurt Oregon's future economic growth is enormous.

The Cost of Compliance section says OWRD expects *many* new ground water rights will be denied; but the readers should expect *all* will be denied or almost all *whether there is plenty of water or not*. It will be the same for transfers that are ground water related. This is not a wise use of OUR water! This is wasting OUR water, and the current rules are fine if OWRD would do their job.

The section also talks about the impacts of less wells being constructed. This entire section misses the point. The new water rights and water right transfers enable whole businesses to start or expand. Each business employs people, but also causes new growth many other businesses to service the one using the right. The loss of well drilling due to this rulemaking is almost insignificant when compared to the other business that will also be stopped. These rules will needlessly put a stranglehold on new business and the economy of the state as a whole. The current rules are fine and fair. OWRD just needs to do their job and do the work to find out where water is available or not and enforce junior/senior rights.

The proposed rules reverse the current rules, which are fine and match with the other rules for water rights. One cannot know how these new rules will affect all of the other current rules. It is such a drastic change.

The rules now basically say ground water applications will be approved if there is no proof that there is NOT water available; where in the future they will say ground water applications will be denied if there is no proof (suitable to OWRD) that water IS available. The current rules work because if a senior user is impacted, then the junior water user has to shut off their water. The current rules work because if there is an area where levels are declining and/or users are running out of water, that is evidence that there is not enough water and a new ground water application will be denied. This works perfect. OWRD just does not want to enforce the junior/senior rights, as that will take work.

The new rules will allow OWRD to deny most all new ground water applications and transfers even when there is no evidence at all that water is not available. If there have been no complaints in the area and levels are not declining, why is OWRD wanting to deny all new applications? This is a horrible idea. The current system works fine. OWRD just has to enforce the junior/senior rights issue; and I think that is one of their true goals – OWRD doesn't want to enforce junior/senior rights. *With these new rules in place, it will give an incentive to OWRD to not do research to find water is available; this rulemaking is horrible.*

The proposed rules affect all water basins statewide, which is completely wrong. Oregon has many, many different aquifers and basins and to treat them all the same in this manner is terribly wrong. In areas where there are problems, use that data to deny new applications and transfers, but to stop everything statewide based on no evidence is completely wrong.

OWRD assumes that all ground water contributes to surface water. But this is also completely wrong; do not believe this. Some ground water does contribute directly to streams. For example, I know of an

area in central Oregon where rain seeps into the ground to become ground water which flows down through the soils until it hits an impervious layer. The water in the area flows along this impervious layer to the local stream which is at the level of this impervious layer. In this area most or all of the ground water ends up as surface water. But there are cases where, contrarily, surface water contributes to ground water, and in a big way. Many streams do not have a solid rock or impervious bottom, rather they can be silt, clay, or cobbles, too. The static water levels in the area will be below the level of the stream because the stream is "leaking" into the ground adding water to the aquifer. It's clear that pumping any amount of water from these wells will have little effect on the stream. OWRD is misstating facts to get this bill approved.

I saw in an OPB article that Justin Iverson of WRD states that people can currently get a permit to pump more water than precipitation can replenish. This makes it sound like the current rules are completely bad, and that new rules are needed. While the described situation is probably possible, the current rules work just fine, and he neglects to state that. For example, if the permit holder pumped more than can be replenished, then the permit holder will not be able to pump much the next year; the problem is self-fixing under current rules. And if in an area, the static water levels are declining and there are complaints about wells going dry, current rules allow OWRD to stop the new use based on the known problems. Again, the current rules are fine.

In the article, Mr. Iverson also states that there's not enough consideration for long-term impact on existing water right holders and streams. Because Mr. Iverson cannot quantify the long-term effects of a very small pumping well on a stream 5 miles away, doesn't mean one should stop all new water rights and transfers. The junior/senior method works, but admittedly sometimes it's hard to find out who is causing the senior right to be damaged. It is possible that groundwater can take years to move through certain fine-grain soils, but if so, not a lot of water is moving and impacts are obviously not big. Mr. Iverson is making a big deal out of something that is minor and does not exist in reality very often. OWRD needs to do their job and enforce the junior/senior right issues.

The new rules proposed that people will need to prove there IS water available to get a new right. But reads should be advised that the real process will be that one would need to prove *to the satisfaction of OWRD* that there is water available. What I have seen in practice is that OWRD will just deny the applications anyway and say your proof is not enough. Then you have to fight OWRD, when *they* make the rules. OWRD knows that many small users don't have the time or the money to fight OWRD, so they demand things that they do not have the legal ability to demand. OWRD has just gotten out of control.

OWRD is known to often not follow its own rules and "interpret" laws and rules. Their interpretations are typically NOT in favor of water users. I fear these new rules will allow OWRD to harass and regulate current users in ways that we have not seen. I fear for the current water users, too.

These new rules seem to be part of OWRD's true long-term strategy to deny new farming activities or possibly all new water rights as well as diminish all current water rights. For example, OWRD has made most applications and transfers more and more difficult and limiting. Most processes take years, even if for a simple temporary transfer!

WRD adds new conditions to certificates now with no good reason. TRANSFERS AND METRS

You need to realize that most, if not all, of the OWRD personnel that have developed these new rules, have never gone through their own process, they are not big water users, and they therefore cannot know the true impacts of these rules. Current users, consultants, and others need to be utilized to review these rules in detail. This rule change basically turns all water rights on it's head. It's a huge change for the worse.

The new rules apply to Oregon as a whole when Oregon is one of the most diverse states for surface water and ground water patterns in the nation. This one policy for the whole state is completely wrong and unfair. While we don't know everything about ground water flows, we do know a lot. So why throw out all of that knowledge? I believe OWRD just doesn't want to do their job. Why deny new ground water permits and transfers when there IS plenty of water? It's totally flawed logic, and the current rules are fine if OWRD would do their job.

OWRD uses data and information against wise water use, and these new rules are just another example. OWRD has a very good model that estimates surface water flows in streams around the state. It uses solid science and data to predict flows and flood events in water basins all over the state. It is a top-notch modeling system. Once surface water flows are computed, OWRD subtracts out water being used to decide if surface water is available for new rights (or not). This makes sense and is a good *plan*. However, OWRD does not subtract the water typically used, they decided to subtract the MAXIMUM amount that can be used by water right, which is completely wrong. Almost zero reservoirs need to be filled every year. How many ponds and reservoirs do you know are completely dry every year? Also, very few water users are using their maximum rate or volume in any year, let alone every year; but nevertheless, OWRD calculates it this way anyway. Therefore, there is FAR more surface water truly available than OWRD models predict. I realize this is off-topic, but it shows that OWRD has lost its way with using science and logic. Make OWRD use science and logic to make decisions and not just use ideals such as "we cannot pump water forever" to then stop all new rights and transfers.

Another example of OWRD bad decisions pertains to a type of transfer that is allowed by statute, but are no longer allowed by OWRD. Industry people called these "strip/drip" transfers among other names. These transfers enabled water users to produce a far, far larger amount of crops using the SAME amount of water as the original certificate. This was a huge beneficial type of transfer for all Oregonians. Yet, OWRD has decided to deny all of these transfers, stating that they expand water rights. They will tell you there is a path through IF you can prove to OWRD upfront that the transfer will work. But OWRD will always just say you didn't provide enough proof or the right data. By doing this OWRD is preventing wise use of water! Do not believe everything they tell you. OWRD will tell you there is a work-around and steer you to another convoluted process that requires the water user to give up some of their water rights forever. This just simply not fair, and not beneficial for Oregon.

Another issue OWRD has gone astray with is their treatment of springs. Springs are where ground water bubbles up and becomes surface water. Some springs are exempt from OWRD control per statute. OWRD want to deny these exempt uses, which is against statute, so OWRD creates unofficial procedures that don't allow these exempt springs to be recognized or practically utilized. OWRD just will not follow their own rules and it hampers wise water use and takes away rights of landowners.

Another example of OWRD over-reach is their new policy to require metering on any transfer that involves ground water. This is unfair. OWRD will say that they have to require the new metering rules to prevent enlargement of the right. But that's just not true in most cases. If a water user move their 40

acres of irrigation across the road and wants to use a different well in the same aquifer across the road, there is no chance of expansion of the right. Nevertheless, OWRD now requires metering on all of these transfers with no good reason. It is a violation of the rights of the water user. The metering does not really stop any illegal use of water anyway. It's just added expense and harassment by OWRD.

There are other situations where water users have paid extra money to OWRD to "expedite" their water right through the very slow OWRD processes. (By the way, this is an incentive for OWRD to continue to work even slower as they get paid more for these expedited processes.) OWRD has seemingly chosen to not process certain expedited applications even when the process has been paid for and the contract has been signed. It seems that OWRD is waiting until these new rules are approved so that then they can deny the application. This is just horrible and wrong. If one complains, they go slower.

The most obvious way to gain better use of water in Oregon is to promote new reservoirs. Oregon typically has a drought in the hot summer months, and that is typically when water is needed the most. An obvious way to exponentially use more water wisely is to store winter runoff in reservoirs, and allow the stored water to be used in the summer. Anybody with half a brain can see this sense in this. The federal government did this in the 1950's and 1960's and most of Oregon's valuable reservoirs could never be constructed now due to the new rules and OWRD thinking. OWRD and the other environmental agencies such as ODFW, DEQ, and DSL, seem bent on stopping and hindering all new reservoirs. OWRD will not admit to this, but believe me, many more applications would be pursued if OWRD and the environmental agencies wouldn't fight every reservoir and delay things for years and years. Reservoirs should be encouraged, not discouraged. This is not all OWRD caused, but they don't help with their process. Applicant's used to be able to respond to other agencies statement with science and logic, but this is very difficult if impossible, to do any more. So the best way to increase beneficial use of Oregon's water is being discouraged by OWRD and the other Oregon agencies. What a waste!

OWRD treats stored water as surface water. It is not truly surface water and this treatment has not allowed a lot of wise use of water. Ground water is under the ground, surface water is above the ground, and springs are where ground water bubbles up on the surface to become surface water. But stored water is taken (or appropriated) water from one of the above sources that is stored. But OWRD (now) treats all stored water as surface water, which limits its use. Natural reservoirs may need this designation, but using this designation for man-made reservoirs is completely wrong. I have seen where stored water was not allowed to be used because the water was already "appropriated". But when the water was permitted to be stored, THAT is when the rules state OWRD can decide if there is enough water from the source to "appropriate" the water *into* the reservoir. But if treated as surface water OWRD now wants the stored water owner to go through the appropriation calculation again to use their stored water and this is all wrong. OWRD statutes (pretty much) allow the owner of the stored water (yes, the landowner *owns* stored water and NOT the OWRD) to use *their* stored water anyway they want, and the water user needs to let OWRD know what the water is being used for. Yet OWRD has created a whole new list of criteria that limit when and where this water can be used and how to apply for any different use. The OWRD process is long and they don't allow a lot of good uses of the water. It makes no sense and most water users just go ahead and use the water anyway. OWRD is just so far away from wise water use and understanding farming these days. The processes to use your stored water need to get back to where they were and be simple. Allow the owners of stored water to beneficially use their water. This is just another example of where OWRD has created interpretations of

rules and they always seem to hurt the water user and not allow wise water use; and I am sure this will happen even more if the new rules are passed.

The reader of this document also needs to know the true time to get paperwork through OWRD. The times to get applications processed are much too long. Water users are constantly amazed at how slow things move at OWRD. It should not take 3 years to get an answer if an application will be approved. OWRD has no idea that businesses rarely can wait years to get an answer. Here are some examples.

Applications for an extension of time for a few years to finish a part of a water right permit. The time limit requested for a few more years came before the approval of the application! How can this be OK?

Anything with the Groundwater Section takes years on top of the years needed for the other OWRD "normal" processes.

An answer for an application for a *temporary* water right can take several years now. This makes no sense to anyone. One example is for applications for "Limited License". Typically, these are for the use of a well using drip irrigation (low water use) to establish a crop that does not have to have water after being established. The most common current crops in this category are Hazelnuts and grapes. But if it takes 3 years to get an answer, how can most businesses plan for this? Also, OWRD used to get these through relatively fast, in maybe a couple months. There is no risk to the public or the state because it is made clear that if anyone complains about their senior right being hampered, OWRD just cancels the Limited License. There is no reason for years to go through the Groundwater Section review, which didn't happen in the past. These rights are for a low water use (drip irrigation), they are temporary, and can be cancelled very easily. Why did OWRD add this huge time line to a temporary low water use? And now with these new rules, they will all be denied anyway. What a waste of water.

Farmers also have to leave fields bare and change crops depending on changing criteria such as expected crops prices and changing costs. Farmers need a away to change fields or crops temporarily while they get ready to deal with the ever changing conditions. But it takes at least a year or two to get these *temporary* changes through OWRD. It also takes time to prepare all of their forms. So the farmer is supposed to know 3 or more years ahead of time if he needs to change a crop and get a temporary transfer! This is just impractical in many situations.

The purpose of these example is to illustrate to the reader that OWRD is no longer an agency that helps people use their water, OWRD no longer is promoting wise use of water in many cases, OWRD is creating rules that hinder the wise use of water. And this rulemaking is just another in a long line of nonsensical rules.

OWRD needs to be required to evaluate applications in a reasonable amount of time. 6 months is a reasonable amount of time. 2 to 4 or more years is just wrong.

As I said earlier, it seems OWRD has been already applying the rules by denying any new ground water applications, only because there is not proof that water is available. The OWRD Groundwater Section has some good people, but the wrong ones are running the department. These proposed rules will completely stifle new business growth farming and for anything that does not get municipal water. While there some good people at OWRD, OWRD needs a big shakeup in personnel and needs to start following their own rules and logic and science, and these proposed rules are another sign of that.

OWRD knows that many people do not have the time and money to fight them so they unfairly deny or add conditions to water rights in hopes that water users do not have the resources to fight OWRD. Often an attorney is needed to push back against OWRD to make them to follow their own rules. This should not be happening over and over. This is over-reach by a state agency.

Perhaps the readers of this letter will be happy because all of this matches their goal of stopping new water use and stopping much new economic growth. It is hoped that some reader see that Oregon has lots of water and has a huge opportunity to manage this resource for the benefit of all of Oregon.

Signed Anonymous



795 Winter St. NE | Salem, OR 97301 | Phone: 503-363-0121 | Fax: 503-371-4926 | www.owrc.org

June 14, 2024

Laura Hartt

Oregon Water Resources Department

725 Summer Street NE, Suite A

Salem, OR 97301

Submitted via email: WRD_DL_rule-coordinator@water.oregon.gov

Re: Comments on Draft Groundwater Allocation Process Rules

The Oregon Water Resources Congress (OWRC) is providing comments on the Oregon Water Resources Department's (OWRD) draft revised Groundwater Allocation Process, under Oregon Administrative Rules (OAR) 690-008-0001, 690-009-0010, 690-009-0020, 690-009-0030, 690-009-0040, 690-009-0050, 690-009-0060, 690-300-0010, 690-410-0070.

OWRC was a member of the Rules Advisory Committee (RAC) and has repeatedly expressed concerns about the overly broad scope and potential unintended consequences resulting from the proposed changes to OWRD's process for allocating groundwater. We are supportive of a modernized set of rules related to groundwater allocation but remain concerned there will be negative impacts to existing water right holders if the proposed rules are adopted as they are currently drafted. We urge the Department to further revise the draft rules to allow for a less extreme, more basin specific approach, based on the best available science and data.

OWRC is a nonprofit trade association representing irrigation districts, water control districts, drainage districts, water improvement districts, and other local government entities delivering agricultural water supplies throughout Oregon. These water stewards operate complex water management systems, including water supply reservoirs, canals, pipelines, and hydropower facilities. OWRC members deliver water to approximately 600,000 acres of farmland in Oregon, which is over one-third of all the irrigated land in the state. While the majority of our members manage surface water rights, groundwater rights are utilized by some members, and all water users are potentially impacted the proposed rules.

Ensure existing water right holders are protected

Our primary concern for our members and the farmers and ranchers they serve is that the proposed rules will have unintended consequences for existing water users. We have heard the Department say multiple times that this will not impact existing water right holders and while we are dubious, we will be watching closely as the final rules are implemented.

The mission of the Oregon Water Resources Congress is to promote the protection and use of water rights and the wise stewardship of water resources

Revise the rules to remove de facto moratorium on new groundwater rights and develop an approach in-between the existing process and the new proposed process.

The proposed rules are a massive change from current practice. We agree the rules need to be updated but such a severe change will be jarring to those seeking a groundwater permit for their farm, their community, or their business. This de facto moratorium on new groundwater permits will likely result in increased legal costs to OWRD as well as to individuals, municipalities, and businesses who need groundwater as part of their water supply portfolio. As drafted, only those that can afford to pay for a hydrogeologist and enhanced groundwater data will be able to secure a permit. This will create greater inequities between water users and likely cause more friction between entities who need water and those that have it.

Revise the rules to allow for more basin specific approaches and adaptive management as more data and research becomes available

Each watershed basin has unique characteristics that impact surface and groundwater supplies. The draft rules lack acknowledgement of these differences or provide an avenue to change the groundwater allocation process as we learn more about the status of the resource. OWRD is now moving forward with implementing HB 2018 (2021 Session) and developing enhanced data about water supplies, including groundwater. The data gleaned from the collaborative USGS studies and development of groundwater budgets will be very useful in determining which basins are facing groundwater declines. It is crucial OWRD moves forward with these essential studies as soon as possible and not put the entire burden of proof on the applicant. We also recommend OWRD use more of their existing tools and statutory authorities (such as designating serious water management areas or critical groundwater areas) in basins where there are significant long-term declines rather than use a one-size-fits-all approach.

In summary, we urge the Department to revise the proposed rules to provide a balanced and equitable approach that is more likely to protect existing water right holders and with basin specific approaches that cause less conflict than a de facto moratorium. And if the rules are adopted as currently drafted, we will be watching closely to ensure OWRD fulfills its commitment that the new rules will not adversely impact existing water right holders.

Your time and consideration of our comments is appreciated.

Sincerely,



April Snell
Executive Director

Senator Art Robinson
STATE SENATOR
DISTRICT 2



OREGON STATE SENATE

May 5th, 2024

Ms. Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department
725 Summer St. N.E. Ste. A
Salem, Oregon 97301

Dear Ms. Hartt,

I am writing to express my strong objection to new rules that will obviously make it extremely difficult for farmers to drill new agricultural wells.

I am a PhD scientist with extensive experience in statistics and computer modeling. Although, I am not an expert on ground water, it is obvious that the computer modeling – which is too complex to be completely understood – in combination with extreme cutoff criteria, can be used to stop the drilling of practically all agricultural wells in Oregon.

This concern is not misplaced. I have also been a farmer in Southern Oregon for 44 years. Claimed concerns over fish habitat have been used to stop the granting of new stream irrigation rights, destroy dams, and wreck havoc in our agricultural industry.

Oregonians need food. In a time of sharply rising food prices we should be doing everything we can to lower food prices, not raise them.

The fish are doing fine. Fluctuations in stream flow are extremely large due to variations in weather from day to day, month to month, and year to year. Fish don't swim where there isn't water. It does not take a scientist to realize that the remote possibility of a minor change in stream flow will not hurt the fish. Flawed computer models have caused problems in other areas of science as well.

Allocation of agricultural wells should be based on common sense, sound well documented science, and an effort to maximize agricultural production in Oregon. These new proposed rules will take us in the wrong direction.

Thank you for your attention in this matter.

Sincerely,

Senator Art Robinson
Oregon State Senate, District 2

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Confederated Tribes of Warm Springs, Oregon

PO Box C

Warm Springs, OR 97761

Phone: 541-553-1161

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June 6, 2024

VIA E-MAIL: WRD_DL_RULE-COORDINATOR@WATER.OREGON.GOV

Laura Hartt
Rules Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: COMMENT: Proposed Rulemaking - Amend, repeal, adopt rules pertaining to allocation of new groundwater rights, OAR Chapter 690, Divisions 8, 9, 300, 410

Dear Ms. Hartt:

I am the General Manager of the Branch of Natural Resources for The Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe"). The Tribe is a sovereign Indian tribe and is the legal successor in interest to the Indian signatories of the Treaty of June 25, 1855, with the Tribes of Middle Oregon, 12 Stat. 963 ("1855 Treaty"). Pursuant to the 1855 Treaty, the Tribe's predecessors ceded certain aboriginal rights to approximately ten million acres of land to the United States, while reserving the Warm Springs Reservation for the exclusive use and occupation of the Tribe and its members. Those "ceded lands" are located in what is now the State of Oregon. The Tribe retains significant treaty-reserved interests throughout our ceded lands and other parts of the State.

The 1855 Treaty reserves certain rights to fish, hunt, and gather roots and berries within our Tribe's ceded lands and other aboriginal lands. The Tribe's treaty-reserved sovereign rights are acknowledged by the United States and State, both of whom recognize the Tribe as a governmental co-manager of certain water, fish, and wildlife resources located throughout the State. The Tribe discharges its co-manager duties as part of its sovereign right to provide for the health, safety, and welfare of its members.

On behalf of the Tribe, I am offering comments to the proposed rules in OAR Chapter 690, Divisions 8, 9, 300, and 410, which relate to the evaluation and issuance of new groundwater rights in a manner that protects existing water uses and manages Oregon's finite water resources sustainably ("Proposed Rules"). The Tribe expressly reserves its right to provide additional comments and to request a government-to-government consultation, as explained more below, before the Proposed Rules are approved by the Water Resources Commission ("Commission").



VIA E-MAIL: WRD_DL_RULE-COORDINATOR@WATER.OREGON.GOV

Laura Hartt
June 6, 2024
Page 2

I. Tribal Consultation

In 2007, United Nations General Assembly adopted the Declaration of the Rights of Indigenous Peoples (“UNDRIP”). Recognizing that the United States supports UNDRIP as an “aspirational document of moral and political force” that is “not legally binding or a statement of current international law,”¹ the Tribe nonetheless urges the State to adopt a consultation policy that aligns with UNDRIP, including, specifically, its Article 19. In particular, the Tribe requests that the State obtain the Tribe’s “free, prior, and informed consent” before adopting and implementing the Proposed Rules to the extent that those rules affect the Tribe.

II. Comments

A. Limited Scope of the Proposed Rules

The Proposed Rules are, as described in the Notice of Proposed Rulemaking dated February 22, 2024 (“NPR”), “forward-looking.” They seek to prospectively limit future groundwater depletion. The Proposed Rules do not attempt to retroactively correct historical depletions of the State’s groundwater resources and have no provisions aiming to replenish groundwater sources or reverse groundwater level declines. The Proposed Rules assume that present-day groundwater levels are the bar to measure against. In this sense, the Proposed Rules are starting at the wrong place. The Proposed Rules should instead be identifying historical groundwater levels and incorporating goals, plans, procedures, and/or incentives to support recharge programs that will bring the State back into a healthier and increased level of water resources. While the Tribe appreciates the benefits the Proposed Rules will bring moving forward, the Tribe also urges the Oregon Water Resources Department (“Department”) to take the additional step to remedy past declines, and to add on to the Proposed Rules new provisions that will remedy historical depletions to allow the State’s water resources to improve, not just stagnate at the status quo.

B. Need for the Proposed Rules and Assessment of Impacts

The Department notes in the NPR that the Proposed Rules will “consider[] the needs of future generations.” NPR at p. 4. The NPR asserts that “[t]he proposed rule changes intend to provide greater protection of surface water from further over appropriation while alleviating groundwater level declines.” *Id.* at p. 8. Specifically, under the Proposed Rules, it is anticipated that “commercial fishing may experience growth due to healthier aquatic ecosystems.” *Id.* at p. 9. The Tribe appreciates the Department’s efforts to protect the State’s precious water resources with such a “forward-looking approach.” *Id.* at p. 4. The Tribe is further supportive of the Proposed Rules to the extent they anticipate resulting in healthier and larger fish populations within the Tribe’s ceded areas and other ancestral lands where it retains certain rights to fish.

The Tribe, however, observes that the “Need for the Rules” section of the NPR does not contain reference to any of Oregon’s Native American tribes, nor does it contain any information as to how the Department intends to engage in meaningful consultation with each of Oregon’s tribes in a manner

¹ United States Mission to the United Nations, [Explanation on “Rights of Indigenous Peoples](https://usun.usmission.gov/united-states-explanation-of-position-on-rights-of-indigenous-peoples/), Nov. 7, 2019, <https://usun.usmission.gov/united-states-explanation-of-position-on-rights-of-indigenous-peoples/> (last visited June 6, 2024).



VIA E-MAIL: WRD_DL_RULE-COORDINATOR@WATER.OREGON.GOV

Laura Hartt
June 6, 2024
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envisioned by UNDRIP and in a way that better recognizes and integrates Oregon's tribes and their traditional knowledge in this rulemaking effort. The Tribe views this as a missed opportunity.

Further, the draft Statement of Need, Racial Equity Impacts, and Economic & Fiscal Impacts ("draft Statement") is problematic. It does not acknowledge the constitutionally-recognized sovereignty of all Oregon tribes and the treaty-reserved rights of some tribes. The draft Statement does not acknowledge the Tribe's co-manager status of significant parts of the State's water resources. And the draft Statement contains no reference to the Department's approach to tribal consultation. Offering Oregon tribes an opportunity to participate in the Rules Advisory Committee is not sufficient. The Department must develop and implement a consultation process aimed to obtain each of the Oregon tribes' free, prior and informed consents of the Proposed Rules before they are presented to the Commission for adoption.

With this backdrop in mind, the Tribe provides the following comments on the specific revisions proposed.

C. OAR Chapter 690, Division 8

The Tribe supports place-based water rights administration. Allowing supersedence by basin program rules under 690-008-001(9)(d) is an important aspect of this Division 8 that should not be altered or removed in the Proposed Rules' final iteration. The Deschutes Basin, in which is situated much of the Tribe's ceded lands, is currently subject to basin-specific rules. The Tribe seeks to continue this place-based approach to rulemaking, including within the Deschutes Basin. Accordingly, the Tribe supports the Proposed Rules to the extent they continue to perpetuate rules specific to the Deschutes Basin and its unique hydrogeology.

The Tribe also, however, has concerns about Division 8. Primarily, the Proposed Rules seek to expand the definition of "Substantial Interference" to include both "substantial" and "undue" interference in 690-008-0001(10). The use of expansive and interchangeable words for the same term, with a singular meaning, can lead to confusion and variations in subsequent interpretations. The Tribe recommends striking "undue" (and all variations thereof, including "unduly") from the Proposed Rules and using only the term "substantial" (and variations thereof, including "substantially") to avoid such confusion.²

The Tribe provides the following additional comments for the Department's consideration:

The use of the term "could preclude" in subsections (5)(a), (7), and (11) of 690-008-0001 is vague, and risks establishing a broad and expansive definition of the defined terms contrary to the intent of the Proposed Rules. Further, this language is in stark contrast to the definition of the key metric of "Potential for Substantial Interference" which is later defined in 690-009-0020 as "a groundwater use that *will* cause streamflow depletion . . ." (Emphasis added.) Where specificity is merited, removing the term "could" will provide more certainty and clarity to these new Proposed Rules.

² The Tribe presumes that the Proposed Rules may be seeking to address the interchangeable uses of "undue interference," "unduly interfere," and "substantially interfere" from existing statutes that will not be modified by the Proposed Rules. See, e.g., ORS 537.629(1) and ORS 537.780(2)(b). To the extent these other statutory references present concerns, the Tribe urges the Commission to raise such concerns to the legislature's attention and request their support in remedying said concerns to provide a clear and enforceable statutory backdrop.



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690-008-0001(4) does not define “Customary Quantity” with any temporal constraints. A timeframe, such as the amount of appropriation or diversion of water within the last five years, would be more appropriate to ensure the rules can grow and change over time, as climactic and other changes may occur. Such a temporal limit would also be consistent with the five-year running average referenced in subsection (6), which follows shortly thereafter.

690-008-0001(5)(e) does not define “groundwater pollution.” It is unclear if this term includes thermal impacts, which are defined elsewhere in this Division 8, or if it is intended to capture only chemical pollution (e.g., from nitrates), or perhaps other kinds of pollutions and contaminations. A definition, even if made by cross-reference to another rule or statutory provision, would provide more clarity to this term.

690-008-0001(8) addresses only “authorized” groundwater use, and does not include illegal or unauthorized groundwater use. Conditions of an overdrawn reservoir will exist regardless of whether the groundwater use is “authorized” or not. The Tribe recommends that this definition remove the term “authorized” and consider overdrawn basins regardless of the legality of the water extracted. This language will reflect the realities of physical water as it sits in, and is extracted and used from, groundwater aquifers throughout the state.

D. OAR Chapter 690, Division 9

The interchangeable use of “hydraulic connection” and “hydraulic interconnection” in this Division 9 raises concerns for the Tribe. As noted above, the use of expansive and interchangeable words for the same term, with a singular meaning, can lead to confusion and variations in subsequent interpretations. It is also not clear why the two interchangeable terms need both be used. Again, consistency with a single term will promote efficiency and reduce confusion, and the Tribe recommends that one of the terms—either “connection” or “interconnection,” as appropriate—be stricken.

The Tribe also has concerns regarding the Proposed Rules’ express incorporation of specifically named and dated scientific studies. For example, a 1940 publication is incorporated by reference into 0690-009-040(3)(a), which cites “The Source of Water Derived from Wells: Essential Factors Controlling the Response of Aquifer to Development” by C.V. Theis, published in 1940, as “generally accepted hydrogeological principles.” The year 1940 pre-dated most scientific advancements that we now take for granted, such as cell phones and the internet. Science continues to grow, develop, and improve over time, and what constitutes the best available science will change as the years progress. These Proposed Rules should be structured to grow alongside science. Codification of a written work that is now nearing a century old could limit the ability of new scientific methods to help determine the potential for substantial interference based on new technologies. Instead of specific citations to what will become (if it is not already) an outdated citation, a clear description of the type of science that may be used (e.g., modeling, groundwater sampling, etc.) will do a better job at standing the test of time.

690-009-0060 refers to a “Water Well Report” without definition of the term. Even where common meanings of a term are generally accepted and understood, clarity through explicit definition remains the preferred route. The Tribe therefore recommends that this term be defined.



VIA E-MAIL: WRD_DL_RULE-COORDINATOR@WATER.OREGON.GOV

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E. OAR Chapter 690, Division 300

The Tribe generally has no comments on Division 300 at this time.

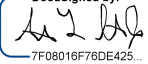
F. OAR Chapter 690, Division 410

The Tribe generally has no comments on Division 410 at this time, but notes one typographical error in subsection (b). There is currently a colon after the word “finding” that should be removed: “ ... new beneficial uses only when Department makes a finding: that water is available ...”

III. Conclusion

Thank you for the opportunity to provide comments on the Proposed Rules. Please let me know if you have any questions.

Sincerely,

DocuSigned by:

7F08016F78DE425...

Austin Smith, Jr.
General Manager, Branch of Natural Resources

cc: Tribal Council
Robert A. Brunoe
Brad Houslet



HARTT Laura A * WRD

From: babettea9@everyactioncustom.com on behalf of Babs Alvernaz <babettea9@everyactioncustom.com>
Sent: Friday, May 10, 2024 2:48 PM
To: WRD_DL_rule-coordinator
Subject: Protect Oregon Wildlife by Protecting our Groundwater

[Some people who received this message don't often get email from babettea9@everyactioncustom.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Water Policy Analyst Laura Hartt,

As an Oregonian I am writing to ask you to support the new rules for issuing groundwater permits.

Too many permits have been issued, resulting in declines in our groundwater supply. Oregon's existing rules for issuing new groundwater permits do not take into account the needs of wildlife in fragile ecosystems, lakes, rivers and streams.

Wildlife is disappearing due to climate changes, we should be trying to preserve our groundwater and give a sustainable amount to wildlife.

No new permits should be issued in areas that do not have an abundance of available groundwater.

People and wildlife need groundwater to live and thrive. We should consider future generations and protect our beautiful state so animals and people can survive here.

Sincerely,
Babs Alvernaz
OR 97448



YAMHILL SOIL & WATER
CONSERVATION DISTRICT

Wednesday, May 29, 2024

Laura Hart
Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301

Re: Modifying the rules governing new ground water right applications in The Oregon Ground Water Act of 1958

Dear Laura Hart:

Yamhill Soil & Water Conservation District (SWCD) responds to land use applications from Yamhill County Planning & Development Department on conditional uses that require new wells or expanded uses of groundwater in Yamhill County.

Yamhill County Planning & Development Department does not have data on the water available in the underground aquifers for new applications. Allowing new wells to withdraw water from an aquifer with limited water or water levels that are declining could lead to conflicts with the owners of older nearby wells.

Yamhill SWCD supports modifying the rules that will result in better management of underground aquifers in the county. We also urge OWRD to require monitoring devices on all new wells, including domestic, irrigation, municipal, and others, that will record data showing water levels to determine declines in the county underground aquifers. This information should be updated regularly and made easily accessible to other agencies and the general public. This data will help Yamhill County and the public make more informed decisions and improve management of limited groundwater resources.

Please add this letter to your file and include our District in any future correspondence.

Sincerely,

Barbara Boyer, District Chair
Yamhill Soil and Water Conservation District

Letter also sent to: OACD & ODA

Oral Comments – Bend Public Hearing (April 4, 2024)

· Barry Shullanberger (Lake County Board of Commissioners)

For the record my name is Barry Shullanberger. I'm a Lake County Commissioner. Lake County is just over 8,000 square miles and about the same amount of people. Everyone recognizes that there are certain areas of the state that are experiencing groundwater declines which need to be better managed. However, the proposed rules are overly broad and would create a de facto moratorium on all new groundwater used in the state, even in areas that are not experiencing issues with groundwater decline. The inability to appropriate available groundwater will harm all sectors and all persons in the state. The proposed rules are essentially a no growth rule because new appropriation from surface waters is typically not available, and the proposed rules are now taking groundwater off the table. The one-size-fits-all rule proposed by OWRD will cause more harm than good. The new rules are not good policy because so many alternatives exist to meet the Commission's goal to better manage groundwater in the state, such as groundwater allocation should be studied, and rules should be developed on a basin-by-basin basis. This process has already begun, and the legislature directed OWRD in House Bill 2018 in 2021 to study ground water basins and develop groundwater budgets. OWRD should prioritize basins based on need and adopt rules that are relevant to the actual conditions in such basins. OWRD can use its existing authority to stop potential groundwater over appropriation in certain groundwater basins. OWRD can declare Serious Water Management Problem Areas to stop further water appropriation and study the groundwater basin. OWRD can reclassify groundwater uses in basin plans to restrict additional uses of groundwater where shortages require. OWRD also enforce groundwater permit restrictions and shut off conditions that already exist in permits. OWRD can shut off junior groundwater users in favor of senior water right holders when the circumstances permit such regulation. OWRD can deny extensions of time to perfect existing groundwater permits where current conditions cannot support additional development. The proposed rules are a crude and over broad that will end all new groundwater use in the state thereby harming all industries and inhabitants. Please deny passage of the new rules and address issues with groundwater declines under a more targeted and scientific approach. Thank you.

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Via email [WRD DL rule-coordinator@water.oregon.gov](mailto:WRD_DL_rule-coordinator@water.oregon.gov)

6/14/24

RE: Oregon's Groundwater, Proposed Rulemaking to Protect Future Groundwater Availability

Ms. Hartt:

Thank you for the opportunity to comment on the proposed rulemaking, referenced above. I support the proposed rulemaking. Unfortunately, I believe the proposed rules are 20 + years too late—most groundwater systems alluvial and basalt, etc.—confined and unconfined—are already over-allocated and water use is not sustainable.

Most importantly, I do not believe adoption of these rules will have a beneficial impact on the declining groundwater levels **and streamflow** in the Grande Ronde Basin and specifically in the Grande Ronde Valley. In the area where I live (north of La Grande, Mt Glen Rd/Hunter Lane area), depth to groundwater in the alluvial aquifer has been declining since 1992, when I began measuring the depth to groundwater in the domestic alluvial water supply well on my property. Groundwater levels have declined to the point that one in five existing residences in the area have drilled new, domestic water supply wells in the past decade into the alluvial aquifer. Most of the original wells were completed at less than 160 ft bgs. The replacement/new water supply wells are completed to > 300 ft bgs.

More acres are currently used for agricultural irrigation than ever before in the Grande Ronde Valley and monitoring, oversight or enforcement by OWRD, of water rights and use, is almost non-existent. I recognize this is not the fault of the area watermasters—it's due to too few OWRD staff and lack of agency focus. And most agricultural uses, and most domestic water users in the area, use more water than they are allowed by rule: irrigate more acres, irrigate a higher seasonal rate than permitted, use water very inefficiently (irrigation leaks, poorly maintained irrigation equipment, irrigating when not required, etc.).

I fully understand that the domestic water supply users contribute to declining groundwater levels—but irrigated agriculture is 99% of the problem. For example, a 160 acre irrigated agricultural site in the Grande Ronde Valley uses > 175,000,000 gallons/yr, which is equivalent to about 1,421 single family homes.

I hope OWRD will eventually enact rules (and have the budget to implement) that require sustainable use of groundwater and surface water in Oregon. Please contact me with any questions.

Best Regards,



Bart Barlow
Environmental Engineer
Certified Professional Soil Scientist, CPSS 2357
Certified Erosion and Sediment Control Lead, CESCL CWT21-1164

Attached: Bart Barlow, Work Experience Summary

QUALIFICATIONS AND WORK EXPERIENCE: Barton G. Barlow
Environmental Engineer, Certified Professional Soil Scientist CPSS 2357,
Certified Erosion and Sediment Control Specialist-Lead CESC 21-1164
Barlow Environmental Consulting
64302 Mt. Glen Rd., La Grande, Oregon 97850
phone: 541.786.6187 email: bartgbarlow@gmail.com

PROJECT EXPERIENCE, SUMMARY:

Mr. Barlow has forty-four (45) years of experience with management and permitting of:

- Industrial and municipal solid wastes including waste minimization, landfills, and beneficial use.
- Industrial, municipal and domestic wastewater, sludges and residuals, including recycling and pretreatment, land application, and lagoons and detention ponds (>50 million gallons).
- Soil investigations and designs of large and small on-site sewage systems.
- Management and treatment of stormwater, including erosion and sediment control plans and BMP's, wetland treatment systems, groundwater recharge systems, and testing and design of stormwater infiltration/detention basins.
- Air contaminant and pollution control systems and devices, for a large variety of industrial and commercial sources, including Regenerative Thermal and Catalytic Oxidizers, Wet and Dry Electrostatic Precipitators, Biofilters, Baghouses, Cyclones, Fluidized Beds, and Electrified Filter Beds.
- Troubleshooting and compliance testing of boilers, rotary dryers, veneer dryers, kilns, and press systems for particleboard and plywood.
- Design and installation of more than 400 groundwater monitoring wells at land application sites, landfills, and former industrial and commercial sites.
- Design and installation of vadose zone monitoring systems at land application sites and landfills.
- Closure and remediation of more than 30 industrial sites and 22 commercial sites.
- Soil and hydrologic investigations to support civil engineering projects, slope stability, and river-bank stabilization work.
- Environmental site assessments and remediation, to support acquisitions and closures of manufacturing facilities.
- Spill response plans for industrial and commercial sites, and spill cleanup and residuals management.
- Wetland delineations on sites with total acreages greater than 1,600 acres.
- Environmental compliance audits at more than 50 industrial manufacturing facilities.
- Operating plans and staff training to support the projects listed above.

Soils and Hydrologic Experience

Mr. Barlow was the lead professional responsible for soils and hydrologic investigations and designs of wastewater detention ponds, landfills, and remediation systems on more than 500 projects. Projects included earthen and synthetic lined lagoons and ponds for wastewater, stormwater or leachate control with capacities greater than 50 million gallons, landfills covering more than 20 acres and groundwater monitoring and contaminant recovery systems at sites of more than 1,500 acres. Mr. Barlow has completed site investigations, soil interpretations to support the designs of on-site sewage disposal systems, wetlands, building foundations, concrete vaults, dewatering systems and retaining walls, slope and streambank stability; and, groundwater, vadose zone and vapor phase monitoring systems. Mr. Barlow was responsible for soil and slope stability investigations on the banks of the Snake River and Payette River in Idaho, and for the City of La Grande.

Environmental Engineering Experience

As a former Region Environmental Engineer for Boise Cascade Corporation (1995 to 2017), Mr. Barlow managed more than 2,000 environmental and geotechnical engineering projects and was responsible, at various times, for all environmental compliance at wood products manufacturing facilities in Oregon, Washington and Idaho (see work experience below). Mr. Barlow was responsible for environmental considerations and associated risks for acquisitions and closures of multiple wood products manufacturing facilities, and corporate environmental audits. Typical projects included recycling, reuse, land application and disposal of industrial wastes and residuals, log yard sprinkling system management, stormwater management, process wastewater management and reuse, management of hazardous wastes, engineering and administrative controls for air pollution and regulatory negotiations. Mr. Barlow prepared more than 200 NPDES, wastewater, solid waste disposal and TV Air Operating Permit and minor source applications, and developed performance/compliance testing, monitoring and maintenance plans as required by those permits. Mr. Barlow was responsible for feasibility, construction, operation, OM&M Manuals, training, troubleshooting and performance testing of air pollution control equipment (more than 92 control devices) including regenerative catalytic oxidizers (RCO), regenerative thermal oxidizers (RTO), dry electrostatic precipitators (DESP), wet electrostatic precipitators (WESP), electrified filter beds (EFB), fluidized bed combustors (FBC), press vents, cyclones and baghouses.

As a former Vice President and co-owner of Cascade Earth Sciences, Ltd. (1981 to 1995), Mr. Barlow managed more than 1,000 environmental engineering and geotechnical projects in the U.S. and internationally (see work experience below). Projects included land application of industrial and municipal wastes, groundwater and vadose zone monitoring, industrial residuals disposal, recycling and reuse; environmental site assessments, remediation and closure; mining waste management, landfill management, and acquisition and closure of facilities.

As a former Environmental Engineer with the Oregon Department of Environmental Quality (1978-1981), Mr. Barlow was responsible for, in a nine-county area of northeast Oregon, permitting and compliance at industrial and municipal facilities, and on-site sewage disposal systems for all sanitary wastewater sources. Responsibilities included air quality, water quality, solid waste, hazardous waste, on-site sewage, and spill response.

EMPLOYMENT EXPERIENCE:

September 2017 to Present: Environmental Engineer, Soil Scientist and Erosion and Sediment Control Specialist, Barlow Environmental Consulting, DBA.

Mr. Barlow provides consulting and related compliance assistance to industrial and municipal clients, engineering firms, and private parties. Specialties include air quality, water quality, solid and hazardous waste, closure and remediation of facilities, soil and hydrologic investigations, wetland determinations, on-site sewage disposal; and, manufacturing facility acquisitions, closures, regulatory negotiations and audits.

September 1995 to August 2017: Region Environmental Engineer, Boise Cascade Corporation, Wood Products Division.

Mr. Barlow was responsible for environmental engineering and compliance at multiple wood products manufacturing facilities. Responsibilities included air quality, water quality, solid and hazardous waste management, environmental site assessments, closure and remediation of facilities, geotechnical and hydrologic investigations, performance monitoring (air, water, solid and hazardous waste), acquisitions, closures, regulatory negotiations and development and implementation of operating and monitoring plans as required by permit or statute. Mr. Barlow was responsible for environmental training of all managers and support staff. Mr. Barlow participated in more than 60 corporate environmental audits of wood products manufacturing facilities in Oregon, Washington, Idaho, Louisiana, and Mexico.

Mr. Barlow was responsible for environmental engineering and management at the following manufacturing locations (varied by year as Boise Cascade redefined region boundaries):

Eastern Oregon: Elgin Plywood, Elgin Studmill, Mt Emily Lumber, Kinzua Lumber, Island City Particleboard. Acquisition, and later closure of McNary Fiber; closure and remediation of Joseph Lumber.

Western Idaho: Homedale Deck and Beam; Emmett Plywood, Emmett CoGen, Emmett Sawmill, Emmett GlueLam Plant; and, sawmills in Cascade, Horseshoe Bend, and Council. Environmental assessment, remediation and closure of Council, Cascade, Emmett, and Horseshoe Bend sites. Confidential potential acquisitions of wood products facilities in Idaho.

Eastern Washington: Kettle Falls Plywood/Lumber, and Kettle Falls Lumber. Site assessment, acquisition, remediation and management of Arden Sawmill.

Western Oregon: Medford Plywood, White City LVL, Rogue Valley Plywood, White City Lumber, White City Veneer, Willamina Veneer, Independence Veneer, St Helens Veneer. Closure and remediation of Valsetz, Independence and a portion of St Helens Veneer.

January 1983 to September 1995: Vice President, Cascade Earth Sciences, Ltd. (CES)

When Mr. Barlow joined CES, it had two full time employees. When Mr. Barlow left CES, it had seven field offices, and a staff of more than 60. Mr. Barlow was responsible for opening and overseeing CES offices in La Grande, Oregon, Spokane, Washington, Boise, Idaho and Pocatello, Idaho. Mr. Barlow managed more than 750 projects in Oregon, Washington, Idaho, Minnesota, North Dakota, Wisconsin, New Mexico, Nevada, Utah, Montana, and Mexico. Most of these projects were for industrial clients: food processing and the wood products industry. Repeat clients included Boise Cascade, Basic American Foods, Borden Chemical, Hermiston Foods, Joy Canning, Lamb-Weston, Micron, Nonpareil, Oregon Potato, R.D. Mac, Sequoia Forest Products, J.R. Simplot, Smith Frozen Foods, A.E. Staley, Universal Foods, Sarah Lee, WTD Industries, Winnemucca Farms; the Idaho Correctional Institute, Idaho Association of Commerce and Industry, and U.S. Navy; cities of Hermiston, La Grande, Milton-Freewater, Portland, Sumpter, and Weston, Oregon; and, the Port Morrow and Umatilla.

September 1981 - February 1983: Research Hydrologist, U.S. Forest Service, Pacific Northwest Forest Range Sciences Laboratory and Wallowa-Whitman National Forest and Graduate Research Associate, Washington State University (dual appointment).

Research focused on site hydrological factors affecting infiltration, erosion, transport of water and solutes in saturated and unsaturated soils, and on the effects of grazing and timber harvest on water quality and soil productivity. Mr. Barlow participated in a multidisciplinary team, which selected and instrumented sites for remote data collection, completed detailed site investigations, analyzed collected data and wrote technical reports.

July 1976 - August 1981: Environmental Engineer/Branch Office Manager, Oregon Department of Environmental Quality, La Grande, Oregon.

Responsibilities included implementation of oversight of State of Oregon permits for air contaminant discharge systems, landfills, waste discharge and water quality permits, and on-site sewage disposal systems. Responsibilities also included compliance inspections and enforcement, remediation of hydrocarbon contamination of soil and groundwater, livestock waste management, and, spill response. During his tenure with ODEQ Mr. Barlow was responsible for more than 300 projects in the above categories and was ODEQ's lead investigator in Eastern Oregon for experimental on-site sewage disposal systems.

SPECIAL APPOINTMENTS AND ADVISORY ROLES

Session Chair, Industrial Waste Section, PNWPCA, 1991, 1992, 1993, 1994, 1995.

Principal Technical Advisor, Northwest Food Processors Association, 1993, 1994, 1995.

Session Chair, Food Processing Engineering and Waste Management, 1994, 1995.

Principal Instructor, Environmental Training Consultants under contract with Oregon, Washington, Idaho, Utah, and Wyoming State Departments for Wastewater and Biosolids Land Treatment, and Lagoon Management, 1990 through 2009.

Chairman, Urea-Formaldehyde Board Committee, Northwest, 1996, 1997, 1998.

Chairman, Associated Oregon Industries, Eastern Oregon Environmental Committee, 1995, 1996.

EDUCATION

M.S., Soils, 1983, Washington State University; 30 Additional Quarter Hours Post Graduate Work in environmental engineering.

M.S. Thesis: "Surface Hydrologic Variability within Soil-Geomorphic Units." WSU. 219 pp.

B.S., Environmental Engineering, Environmental Health Option 1976, FSU.

Registration: Certified Professional Soil Scientist, ARCPACS Certification Number 2357

Certified Erosion and Sediment Control-Lead, CESC 21-1164

REFERENCES

Luke Aldrich, PE, EOU Engineering Dept, Former Region Engineer Boise Cascade Corp. (541.786.3173)

Cody Cox, PE, Cox Engineering, Former Region Engineer Boise Cascade Corp (509.570.3249)

Derrick Howard, PE, CB Construction, Inc., Former Region Engineer Boise Cascade Corp (541.786.5315)

Eric Steffenson, Region Environmental Engineer, Boise Cascade Corp (509.675.5391)

Russell Strader, Corp. Environmental Engineer, Boise Cascade Corp (208.384.6679)

HARTT Laura A * WRD

From: bbenbaruch@ashlandhome.net
Sent: Wednesday, May 15, 2024 10:12 AM
To: WRD_DL_rule-coordinator
Subject: Proposed rules for groundwater

Some people who received this message don't often get email from bbenbaruch@ashlandhome.net. [Learn why this is important](#)

I am submitting comments regarding the proposed rules that would do the following:

- Stop the state from issuing new groundwater permits when groundwater levels are not "reasonably stable," and define what that means.
- Require data to demonstrate that groundwater is reasonably stable before a new permit is approved, and stop new permits if there isn't enough data.
- Require an analysis of the impacts of any proposed water withdrawals on rivers and streams fed by groundwater.
- Protect senior surface water rights, fixing issues in the current rules, where junior water rights have too often been given an unjust advantage over senior rights.

These common sense rules are the bare minimum of what is required to safeguard our water. We have no future without protecting our ground water. Literally – we have no future if we don't protect our ground water!

- Stop the state from issuing new groundwater permits when groundwater levels are not "reasonably stable," and define what that means.
 - The definition of “reasonable” must be very restrictive and allow for no “wobble room” for getting around the imperative of protecting our groundwater.
 - Moreover, for those areas where the groundwater level has decreased, all efforts should be made to restore the groundwater levels – even if it means denying new permits.

Regarding the issue of “water rights” in general, we must move toward eliminating any and all private water rights. Water should be considered a common good and a common resource that must be vigorously protected and managed responsibly and sustainably for the common good. The importance of water for our lives and for the environment compels us to protect our water sources by making them a public good and protecting them from exploitation for private gain at the expense of the public needs.

The proposed rules are good. But they do not go far enough in protecting our water resources.

Benjamin (Benjy) Ben-Baruch
461 N Mountain Ave
Ashland OR 97520
734-507-0862

HARTT Laura A * WRD

From: Isus2017 <isus2017@protonmail.com>
Sent: Thursday, April 11, 2024 12:56 PM
To: WRD_DL_rule-coordinator
Subject: Proposed rules for farm water use

Some people who received this message don't often get email from isus2017@protonmail.com. [Learn why this is important](#)

Hello, I am a resident of Corvallis concerned about rules being made for water use on small farms. I have learned that some small farmers have been restricted from irrigating their very small farms due to not having water rights. While I understand that we must safeguard our water, I believe this needs to be looked at carefully and that rules need to be made that allow small farmers to keep farming. We really need local foods. These small farms are in general the more healthy farms for the land and water overall. They keep local food growing. So important for our resilience in communities . They are the bulk of the farmers at our farmers markets. They need the security of knowing they can keep farming. They don't have lobbyists like the big businesses who usually get all the protections. They don't have extra money to jump through hoops that you create. Give them exemptions. Give them a break, and give them support, and healthy ways to use water.

Thank you. Berthe Palmrose

Sent from [Proton Mail](#) for iOS

HARTT Laura A * WRD

From: Bill Bold <billbold@cotse.net>
Sent: Monday, May 20, 2024 5:23 PM
To: WRD_DL_rule-coordinator
Subject: Comment on Proposed Rulemaking

Some people who received this message don't often get email from billbold@cotse.net. [Learn why this is important](#)

Ms. Hart,

I would like to submit the following comments on the draft of chapter 690 filed 2/22/24.

In terms of your current draft I feel exempting everything with less than 5 Ft3/sec flow rate in 690-009-0060 4B as way too high. Someone withdrawing water 24 hours a day, 365 days/year will withdraw 157 million gallons/year by my calculations. It seems to me that the aquifer would run dry fairly quickly if everyone started withdrawing water at this rate. In my opinion all water withdrawals should be considered and managed. There should be no exceptions.

I did some work on the Surprise Valley geothermal energy plant in Paisley. In that situation there were 2 underground aquifers. One at 750 feet and the other at 1300 feet depth and (to the best of my knowledge) neither are connected. I don't see any mechanism in your document that can handle this situation accurately. I also do not see any provisions in the current draft that considers the re-injection of the geothermal water back underground.

As a big picture view I see your process as a kluge, a 19th century surface water rights law aimed at farming that was expanded to include aquifers. In other words it doesn't manage aquifers very well, it looks like it treats aquifers similarly to a surface water source. It seems to me in the age of ground penetrating radar, accurate flow meters and computer record keeping the state of Oregon can do better. Maybe this is the time to switch methods and base water rights from aquifers on the size of the reservoir and the inflow of water. The amount of water that can be withdrawn should be based on maintaining the level of the underground aquifer.

Thank you for considering my comments.

--

Bill Bold
billbold@cotse.net

Oral Comments – Central Point Public Hearing (May 16, 2024)

Bob Hunter (Jackson County)

My name is Bob Hunter. I'm a resident of Jackson County and I'm here perceiving this to indicate that I strongly support the Department's proposed groundwater allocation rule revisions. These necessary revisions are long overdue given the fact that our water resources are over allocated and we're going to climate change. It's about time the Department gets more into management than just pure allocation. I think these rules are a good step in trying to establish sustainable management of our groundwater. I won't go into because I thought it was a great presentation on the benefits of these rules. Basically, by protecting our groundwater resources and managing the stable manner, it protects the existing current users of groundwater and existing water rights, and it protects senior water rights because of the hydraulic connection as was stated. And it also will help protect and give additional analysis to what impacts are having on stream flows and the cold groundwater component to our stream flows are really extremely important to the fish and ecology of our streams. In the past, unfortunately, it was not an option to the Department to issue groundwater, new groundwater rights, not knowing what the hydraulic connection was, not knowing what impacts it would have on the aquifers. And as we've seen in many places in the state, this has resulted in problems. And I think these rules go a long way to make sure we don't exacerbate these problems in the future and have good management practices. So again, I commend the Department for moving forward on these rules. And thank you for your time.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Bonnie New (Hood River County)

My name is Bonnie New. I live in Hood River County. Thank you for the chance to comment. I want to comment in support of the proposed new groundwater rules. I have some experience working on water quality as a public health physician and have had the opportunity to learn a lot more about water quantity since I moved to Oregon 15 years ago. I know you've had comment sessions in South Central and East Oregon. I'm in Hood River County, but there's significant groundwater issues here at the eastern edge of the Cascades. Our agriculture economy and our drinking water, of course, largely from snow melt. But there is also a groundwater component. The proposed rules would enable a more proactive long term management of Oregon's groundwater instead of the current system, which allows for pretty unsustainable use. The current rules are written in a way that, as I understand it, water's available for new groundwater appropriation if it's not already over appropriated. That doesn't seem like a logical game plan because it's not proactive. It essentially says, if I understand it correctly, we'll only make changes when we're at the crisis point of full appropriation. I like that the new rules take into consideration the effect of groundwater on stream flow. This is important in Hood River County for both the irrigation water essential to the orchardists and farmers in this county and for supporting fish populations and recovering fish populations. I was impressed with one comment made by Justin Iverson of OWRD on OPB's recent interview broadcast on Think Out Loud talking about the data used for allocation decision making. Mr. Iverson noted that the rules define a minimum set of information for decision making, and he said if that information isn't available, then we will not make a positive finding for availability until that information is collected selected. In my opinion, that's remarkably smart and cautious. It's essentially equivalent to the do no harm principle in medicine and should be more commonly seen in the regulatory environment, I believe. In summary, I endorse the new proposed groundwater rules. We definitely need this more proactive long term management of Oregon's groundwater. And I say this with the expectation that more will need to be done in the future to reverse, if not just slow down depletion of aquifers in Oregon.

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HARTT Laura A * WRD

From: Brian von Dedenroth <brianvon@hotmail.com>
Sent: Friday, June 14, 2024 11:16 AM
To: WRD_DL_rule-coordinator
Subject: Support of Revised Groundwater Allocation Rules

Some people who received this message don't often get email from brianvon@hotmail.com. [Learn why this is important](#)

I'm writing in support of revised groundwater allocation rules. For decades, Oregon's existing rules for issuing new groundwater permits have resulted in an over-issuance of groundwater permits, and have caused major groundwater level declines state-wide that harms rivers, streams, lakes, and wetlands. The new rules will result in more sustainable management of groundwater, ensure better protection of stream flows for the benefit of all aquatic species, those who enjoy recreation in them, and an overall healthier ecosystem. As the population of OR continues to grow, and the effects of climate change are felt ever more drastically, it is more important than ever for the state to stop over-issuing groundwater permits. I look forward to the adoption of the proposed rules for a healthier aquatic ecosystem for myself, my family, and the other species that depend on it.

Thank you,

Brian von Dedenroth



TO – Oregon Water Resources Commission
FROM – Oregon REALTORS®
DATE – June 5, 2024
SUBJECT – Proposed Groundwater Allocation Rules

Chair Quaempts, Vice-Chair Smitherman, and members of the Oregon Water Resources Commission,

Thank you for the opportunity to provide comment on the proposed Groundwater Allocation rules. Oregon REALTORS®, Oregon Home Builders Association, and Oregon Property Owners Association supports the efficient, beneficial use of water in the state, however, we are greatly concerned that the proposed rules as they would apply an unscientific and generalized system of groundwater management that could have serious implications statewide.

We are greatly concerned about the impact of the proposed rules on the ongoing efforts across the state to increase the production of needed housing. Specifically, we are concerned that these rules will have a substantial impact on the ability of cities to identify and obtain sufficient water resource allocations necessary to support the production of needed housing. While we acknowledge the amended language in OAR 690-008-0001 and OAR 690-009-0010 allows for the creation of basin program rules with unique groundwater level decline thresholds, this allowance alone is insufficient to prevent negative impacts to housing production.

As increasing housing production remains the top priority of Governor Kotek and a top priority of the Oregon Legislature, it appears that OWRD has developed these rules in isolation from state agencies tasked with increasing housing production, such as DLCD. Like our state agencies, Oregon's water providers will also play a key role in increasing housing production by providing more water and water infrastructure to support development, but to do so, they will need more access to water. OWRD has proposed certain actions that cities and providers can take to address this concern, such as building at higher densities or encouraging water conservation, but these suggestions are insufficient to bridge the gap in groundwater and housing needs.

Similarly, we are concerned about the impact of the proposed rules on economic development. If businesses which need water to support their operations are unable to, or

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Oregon Home Builders Association – 503-378-9066 | info@oregonhba.com

lack confidence in their ability to, obtain groundwater permits, these businesses will establish elsewhere. When combined with the impacts of the proposed rules on housing production, businesses that are struggling to attract employees will struggle even further to attract and retain workers, hamstringing the economic development efforts of these communities.

We respectfully request that the Commission not adopt the rules as currently drafted, and instead, redraft the rules as needed to ensure that Oregon's plans for groundwater management are based upon sound science and are made responsive to local resource capacities at the forefront of plan development.

Thank you for your time and consideration of our comments.

Brock Nation – Policy Director, Oregon REALTORS®

Jodi Hack – Chief Executive Officer, Oregon Home Builders Association

From: Bruce Anderson <bruce.eugene@comcast.net>
Sent: Friday, March 29, 2024 3:50 PM
To: WRD_DL_rule-coordinator
Subject: Aligning Oregon's Groundwater Rules with Oregon's 1955 Groundwater Act

Some people who received this message don't often get email from bruce.eugene@comcast.net. [Learn why this is important](#)

Thank you for the opportunity to comment. I am very encouraged to see that Oregon is finally preparing to amend its groundwater administrative rules to align them with the historic, forwarding looking provisions of the 1955 Groundwater Act. With freshwater access certain to be THE environmental issue for the American west this century, that certainty is only heightened by the climate crisis the whole world is facing. It is therefore all the more important to define "reasonably stable" groundwater levels and prevent new groundwater permits from being issued when groundwater levels are not reasonably stable. I strongly support the proposed rule revisions because they will result in more sustainable management of groundwater in the face of climate change, especially by:

1. Requiring data to determine "reasonably stable" groundwater levels and prevent new groundwater permits from being issued when groundwater levels are not reasonably stable.
2. Better protect streamflows and cold water inputs to rivers and streams from over-pumping hydraulically connected groundwater.
3. Protect senior surface water rights — including instream water rights — by requiring a full accounting of the impacts of proposed pumping on hydraulically connected rivers and streams. This is a critically important improvement because the state's practice has resulted in issuance of groundwater permits that injure senior surface water rights.

Improving how Oregon issues new groundwater permits is overdue and I look forward to adoption of the proposed rules.

Sincerely,
Bruce H. Anderson
4350 Spring Blvd, Eugene, OR 97405



COW CREEK BAND OF UMPQUA TRIBE OF INDIANS
GOVERNMENT OFFICES
2371 NE STEPHENS STREET, SUITE 100
ROSEBURG, OR 97470-1399
Phone: 541-672-9405
Fax: 541-673-0432

June 12, 2024

VIA E-MAIL TO:

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
WRD_DL_rule-coordinator@water.oregon.gov

RE: Comment of Cow Creek Band of Umpqua Tribe of Indians on
Notice of Proposed Rulemaking: Groundwater Allocation Rulemaking

Dear Ms. Hartt,

I am the Chair of the Cow Creek Band of Umpqua Tribe of Indians ("Cow Creek Umpqua"), a federally recognized Indian tribe headquartered in Roseburg, Oregon. Cow Creek Umpqua submits these comments regarding the Groundwater Allocation Rulemaking. We have been the stewards and protectors of water in southwestern Oregon since time immemorial. Cow Creek Umpqua serves as a co-manager of the natural resources within its Ancestral Territory. Cow Creek Umpqua recognizes that its culture and history are directly tied to the land, with even its name coming from a life-giving river. Cow Creek Umpqua has made it its mission to protect and enhance tribal lands, natural resources on these lands, and the Tribe's aboriginal and cultural heritage, ensuring that all natural and cultural resources are managed in a sustainable, well-balanced manner that reflects the ecological, cultural, and economic priorities of the Tribe. The main purpose of these comments is to ensure the State is on notice that the Tribe's sovereignty, water rights, and Treaty rights are not impacted by your Rulemaking. We do not waive any right or defense.

I. Rulemaking Fails to Recognize Tribal Rights

In 1853, Cow Creek Umpqua executed a Treaty with the United States, which promised Cow Creek Umpqua the creation of a permanent reservation. However, the Treaty was not honored, the United States failed to fulfill the promises contained in the Treaty and the promised

reservation was not created. Instead, in 1954, the United States terminated Cow Creek Umpqua and dozens of other Tribes in western Oregon. But we never went away. Like our ancestors who lived in and around the Umpqua and Rogue watersheds, we are the first stewards of the land and water that you now call Oregon. After the United States terminated us, we fought for decades for restoration. When the United States finally reversed its termination of Cow Creek Umpqua in 1982, part of our federal re-recognition included the ability to rebuild our reservation. When we take land into trust in the Umpqua River watershed upstream from Scottsburg, Oregon, or the northern slope of the Rogue River watershed upstream from Agness, Oregon, it becomes part of our reservation and "all rights and privileges of the tribe and the members of the tribe under [the Treaty] are restored[.]" 25 U.S.C. § 712e.

State water laws are preempted and do not govern the use of water by Cow Creek Umpqua on our lands. With the existence and restoration of our reservation lands, come the water rights that are defined by Tribal and federal law, not Oregon law. We reserve all rights to the Tribe's water resources now and in the future. To the extent your Rulemaking intends to impact in any way the rights and the privileges of Cow Creek Umpqua, or our ability to restore the lands due to us under the Treaty of 1853 and 25 U.S.C § 712e, and Cow Creek Umpqua's ability to appropriate water resources now and into the future, we do not consent.

The Rulemaking and its supporting documents fail to take into consideration the rights of the Nine Oregon Tribes. The importance of water to Cow Creek Umpqua cannot be understated. Water is life and is essential to our Tribe. The Rulemaking fails to provide information on how the State intends to engage the Nine Oregon Tribes in meaningful consultation on this matter. It does not acknowledge the sovereignty of the Nine Oregon Tribes or recognize any of the federally and treaty derived water rights possessed by the Nine Oregon Tribes. Cow Creek Umpqua must have a say in the allocation of groundwater in its Ancestral Territory and the Rulemaking should reflect the need for consultation, additional consultation procedures, and a recognition of the unique water rights possessed by the Tribe.

II. Lack of Tribal Consultation

The changes proposed do not recognize the importance of tribal rights or incorporate a process to allow meaningful consultation with the Nine Oregon Tribes throughout the groundwater allocation process. The Draft Statement of Need, Racial Equality Impacts, and Economic and Fiscal Impacts indicates that the only consultation even attempted was an invitation for Tribes to serve on the Advisory Rules Committee. This is insufficient to meet the State's consultation requirements. The very brief comments concerning the potential impact on Tribes was very cursory. The Rulemaking, and its supporting documents, fail to take into consideration the complex water rights possessed by Tribes and fail to provide for meaningful consultation.

Further, to the extent you believe you have invited the Nine Oregon Tribes to engage with you regarding the Rulemaking, we have not consulted with OWRD and do not consider consultation with Cow Creek Umpqua to be complete under ORS § 182.164. We expressly reserve the right to provide additional comments and to request a government-to-government consultation regarding the Rulemaking.

III. Need for Additional Analysis and Study

We agree with the State that more information is needed to understand the status of groundwater in the State of Oregon. *See* HB 2018 (2021). The State should further collect information on groundwater levels and use. Then you should formally consult with Tribes both to take into account our millennia of experience managing these resources and to ensure your activities honor and uplift Tribal sovereignty.

Sincerely,



Carla Keene, Chairman

Cow Creek Band of Umpqua Tribe of Indians

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Carol Dutton (Harney County) as summarized by the Rules Coordinator

Carol Dutton is with us virtually and does not have a microphone, but she's put some comments in the chat, so I'm going to read those out loud. So, her first comment is going back to the comments of Molly Collins. As a lifetime resident of Harney County and a very senior 4th generation rancher, I concur with her comments on the difficulty of being a part of the OWRV planning process due to timing, unreliable distance communication and difficulty in use of technology. I thank the two people who made it possible for me to be a part of the meeting tonight after the registration had closed, I appreciate the extension of the comment period and the opportunity to comment. I will send it in comments. She also says thank you Jean, in summary, it has been very difficult to be part of the planning process that is gonna take place and there are many active people who are not aware of the process that has been underway.

HARTT Laura A * WRD

From: Casey McClellan <mcclellancasey@yahoo.com>
Sent: Friday, May 17, 2024 9:42 AM
To: WRD_DL_rule-coordinator
Subject: Division 8,9,410 comments

I am Casey McClellan, a Umatilla County, Walla Walla Basin agribusinessman and a user of deep basalt, alluvial, and surface water rights in the basin over that last 35 years.

I served on the RAC concerning this rule making, on behalf of the Oregon Winegrower Association and Seven Hills Winery.

Overall, I think the OWRD/OWC has done a great job with this rule making and fulfilling the mission of a more sustainable and equitable Oregon water resource into the future. It would be a shame for these rules to get significantly diluted in their power to change our water future.

I have just a few comments of concern:

1. Div 8, 0001(9)(a)(B): I would hope these “reasonably stable” parameters are as least as robust. as they were in the November version of this clause . I believe that weakening these are a blow against sustainability.

2. Div 8 0001(9)(d): I am opposed to basin specific rules that weaken the State’s overall mission to enhance sustainability, and believe this opens to the door to endless “unique” variations of the rules and would add substantial burden to the OWRDs’ work load. If basin specific rules are allowed their should be absolute best science based reasoning to support the need to for specific rules for that basin. It should NOT be easy to attain sin specific rules

3. I believe that Div 410-00702(b) in its relation to exempt wells risks significant political controversy, and could lead to very real legal actions, as it in effect will prohibit development in our dry-side Eastern Oregon rural areas. See Washington’s similar attempt a few years ago.

4. I think ti would be prudent that the OWC, OWRD and Legislature absolutely commit to substantially increase the staff numbers to deal in a real effective way with water right applications in a timely manner. This is very important for Oregon businesses.

I think the OWC and OWRD for the opportunity to comment and found your process to be very well executed. It was a privilege to serve on this RAC.

Sincerely,

Casey McClellan
509 520 8928

HARTT Laura A * WRD

From: Catherine Kordesch <catherine.kordesch@gmail.com>
Sent: Thursday, April 18, 2024 9:05 PM
To: WRD_DL_rule-coordinator
Cc: Zach Freed; Kate Natoli
Subject: Support for new rules that address Oregon's groundwater overallocation

Some people who received this message don't often get email from catherine.kordesch@gmail.com. [Learn why this is important](#)

To whom it may concern:

I am a retired Pediatrician and also a Board member of the Oregon chapter of the Nature Conservancy. The proposed new rules are urgently needed to conserve our groundwater. Beyond the impact on fish, wildlife, rivers and lakes there is a looming public health issue as well. Over half of the wells tested in the Harney Basin have shown high levels of arsenic and boron due to low groundwater. In the Umatilla Basin nitrate levels are significantly higher than the EPA considers safe for drinking water. This public health issue disproportionately affects low income families that cannot afford the costs of deepening their well or digging a new one.

Thank you for your time.

Sincerely, Catherine Kordesch MD

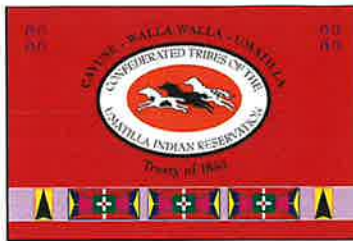
Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Charles Froelich (Portland)

Hi, I'm Charles Froelich and I live in Portland, OR, and I support small farmers. I want to say please do not adopt these punitive new proposed rules. They will shut down even more small farms and Agri businesses. Small agricultural operations are the heart of what sustained Oregon for generations. And there's still the reason why Oregon is a destination from around the world for the best culinary experiences known. And maybe more importantly, they feed our local residents day in and day out, not just tourists. This is families and people that live and work here, that want to eat good clean food and want to grow it and buy it from someone that they know that are growing it. Please do not further restrict small farmers based on your predictive modeling. And different, and I want to say different regions with different water sources require totally different parameters.

**Confederated Tribes *of the*
Umatilla Indian Reservation**

Department of Natural Resources



46411 Timíne Way
Pendleton, OR 97801

www.ctuir.org ericquaempts@ctuir.org
Phone: 541-276-3165 Fax: 541-276-3095

June 14, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
WRD_DL_rule-coordinator@water.oregon.gov
Laura.A.HARTT@water.oregon.gov

RE: CTUIR DNR Comments on Proposed Groundwater Allocation Rule Changes

Dear Ms. Hartt,

The Confederated Tribes of the Umatilla Indian Reservation Department of Natural Resources (CTUIR DNR) appreciates the opportunity to comment on the proposed groundwater allocation rule changes. We participated as a member of the groundwater allocation Rules Advisory Committee, received an Oregon Water Resources Department (Department) staff presentation to our Tribal Water Commission, and engaged in public hearings to inform our understanding and position on the proposed rule changes. We appreciate the Department's recognition of the current inadequacy of groundwater allocation rules as well as the science- and data-driven public process utilized to inform the proposed improvements.

Introduction and Background

The CTUIR is a federally recognized Indian tribe, with a reservation in Northeast Oregon and ceded, aboriginal, usual and accustomed, and traditional use areas in Oregon, Washington, Idaho, and other Northwest states. In 1855, predecessors to the CTUIR—ancestors with the Cayuse, Umatilla, and Walla Walla Tribes—negotiated and signed the Treaty of 1855 with the United States, 12 Stat. 945. The Treaty is a contract between sovereigns, and law—indeed, “the supreme Law of the Land” under the United States Constitution.

In the Treaty the CTUIR ceded millions of acres of land to the federal government, and in exchange received assurances that our sovereignty would be recognized and respected, our various pre-existing tribal rights would be honored, and our interests would always be considered and safeguarded, in perpetuity. The federal government has a duty to honor and uphold the Treaty of 1855 and all Indian treaties and to act as stewards and trustees to ensure that the terms and commitments of those treaties are fulfilled. The subordinate states similarly have an obligation not to infringe on or otherwise erode tribal Treaty Rights.¹

¹ Pursuant to the Constitution's Supremacy Clause, treaties and statutes also bind states. *Antoine v. Washington*, 420 U.S. 194, 205 (1975) (like a treaty, when Congress by statute ratifies an agreement that reserves Tribal rights, “State qualification of the rights is precluded by force of the Supremacy Clause, and neither an express provision precluding state qualification nor the consent of the State [is] required”); *U.S. v. Washington*, 853 F.3d 946, 966 (9th Cir. 2017) (Holding that “in building and maintaining barrier culverts within the Case Area, Washington has violated, and is continuing to violate, its obligation to the

A paramount objective in the Treaty of 1855 was protecting and maintaining our tribal First Foods—water, fish, big game, roots, berries, and other plants—and the habitats and environmental conditions that support and sustain them, then, now, and forever. This remains an overriding objective of the CTUIR. Protecting and maintaining our tribal First Foods is essential to safeguarding our Treaty Rights and the traditions, culture, and way of life those Rights were meant to uphold and perpetuate. Vital to our authority to protect and maintain the First Foods are our legally recognized rights as resource co-managers.² In addition to various applicable policies, the CTUIR has developed a First Foods management mission, a River Vision, and Upland Vision to guide restoration and management of our First Foods.³

Comments:

Water is the first of the tribal First Foods, and is essential to the existence, health, and well-being of our communities and all other First Foods. Water nourishes the ecosystems that provide our First foods that are central to our culture and traditions. Without water, the health of these ecosystems and our communities is compromised.

Many waters in Oregon, over which the State has management authority and jurisdiction, are essential components in maintaining and sustaining tribal First Foods. State water management can profoundly impact CTUIR Treaty Rights and the ability of our members to exercise them. The State's current groundwater allocation rules have and will continue to negatively impact the rights, interests, and resources of the CTUIR if they remain unchanged.

The CTUIR DNR supports the Department's efforts to modernize water laws, including groundwater allocation rules, to be more sustainable and protective of existing water users, both instream and out-of-stream. Groundwater overallocation and its devastating results are not new and are becoming more common in Oregon and elsewhere. Within the CTUIR's aboriginal lands, there are multiple Critical Groundwater Area designations, a Serious Water Management Problem Area designation, other basins coming to terms with severe groundwater declines, and countless groundwater diversions hydraulically connected to and further impairing overallocated surface water sources.

Tribes under the Treaties.”) *aff'd*, 138 S.Ct. 1832 (per curiam); *Skokomish Indian Tribe v. United States*, 410 F.3d 506, 512 (9th Cir. 2005) (Treaties “constitute the ‘supreme law of the land’” and have “been found to provide rights of action for equitable relief against non contracting parties,” and such equitable relief “ensures compliance with a treaty; that is, it forces state governmental entities and their officers to conform their conduct to federal law.”); *see also* *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 204 (1999) (noting that “[a]lthough States have important interests in regulating wildlife and natural resources within their borders, this authority is shared with the Federal Government when the Federal Government exercises one of its enumerated constitutional powers, such as treaty making,” and accordingly, the treaty in that case gave the Chippewa Tribe “the right to hunt, fish, and gather in the ceded territory free of . . . state, regulation.”).

² Our ancestors were sole resource managers since time immemorial, but beginning less than two centuries ago we began to share this responsibility with federal and state managers. Tribal management is now jointly based on traditional knowledge, expertise, and experience combined with the latest, most reputable, state-of-the-art scientific knowledge, practices, techniques, and data.

³ These guidance documents are based on the ecology between and among First foods, the ecology of the CTUIR and our Foods, and our relationship to the landscapes and waters that provide the Foods—in other words, our relationship to our environment. The priorities in our management visions are backed by peer-reviewed science publications, and our guidance should be recognized as expressions of applied “Traditional Ecological Knowledge” and given equal weight to other government agency management guidance. Where our management goals or priorities differ, we can consult to address those differences; where our goals and priorities align, we can collaborate to our mutual benefit.

We welcome the Department's use of data and science to acknowledge that groundwaters are not infinite and are often hydraulically connected to surface waters. While late for many watersheds, the proposed rules are vital to avoid more communities facing groundwater overallocation issues with fewer and fewer options available besides curtailment. The proposed rules are also essential to meeting shared water co-management objectives. Baseflow conditions in our ceded lands rely mostly and at times entirely on hydraulically connected groundwater and we are also a groundwater-dependent community. Current rules threaten to worsen conditions that are already concerning and impacting our ability to meet instream and consumptive uses.

Clarifying and updating the definitions of "reasonably stable groundwater levels" and "potential for substantial interference" provides the Department with a much more realistic accounting of water availability to inform decision-making. More decisions made under current rules will create more problems that our future generations will have to overcome with far fewer options than are now available. While we recognize concerns primarily from those that have become accustomed to relying on groundwater to overcome climate change impacts and meet new demands for growth and development, we do not support any further delays in adopting the proposed changes or weakening them.

Conclusion

The CTUIR DNR supports the proposed rule changes and urges immediate adoption by the Oregon Water Resources Commission. The changes to how water availability is assessed are long overdue and must not be delayed. The Department's rulemaking process was robust, adequately informed by science and data, and confirmed the urgent need to address the deficiencies of existing groundwater allocation rules.

The CTUIR DNR appreciates the Department's commitment to the rulemaking process and for your consideration of our input and comments on the proposed groundwater allocation rule changes. We look forward to continuing to work effectively and collaboratively with the State of Oregon to protect, recover, and restore our shared waters.

Respectfully,

A handwritten signature in black ink, appearing to read "Chris Marks", written in a cursive style.

Chris Marks, Policy Analyst
Department of Natural Resources
First Foods Policy Program
Confederated Tribes of the Umatilla Indian Reservation

Oral Comments – La Grande Public Hearing (April 18, 2024)

Chris Marks (Confederated Tribes of the Umatilla Indian Reservation)

My name is Chris Marks. Born and raised in Pendleton, just over the Blues, and a graduate from Eastern Oregon. Good to be back. I serve as the Water Policy Analyst for the Confederated Tribes of the Umatilla Indian Reservation, and we'll be providing comments on behalf of the Department of Natural Resources. Water is the first of the tribal first foods and is essential to the existence, health, and well-being of our communities and all other foods. Water nourishes the ecosystems that provide our first foods--the fish, the wildlife, roots and berries--that are Central to our culture and tradition. Without water, the health of these ecosystems in our communities is compromised and that's where we're at right now in a lot of places. In fulfillment of the tribe's mission to protect, restore, and enhance the first foods including water, we work with and must rely upon the adequacy of OWRD's management and its rules. Oregon's current rules are not adequately solving our groundwater issues as they continue to grow worse. They're ultimately kicking those issues down the road for future generations who may be out of a lot more options that we currently have, and they're dwindling quickly. We need to take responsibility now before it's too late, and more areas of the state suffer from the curtailment after it's already gotten too bad and you're pacing back. That's not growth that's pulling that back. The proposed rule changes are necessary because we are draining that precious groundwater. That water is finite. By saying yes to more and more uses, we are draining the aquifers upon which our communities and ecosystems depend from below, devastating native fish, water quality, and reducing the quality of life for the tribes and all of Oregonians. We cannot continue to ignore these facts simply because improving water management is going to be challenging. It's going to require self-discipline, and it's going to require a lot more collaboration from top to bottom to top. Local, state, federal, tribal are all going to have to work on this together. In recent years, Oregon has taken some vital steps to improve water management. Develop and use of the Integrated Water Resources Strategy specifically prioritizing understanding the state's surface and groundwater resources and meeting instream and out of outstream needs as well as ecosystem water demands. That work has led to this. These proposed rules are really informed by that improved understanding that they've gotten since the IWRS and the USGS Basin studies, really trying to understand these resources a little bit. That information is leading us to this rule. The proposed rules also responsibly acknowledge the link between groundwater and surface water, something that's in the code but has not necessarily been managed to do that. And we think that that's a vital step consistent with the IWRS, and we look forward to more actions being driven by that IWRS, and that improved understanding of our water resources. We appreciate the rule making processes; inclusiveness, the diverse options for engagement, and the deliberate process that the Oregon Water Resources Commission and the Department went through really starting in in the mid 2010's. This has been a good robust process. We understand this issue is challenging. Our tribal community outside of Pendleton is fully groundwater dependent. That is the only water source for all of the uses on the Reservation, and so we recognize that this rule could absolutely make it more difficult to meet our future growth, our future demands, but we also rely on the ecosystem and so it's not a choice between the two. We've got to figure out how to do both, and that's what this rule is helping us get to as well. We're encouraged by examples like the City of Walla Walla. We work with the Walla Walla Basin a lot, where they have been meeting growth demands through conservation and management efforts. Use has gone down during the last 10

years of growth through water metering, through leaky pipes. So, there are options, but they recognize that they will not be able to meet that demand forever through those types of things, and so they're also investing big time in op for storage and recovery. Storage has come up many times. It doesn't have to be all above ground. It can be below ground as well, and so that is another option that I think we'll have to look for in the future. So, support the proposed rules, support the commission adopting those. Want to thank the Department, volunteers of the Rules Advisory Committee and all other others involved to make this a robust, diverse, and I think a very productive process. Thanks for the opportunity to comment and sport of these rules.

CHRISTINE GOODWIN
STATE REPRESENTATIVE
DISTRICT 4



OREGON HOUSE OF REPRESENTATIVES

June 11, 2024

Ms. Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Via Email: laura.a.hartt@water.oregon.gov

Dear Ms. Hartt,

I submit the following testimony in response to the Groundwater Allocation Rulemaking that was discussed at public hearings across Oregon this past April and May.

As the rules are currently written, they will make it nearly impossible for new agriculture users and other commercial users to obtain Water Rights permits. Clearly this will damage individual businesses' economic future and it will "fail up" causing widespread problems all over Oregon.

The scientific methods used to determine "the potential for substantial interference" with surface water sources appears to be woefully inadequate. Additionally, the one-size-fits-all approach that appears in the new rules does not take into account Oregon's diverse basins.

I am recommending that this rulemaking process be suspended until more accurate scientific methods can be developed for identifying the potential for interference with surface water sources.

Thank you.

Sincerely,

Representative Christine Goodwin, HD4

Received

JUN 18 2024

OWRD

HARTT Laura A * WRD

From: GONZALEZ Danielle L * WRD
Sent: Thursday, April 4, 2024 9:31 AM
To: WRD_DL_rule-coordinator
Subject: Fw: Ground Water Availability Allocation Rule Making Bend

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From: Christine Larson <brookslarson1205@gmail.com>
Sent: Wednesday, April 3, 2024 12:54 PM
To: WRD_DL_waterstrategy <WRD_DL_waterstrategy@water.oregon.gov>
Subject: Ground Water Availability Allocation Rule Making Bend

Some people who received this message don't often get email from brookslarson1205@gmail.com. [Learn why this is important](#)

Hello,

I wanted to inform you about the water allocation issue and my concerns.

Efficiency and Conservation Efforts.

We live in a farming area that supplies meat, vegetables, eggs, hay, etc.

The current system, Tumalo Irrigation District, needs to be fixed.

We pay for a certain amount of water for irrigation, which has been cut back substantially.

In addition, we have seven days off and seven days on at the end of the system, which is not sufficient for production.

Priority should be given to the farmer who provides food for the consumer and has domestic livestock.

It is disheartening to see that golf courses, which cater to a leisurely activity, and resorts, which are primarily for the comfort of tourists, are given priority over the livelihood of farmers and the sustenance of our community. This is particularly evident in our proximity to the Thornburgh Resort, which seems to contribute to our water shortage despite its water studies claiming responsible usage.

Any resort should be required to eliminate grass and water-gobbling plants and adhere to stricter water use laws.

The transfer of water rights through buying and selling is not working. Citizens without deep pockets can not compete with developers who purchase existing rights to increase water usage.

Eliminating transfer will allow those who depend on groundwater and water provided through wells to continue receiving their current share without penalizing other users.

Someone not using their water could transfer it to the neighbor but not transfer large amounts of water rights to developers who create a more significant need elsewhere in the area.

Current residents could utilize water sharing with an existing need, not a mass of new homes that will continue to need more. The watering of any new golf course, housing in desert areas, and new resorts should be eliminated, not approved to use water transfer.

Aquifer storage and recovery are changing. In Deschutes County, our canals are being piped.

While this reduces evaporation, our aquifers will not benefit from water returning to the aquifer.

Ten years ago, many thought the aquifer was plentiful. Some still do. However, with the canal piping and rural subdivisions being approved, those who rely on well water are already challenged with dry wells. Imagine being a resident who bought in a rural community and running out of well water while the newly approved resort or sub-division comes in and starts using massive amounts of water, forcing you to drill new wells. Transferring water rights to developers is threatening our storage and recovery.

Christine Larson

Managing Partner for B&C Development, LLC

Sent from [Mail](#) for Windows 10

Oregon Water Resources Department
Groundwater Allocation Rulemaking Public Hearing
May 16, 2024

Testimony by Christopher Hall, Water League
[Transcript]

Good evening. My name is Christopher Hall. I'm the Executive Director of Water League and our organization engages the public and water stewardship.

First thing I'd like to say is thank you very much for all the hard work you and all the other staff members have done. This is a huge job. It's filled with a lot of concern across the state and I think the way that staff of the water resources department has done, has handled this, has been exemplary. And there are a lot of people who are very good friends of mine and people who I know who are on different sides of the issue in this regard. And the thing that I really appreciate the most is just the decorum and the way that this rules process has moved forward. And I think despite how divisive some of these issues are, we are still able to, at the end of the day, work together to make Oregon as good as as it can be.

And I think that's a real achievement. 75 years ago or more, Frank McColloch was given the job, along with the number of other people, to come up with the 1955 Groundwater Act. And in that act, they, the legislature, voted to ensure that all water in the state of Oregon, not just surface water but groundwater, is also a substance that belongs to the public. So unlike the dirt on your property, unlike the minerals that are there, the people who own property do not own that water. That water is flowing just like a stream, whether it's on the surface or whether it's underground. And the reason why they chose to make all the water in the state public is because water is life.

And when we start turning it into personal property, the way we do furniture and minerals and all sorts of other equipment, we end up making serious mistakes with this substance that is incredibly important to life. It would be as if we were to say that air is personal property. It's just not possible, and Oregon's not a state that does that.

Water League strongly supports this rule making revision. We have our critiques, and we have our comments, and we have our opinions about what needs to be fixed — and I'll get into one or two of them. But, this is, and I may have hinted at this earlier, a bit late coming and better late than never. You know, when was the when was the right time? We should have passed these rules probably 20 years ago and the next best time is today.

So the first thing I would like to say is that the following statistics are supplied by you, the state of Oregon. They're not mine, and we saw some of them tonight. We saw that irrigation uses 82% of all the water that gets pumped out of the ground that comes from aquifers. That's not unusual. That's pretty much like many different places in semi arid or Mediterranean climates where water is needed for irrigation. It also happens to be the case according to the Oregon Department of Agriculture, that 80% of all agricultural products are exported out of Oregon. So that means is that a lot of that irrigation water that's being pumped out of the ground, it's also being shipped out of state in what's called Virtual Water Exports.

All the domestic wells as we saw earlier tonight (there's almost a quarter million of them) use just 4% of the groundwater. So when somebody complains about a farmers market vendor who is using their domestic well to irrigate their 1/2 acre crop — for 70 years it was never enforced. And the reason why is because — frankly — it's a public relations disaster. And the 4% of water use that comes out of the ground with those domestic wells is just infinitesimal.

The public water supplies that service every municipality in Oregon account for only 10% of groundwater use. That is a very small amount given the fact that 85% of all Oregonians pretty much live in municipalities in one form or another. The 4.2 million Oregonians go about their day and directly use a total of 14% of the groundwater. And that's saying something — that you know — the population is large and they just don't use that much water every day. And one of the points I'll make is that since 80% of Oregon's agricultural products are exported, we don't “eat” that irrigation, we don't in fact — actually people outside the state do.

The correlation between population and irrigated acres has never existed. In the early years of Oregon, irrigated acres grew 50% faster than the population did. And then in the past 75 years, the population outpaced irrigation by a factor of 9, which is almost an order of magnitude. So the population in Oregon and irrigation have absolutely no correlation. The fact is that irrigation is an industrial practice that uses water for exports far more than it does for Oregon's 4.2 million residents. We get our food from California and other places across the nation. This is an important point to consider when we want to push back against the falsehood that is actually in this rules package, that says quote: “Because everyone relies on food and clothing, to the extent the rule making impacts agriculture, everyone should be impacted equally.” That's just false.

This is a dangerous misrepresentation because irrigation has drained Oregon's aquifers, not domestic well users, not municipalities where 85% of the population lives, and not by the residents who get hungry three times per day. Therefore, we consider these very important (and dare I say crucial) rules that will limit the allocation of future water rights to account for the fact that groundwater has been over allocated in every basin in Oregon — that we must not punish domestic well users and municipalities by preventing them from access to water for the humans that need to live every day. We will never wring enough water from cities to conserve our way out of water scarcity. And telling cities that they can't get new water rights because irrigation used up the vast amount of groundwater is grossly inequitable.

The governor has called for ending the housing crisis by building new homes and apartment buildings. We cannot expect to address our housing crisis if these rules make water the limiting factor. I submit, and I stand upon the statement, that growing animal forage crops and other non-human foods for export is not now and never will be as important as ensuring that our communities have plentiful and fresh, clean water. These rules must have a carve out for allowing new water rights for all municipalities because the volume of water that they use is so small compared to irrigation, and the value of their water use is so much greater than irrigation, especially the export crops that effectively ship our groundwater out of state.

Thank you very much for the time to be here today and share this information. And despite our strident, if not strong critique on some of these issues, we support this rulemaking unequivocally. Thank you.



*Engaging the public in water
stewardship.*

www.waterleague.org

June 12, 2024

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Re: Testimony on the Notice of Proposed Rulemaking for Chapter 690,
Divisions 8, 9, 300, and 410

Herein is Water League's continuing testimony on the *Notice of Proposed
Rulemaking for Chapter 690, Divisions 8, 9, 300, and 410*.

We provided in-person testimony at the public hearing on May 16, 2024, at
Central Point, Oregon. We also emailed the hard copy transcript of this spoken
testimony to OWRD on June 5, 2024.

The following testimony addresses a few important factors that we urge you to
consider. As we stated in previous testimony, Water League strongly supports
the revision of Division 8, 9, 300, and 410 administrative rules, despite some
serious concerns we articulate below. We are grateful for the visionary leadership
and the hard work of all participants.

Thank you,

A handwritten signature in black ink, appearing to read "Chris Hall", written over a light blue horizontal line.

Christopher Hall
Executive Director
Water League

Introduction

Water League supports the need for resilient definitions capable of resisting erosion by special interests that harm the public interest. (Some unique interests do not harm the public interest.) In our critique below, we discuss our concerns with two loopholes that subvert the very intent of this rules package by undermining the definitions of Reasonably Stable Groundwater Levels in Division 8, all of the definitions and every section in Division 9, and the definition of Water is Available in Division 300. The extent of the impairment has the potential to nullify the rules and indicates the degree to which the lobbyists who pushed for the loopholes will aggressively exploit them in the short, mid, and long term going forward.

As written, the loopholes undermine the two core pillars of these rules. The first is what we call *The Allocation Loophole*, and it negatively impacts the proposed rules that restrict the allocation of new groundwater water rights when groundwater levels are unstable and declining. The second is what we call the *Groundwater Controls Loophole*, and it negatively impacts the proposed rules that OWRD uses to regulate existing junior groundwater water rights. We request the removal of these loopholes.

We also request reasonable considerations for municipal public water supplies to access water as needed because they use so little water compared to industrial irrigation operations. Municipal public water supplies serve 80% of the public but use only 10% of all groundwater pumped annually; whereas, irrigated agriculture uses 82%, which approaches an order of magnitude (See Figure 1). Oregon's public water supplies did not drain the state's aquifers to the extent that irrigation has drained them.

Water League contends that it is a bad policy to punish cities and towns for groundwater declines caused almost exclusively by the irrigation industry. To this point, OWRD must require irrigated industrial agriculture to strictly adhere to the proposed rules without the two noted loopholes, which we describe at length in our testimony below. Oregonians can no longer stand by and watch irrigators drain Oregon's aquifers and leave our cities stranded high and dry without future access to water – it's downright immoral. That Oregon exports 80% of all agricultural crops makes the problem worse since water leaves the state in *Virtual Water Exports* – this is water that cities should have access to, whether through water right transfers or the restriction of new irrigation water use allocations.

Wells in Oregon

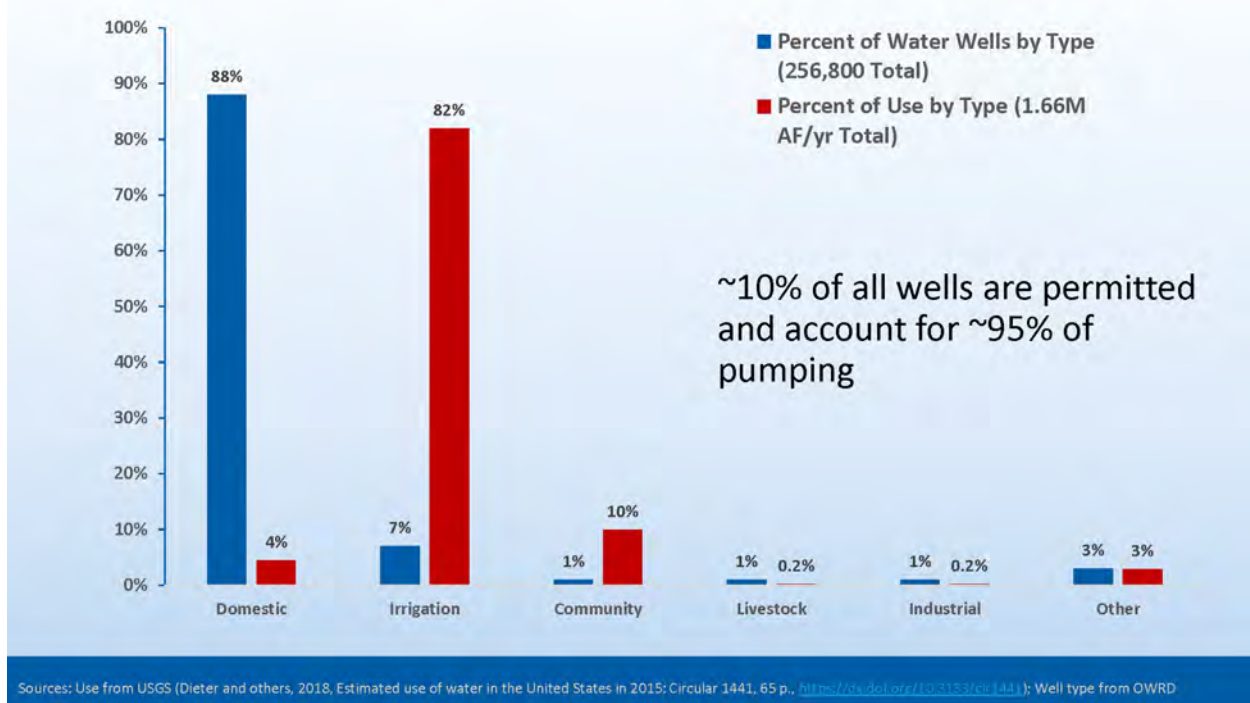


Figure 1. Source: Oregon Water Resources Department – [Pre-Hearing, Information Slideshow](#) – Pubic Hearing, May 16, 2024 (Slide #5).

The governor has called for all Oregonians to help solve the housing crisis. The way OWRD and the WRC can help is by not obstructing urban growth by forcing water limitations onto municipalities that are the responsibility of large-scale irrigated agriculture to shoulder. Oregon will never conserve its way out of the water crisis by cracking down on cities; indeed, water conservation will necessarily, if not mathematically, have to come substantially from industrial irrigation operations commensurate with the scope of their water use. In regions where surface water is hydraulically connected to groundwater, the responsibility to stop irrigation from harming cities that use groundwater is ever more pertinent.

The housing deficit is unacceptable, if not shocking, and to propose rules that make groundwater a limiting factor for municipalities cannot stand. The OWRD cannot let the irrigation industry's massive scale water use problems further harm 80% of the public who rely upon municipal water uses by ensconcing that harm into the proposed rules. We

incorporate by reference the public testimony by Redmond City Mayor, Edward Fitch, on agenda item K. *Groundwater Allocation Rulemaking Update* at the WRC meeting on Friday, June 14, 2024. Mr. Fitch called for the implementation of the [OWRD State Agency Coordination Program](#) in the context of drafting these proposed rules so that city and county Comprehensive Plans can better coordinate with statewide planning goals that are both land and water based. We agree.

The inclusion of these loopholes without protections for cities harms the greater public interest. The proposed rules must not be allowed to inure benefits to the irrigation industry via these loopholes while cities wither. We also note that arguments in favor of the loopholes, saying that cities need them too, are specious: OWRD should remove the two loopholes and create a straightforward provision that public water supplies may have reasonable access to future water sources as needed for municipal uses to house and care for 80% of Oregon's population that survives on public water supplies.

The Allocation Loophole

We begin our critique of the two loopholes by way of highlighting how the proposed rules offer a workaround to the new standard that the OWRD “will make a finding that no water is available” when there is insufficient hydrologic data to make a determination on water availability. (This is technically a third loophole, but it figures in the first *Allocation Loophole*.) In the past, industry pressured staff to approve a water right permit if water availability was unknown; now these new rules take the opposite approach, known as *The Precautionary Principle*.

The most clear expression of the new standard is not in the rules but in [the public relations document](#) for communications with the public about these proposed rules. OWRD says:

If the Department is not able to make site-specific determinations based on existing data, a finding would be made that no water is available for the requested use and the application would be denied.

Nowhere in the [Notice of Proposed Rulemaking for Chapter 690](#), referred to as the Groundwater Allocation Rulemaking process, do the draft rules make such a clear and direct statement. The stance against allocating water use in the absence of data is a cornerstone of the new rules package that OWRD has been heralding. Any efforts to weaken the concept

are not only counter-intuitive; they are a poison pill killing off the core aspirations of these proposed rules.

The two closest statements in the proposed rules that approximate the new standard to deny allocations in the absence of data are:

690-008-0001 *Definition and Policy Statements* (9)(b) If water level data are insufficient to perform either test in (a) for a given year, then the Department will presume that groundwater levels are not reasonably stable unless...[and then two reasonable alternative conditions for testing are listed unrelated to the loophole];

690-410-0070 *Water Allocation* (2)(b) The groundwater of the state shall be allocated to new beneficial uses only when the Department makes a finding that water is available for a proposed use as defined in OAR 690-300-0010. Restrictions on additional appropriation for exempt groundwater uses may be considered when a groundwater source is over-appropriated.

Ostensibly, these sections are supposed to stop groundwater allocations in the absence of data. But they are undermined by factors that these sections rely upon, which we explain below. As such, these paragraphs play a role in a loophole that undermines *The Precautionary Principle*, basin-by-basin.

In addition to weakening the policy “insufficient data = no new water right,” there are several other ways pumping proponents can bend the rules when data is available. Here’s how the *Allocation Loophole* works regardless of whether there is sufficient data or what condition the data is in:

First, Superseding Entities go to the WRC and press for new basin rules in their region under 690-008-0001 *Definition and Policy Statements* (9)(d) to supersede the limits in 690-008-0001 *Definition and Policy Statements* (9)(a) *Reasonably Stable Groundwater Levels*.

690-008-0001 *Definition and Policy Statements* (9)(d) states:

The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission’s authority in ORS 536.300 and 536.310. Any proposed superseding basin program definition must consider, at a

minimum, the anticipated impacts of the new definition on:

- (A) the number of wells that may go dry; and
- (B) the character and function of springs and groundwater dependent ecosystems; and
- (C) the long term, efficient, and sustainable use of ground water for multiple beneficial purposes.

This effort to supersede the rules would be to permit less stable groundwater levels in a given basin than section (9)(a) permits by changing the standards for the rates of decline (over time) in groundwater from benchmarked Annual High Water Levels in any given area. The Superseding Entities would also seek to increase the permissible overall depth of declines as measured from a reference level taken at a point in the past, the time of which, would also be changed. The Superseding Entities will use the ability to supersede the entirety of the Division 9 rules (we discuss later on) to manipulate the conditions present in subparagraphs A, B, and C in 690-008-0001 *Definition and Policy Statements* (9)(d). They will do this by pressing for weaker standards on what a Hydraulic Connection, Streamflow Depletion, and Potential for Substantial Interference mean in Division 9.

Furthermore, in the absence of favorable data that would otherwise signify greater pumpage allowances, new data will be created under the superseding provisions allowed in 690-008-0001 *Definition and Policy Statements* (9)(d). The same special interests who pushed for the (9)(d) carve-out for special consideration in these proposed rules will use the same influential force later on to press for changes they seek that will increase groundwater pumping. The effect has an unreasonably high chance of destabilizing groundwater levels in basins across the state because it is precisely more of the same lobbying that has occurred over the past decades that caused the problem these proposed rules address. If OWRD can't resist the (9)(d) superseding carve out now, how can the public expect them to resist future pressure that pits special interests against the greater public interest?

Following the logic of this chicanery, and with the intent to supersede the statewide rules as permitted in the rules, the superseding entities then go to OAR 690-300-0010 *Definitions* and cite the definition in section (57) "Water is Available," paragraph:

- (d) The requested groundwater source exhibits reasonably stable groundwater levels, as defined in OAR 690-008-0001;

Now, with desirable alternative metrics on rates of decline and overall depths of decline in hand, the “Water is Available” determination will register as a “Yes.” These *Alternative Facts*, which are all the rage these days, will result in further groundwater declines that the state would otherwise prohibit. Lest we have not been clear: when there is insufficient data for OWRD to make a determination about whether groundwater levels are reasonably stable, pumping proponents will use this loophole to acquire favorable data as needed to press their case.

But it’s much worse: the entirety of Division 9 rules are preempted by Division 9 rules language, which states:

690-009-0010 *Basis for Regulatory Authority, Purpose, and Applicability* (2) states: “The authority under these rules may be locally superseded where more specific direction is provided by the Commission.”

Therefore, in OAR 690-300-0010 *Definitions* (57) “Water is Available,” paragraph (e), “the rules governing groundwater interference with surface water OAR 690-009-0010 through 0040” will also be whittled down so that definitions in OAR 690-009-0020 *Definitions*, Hydraulic Connection, Streamflow Depletion, the Potential for Substantial Interference, and others in Division 9 are weakened to the extent necessary to allege that more “Water is Available” than the statewide rules permit. With the weakening of these definitions in certain localities (that are not defined as basins but are any version of what the term *Local* means), more water will be made available by the very same means of lobbying pressure and influence that have wracked OWRD water management policies and practices over the past decades. We are reminded of an ironic phrase when thinking of the very literal statement: *The lobbying will continue until more water is made available.*

The Groundwater Controls Loophole

For purposes of outlining the *Groundwater Controls Loophole*, we restate the extraordinary provision from 690-009-0010 *Basis for Regulatory Authority, Purpose, and Applicability* (2): “The authority under these rules may be locally superseded where more specific direction is provided by the Commission.” This is notable since section 690-009-0010(1) states:

The right to reasonable control of the ground waters of the State of Oregon has been

declared to belong to the public. Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.795, the Water Resources Commission has been charged with administration of the rights of appropriation and use of the groundwater resources of the state.

While these proposed rules do not have supremacy over the statutes, they have the force of law and serve to streamline and clarify the statutes. Ironically, OWRD appears to have established a form of *state-sponsored preemption*. Just what does OWRD think will happen when a pumping proponent seeks to carve out the public interest provision in their basin under the pretense that “The authority under these rules may be locally superseded where more specific direction is provided by the Commission?” Our question here is not rhetorical or speculative; it is a very real concern for the public interest standard.

The Division 9 rules are wide-ranging. 690-009-0010(2) also states:

These rules apply to all wells, as defined in ORS 537.515(9), and to all proposed and existing appropriations of groundwater except the exempt uses under ORS 537.545.

The Division 9 rules are also powerful. In the same paragraph, 690-009-0010(2), the rules “establish criteria to guide the Department in determining whether a proposed or existing groundwater use will substantially interfere with a surface water source.” This is an important metric that determines if OWRD will permit a new water right and if OWRD will regulate off an existing junior water right.

Critically important definitions, such as Hydraulic Connection, Streamflow Depletion, and the Potential for Substantial Interference in 690-009-0020 *Definitions* are now vulnerable to manipulation by lobbyists for the most powerful water users in the state. The same fate awaits the Determination of Hydraulic Connection and Potential for Substantial Interference in 690-009-0040 *Determination of Hydraulic Connection and Potential for Substantial Interference*, for Groundwater Controls in 690-009-0050 *Groundwater Controls* that regulate off junior water users, and for Groundwater Controls that determine the Potential for Substantial Interference in the allocation of new water rights in 690-009-0060 *Groundwater Controls: Determination of Potential for Substantial Interference*. All sections of Chapter 690 Division 9 are now variable from one locality to the next even though every aspect of these rules listed above should equally apply across the state as the proposed rules otherwise dictate.

Hydraulic Connection, Streamflow Depletion, and the Potential for Substantial Interference, to name a few of the affected definitions, are provable facts. Saying that the hydrologic science determining a hydraulic connection varies from one locality to the next is preposterous. What varies from place to place is the strength of the hydraulic connection, not the methods hydrogeologists use to measure it. This is a conflation error, where the standard for what constitutes a hydraulic connection is conflated with the evaluation of the data itself.

The same critique extends to Streamflow Depletion and the Potential for Substantial Interference. The proposed rules state: “‘Streamflow depletion’ means a reduction in the flow of a surface water due to pumping a hydraulically connected groundwater source.” There are no *Alternative Facts* about what this definition means. Special interests wishing to supersede the entirety of the Division 9 rules cannot be allowed to attach preferential numbers to what a reduction means so that a “reduction” doesn’t exist until a stream has been almost dewatered.

Most surprising is how these rules permit special interests to supersede the Potential for Substantial Interference, which, in these rules “means that a groundwater use will cause streamflow depletion based on the assessments described in OAR 690-009-0040 or OAR 690-009-0060, and therefore may cause or may have caused substantial interference with a surface water source.” Since sections 0040 and 0060 are both in Division 9, the Superseding Entities can rewire those sections first, then come back to the definition of the Potential for Substantial Interference and rewire that one as well. If they are successful at doing that, then jerry-rigging the definition for Streamflow Depletion is made even easier.

The proposed rules language poses serious questions about the resilience of these rules and how they even matter to the public interest if special interest water users relentlessly press for decades to weaken them into a patchwork of failed groundwater policies. OWRD undermines the very basis for allocating new rules restricting groundwater water rights and controlling existing water rights.

Were these rules to overcome the incredulity of reason and become law, then the WRC would be placed in the unfortunate position of constantly deflecting lobbyist pressure seeking to erode groundwater protections as they have for decades. How, then are the proposed rules any different from the past policies that have permitted special interests to drain Oregon?

And yet, there's even more bewildering language: OWRD does not specifically define the superseding entities in 690-009-0010 *Basis for Regulatory Authority, Purpose, and Applicability* (2), which states: "The authority under these rules may be locally superseded where more specific direction is provided by the Commission." Rather, OWRD alludes to them as if **they were to exist** by the presence of an adverb (locally) modifying an action they describe in the passive tense (superseded), which is notable for its ambiguity. Are Superseding Entities political subdivisions of the state asking the WRC for permission to preempt state supremacy? Are they residents who are asking the WRC to open a Basin Rulemaking process to amend the Basin Rules in their region to counter the statewide rules in 690-009-0010 *Basis for Regulatory Authority, Purpose, and Applicability*? Are the Superseding Entities any locals anywhere who decide they don't like the statewide rules and wish to supersede them? The conceit of defining who may take action by obliquely referring to their existence in an adverb is extraordinary.

In any likely scenario, the Superseding Entities would go to the WRC and seek to loosen the rules in their locality on any aspect of Division 9. Then they would, once again, point to 690-300-0010 *Definitions*, (57) "Water is Available," which states:

(e) The requested groundwater use will not substantially interfere with existing rights to appropriate surface water, as per the definition of "substantial interference" in OAR 690-008-0001 and the rules governing groundwater interference with surface water in OAR 690-009-0010 through 0040.

In this case, pumping proponents would cite how their "requested groundwater use will not substantially interfere with existing rights to appropriate surface water, as per...the rules governing groundwater interference with surface water in OAR 690-009-0010 through 0040." By doing so, they would control to the greatest extent possible (that their lobbying and influence can affect) how OWRD manages Groundwater Controls in 690-009-0050 *Groundwater Controls*.

Assessment and Recommendations

Water League has a grudging respect for the legal and political minds who fabricated the two loopholes described above: the first that undermines Reasonably Stable Groundwater Levels, the other that undermines the entirety of 690 Division 9, and how both cripple the concept in 690-300-0010 *Definitions* (57) of "Water is Available." The conceit is truly impressive,

and we wonder what could be done in the name of the public interest if these actors had shifted their alliances to the public good.

Water League has advocated extensively for place-based planning in the context of establishing political subdivisions called Basin Districts. These districts differ from the proposals in these proposed rules for local control (“locally superseded”) in Division 9 and for a basin-by-basin patchwork of groundwater allocation standards in 690-008-0001 *Definition and Policy Statements* (9)(d). **Basin Districts would have to comply with statewide water-based planning goals; whereas in these proposed rules, undefined localities and basin rulemaking would circumvent the proposed statewide rules, which is the exact opposite concept.**

Water League calls for OWRD and the WRC to reject these broadside attacks against statewide rules that seek to undermine the public interest in securing groundwater sources for the future. The loopholes in these rules will lead to destabilizing groundwater levels: wherever lobbyists for special interests have sought in the past to pressure state officials to approve water rights when the data plainly showed no water was available or when there was no data, they will press ever harder under the provisions of these loopholes that they sought.

It is this exact kind of subterfuge that has gotten Oregon officials, led by the governor, to finally say “*Enough is Enough*” and propose a sweeping omnibus water package for the 2025 legislative session. [The letter to Governor Kotek from four water law experts](#) details how the governance leadership, which includes the executive branch and legislators, must take responsibility for failures in water management. Such aspirations take the high road and establish that the buck stops with those in a governing capacity. We agree and hold our governing officials in the highest regard for their leadership in this manner and on this matter.

To that extent, we call for the WRC, appointed by the executive branch, to reject the loopholes inserted in these rules and establish a provision to protect public water supplies:

1) Remove the paragraph in 690-008-0001 Definition and Policy Statements (9)(d), which states:

The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission’s authority in ORS

536.300 and 536.310.

2) Remove the sentence in 690-009-0010 Basis for Regulatory Authority, Purpose, and Applicability (2), which states:

The authority under these rules may be locally superseded where more specific direction is provided by the Commission.

3) Create a straightforward provision for the WRC to consider that public water supplies may have unimpeded access to future water sources as needed for municipal uses to house and care for the 80% of Oregon's population that survives on public water supplies.

Conclusion

There have been many complaints in the past few years by irrigators and water conservationists that OWRD was too permissive in allocating water rights to use groundwater for non-exempt uses. On one hand, conservationists believe too much groundwater has been pumped, and they want to preserve water in-ground for the environmental health of the ecosystem and future uses by humans. On the other hand, irrigators have been vocal in blaming OWRD for misleading them that water was available in sufficient amounts to realize the full potential of their water rights. In many places, there is not enough groundwater to pump for irrigators to maximize the full use of groundwater their water right certificates authorize. Both constituencies exemplify the reason why OWRD initiated the Groundwater Allocation Rulemaking process.

One of the leading voices from the irrigation perspective is Representative Mark Owens, an irrigator in the Harney Basin, where a separate rulemaking process is underway to designate a Critical Groundwater Area (CGWA). In an email to this writer, Representative Owens noted:

There also needs to be a conversation with affected Ag producers that when WRD has issues a GW permit with full knowledge that the basin is over appropriated that those that oversee managing this public resource should be held accountable. Our Ag producers when they receive a permit or a certificate to use water assume the WRD has made this allocation on knowledge that the resource is present and available when the permit was approved. If permits are issued when the state has current available

information the basin is over appropriated the state does bear responsibility. ([February 27, 2023](#))

This is perhaps the best articulation of the historic problem issuing water rights in over-appropriated regions to use groundwater for non-exempt purposes. While there is a large body of research that demonstrates the extent to which [OWRD staff were pressured to issue permits against their better judgment](#), Representative Owens makes a very good point about how “Ag producers when they receive a permit or a certificate to use water assume the WRD has made this allocation on knowledge that the resource is present and available when the permit was approved.”

Irrigators who feel like they were misled, criticize the OWRD for approving water rights when there was not enough data to justify the groundwater appropriations. Lobbyists for the irrigation industry shirk all responsibility for their decades of pressuring agency staff and elected officials to blindly approve water rights. And yet, throughout this Groundwater Allocation Rulemaking process, irrigation advocates have been vocal detractors bristling at the upcoming restrictions that will make the process of acquiring new groundwater water rights much more restrictive. Such dissonance is a serious impediment to good water policy; it has resulted in the two counterproductive loopholes we discussed above. We call on the WRC and OWRD to cut through the morass in service to the public health, safety, and welfare.

We ask: What does accountability look like in the context of over-appropriating Oregon’s groundwater in every basin of the state? It looks like this statewide Groundwater Allocations Rulemaking Process – plus protections for public water supplies and minus the two loopholes.

In the course of revising these proposed rules, OWRD should not misconstrue ideological and emotional responses as hydrologic facts; nor should OWRD conflate the opinions people have about hydrologic facts with hydrologic facts. Such errors have serious consequences that run directly counter to this Groundwater Allocations Rulemaking process. As such, the error undermines the intent of the rules to streamline the implementation of ORS 537.525(7) *Policy*, which requires Oregon to maintain reasonably stable groundwater levels. For far too long, Oregon has not maintained reasonably stable groundwater levels because its elected and appointed officials have too often served the special interests of a few vocal influencers to the detriment of the public interest, whose future is the quintessential silent majority.

While cultural heritage, ecosystem diversity, and economic livelihood vary from basin to basin, there are core facts that cross all boundaries and have no alternatives. For example, wherever Oregon residents live, water flows down gradients above and below ground. Another fact is that water fills gaps, pores, and channels. Water moves up or horizontally under pressure, and when that force is not present, water moves down or settles in stasis. An important fact across every basin is that declining groundwater levels tracked over time and measured in years (in some cases, going back decades), result in a “new normal” for the Annual High Water groundwater levels that are lower than they were under Natural Variability before human groundwater pumping began. (We note how excessive irrigation water use has raised unconfined groundwater levels in the Deschutes Basin, and OWRD should acknowledge this fact as well.)

What is not factual is how different people feel about the groundwater declines. For example, some people in agricultural regions (including a subset who might be content to mine water until it is gone) may have a higher tolerance for excessive groundwater declines than others who wish to protect the water sources in the basins for the environmental health of the ecosystem and future residents they will never know. Cultural heritage, ecosystem diversity, and economic livelihood play important roles in shaping how people understand and react to hydrologic facts. These views do not change the facts.

ORS 537.525 *Policy* (1) declares that “the right to reasonable control of all water within this state from all sources of water supply belongs to the public,” and then lists numerous provisions “to insure the preservation of the public welfare, safety and health.” To the extent the groundwater flowing under the property of a person does not belong to them as a possessory fact but that they may have a right to use that water within limits set by the state, so too, do all Oregonians have a usufruct interest in all the water in every basin in the state.

We understand not everyone has a right to each other’s faucet, spigot, or the use of water authorized by a water right certificate that’s vested in a person, but Oregonians do have an interest in that water use, especially if they find themselves among the collateral damage resulting from that use. Whole nations have fought resource wars, and the history of water law in the West has been to settle disputes resulting from water use. When we say the public has a usufructuary interest in all the water throughout the state, we do not parse the 4.2 million residents’ discrete uses; rather, we acknowledge that every use impacts many other uses in various ways: some are hydraulic connections, while others are spiritual, emotional,

cultural, environmental, and even recreational connections. There are untold numbers of humans, flora, and fauna connected to water use in the present and future.

To that degree, and within reason, each has an interest in the way others use water. The public interest in water is a gestalt comprised of everyone's uses; as such, the whole public interest is greater than the individual (personal) interests. Because we are Oregonians (in Grants Pass, *We Are GP*) we have a usufructuary interest in the way all the water that belongs to us is used. The best description of this concept is by Mark Squillace in his article for the Utah Law Review titled: "[Restoring the Public Interest in Western Water Law](#)." Squillace describes three ways to look at the term public interest, with his third example being the most reasonable expression of the concept:

A third theory views the public interest as solely reflective of shared communal and societal values. The essence of this approach is recognizing that public interests are distinctly different from private interests and describing the communal aspect of the public interest in normative, values-based terms. A communal perspective of the public interest acknowledges the value of private interests in common resources, but only to the extent that the shared, public values of those resources are protected first. (Pg. 638)

The concepts of Reasonably Stable Groundwater Levels and Annual High Water Levels, the rates of decline and the total declines of groundwater over time, the evidence of a Hydraulic Connection, Stream Flow Depletion, and the Potential for Substantial Interference, and whether Water is Available are all factors that matter to Oregonians whether they know about them or not. OWRD has a fiduciary duty to manage these factors for the entire public by preventing special interests from harming the public health, safety, and welfare in the present and the future. Holding water in trust for the public is a big job and we appreciate the opportunity to be of service.

Thank you

A handwritten signature in black ink, appearing to read "Chris Hall", written in a cursive style.

Christopher Hall
Executive Director
Water League

Oral Comments – Central Point Public Hearing (May 16, 2024)

Christopher Hall (Water League)

My name is Christopher Hall. I'm the Executive Director of Water League, and our organization engages the public water stewardship. The first thing I'd like to say is thank you very much for all the hard work you and all the other staff members have done. This is a huge job. It's filled with a lot of concern across the state, and I think the way that staff, Water Resources Department has done, has handled this has been exemplary. And there are a lot of people who are very good friends of mine, people who I know who are on different sides of the issue with this regard. And the thing that I really appreciate the most is just the decorum and the way that this rules process has moved forward. And I think despite how divisive some of these issues are, we are still able to, at the end of the day work together to make Oregon as good as it can be. And I think that's a real like achievement. 75 years ago, or more, Frank McCulloch was given the job along with the number of other people to come up with the 1955 Groundwater Act. And in that act, the legislature voted to ensure that all water in the state of Oregon, not just surface water but groundwater, is also a substance that belongs to the public. So, unlike the dirt on your property, unlike the minerals that are there, the people who own property do not own that water. That water is flowing just like a stream, whether it's on the surface or whether it's underground. And the reason why they chose to make all the water in the state public is because water is life. And when we start turning it into personal property, the way we do furniture and minerals and all sorts of other equipment, we end up making serious mistakes with this substance that is incredibly important. It would be as if we were to say that air is personal property. It's just not possible and Oregon's not a state that does that. Water League strongly supports this rule making revision. We have our critiques, and we have our comments, and we have our opinions about what needs to be fixed, and I'll get into one or two of them. But this is, and I may have hinted at this earlier, a bit late coming. And better late than never, you know, when was the right time we should have passed these rules? Probably 20 years ago. And the next best time is today. So, the first thing I would like to say is that the following statistics are supplied by you, the state of Oregon. They're not mine. And we saw some of them tonight and we saw that irrigation uses 82% of all the water that gets pumped out of the ground that comes from aquifers. That's not unusual. That's pretty much like many different places in semi-arid or Mediterranean climates where water is needed for irrigation. It also happens to be the case according to the Oregon Department of Agriculture that 80% of all agricultural products are exported out of Oregon. So that means that a lot of that irrigation water that's being pumped out of the ground is also being shipped out of state in what's called virtual water exports. All the domestic wells as we saw earlier tonight, there's almost a quarter million of them use just 4% of the groundwater. So, when somebody complaints about a farmers market vendor who is using their domestic well to irrigate their half acre crop, it's just, for 70 years it was never enforced. And the reason why is because frankly it's a public relations disaster, and the 4% of water use that comes out of the ground for those domestic wells is just infinitesimal. The public water supplies that service every municipality in Oregon account for only 10% of groundwater use. That is a very small amount given the fact that 85% of all Oregonians pretty much live in municipalities in one form or another. The 4.2 million Oregonians go about their day and directly use a total of 14% of the water. And that's saying something, that you know, the population is large, and they just don't use that much water every day. And one of the points I'll make is that since 80% of Oregon's

agricultural products are exported, we don't eat that irrigation. We don't, in fact, actually people outside the state do. The correlation between population and irrigated acres has never existed. In the early years of Oregon, irrigated acres grew 50% faster than the population did. And then in the past 75 years, the population outpaced irrigation by a factor of 9, which is almost an order of magnitude. So, the population in Oregon and irrigation have absolutely no correlation. The fact is that irrigation is an industrial practice that uses water for exports far more than it does for Oregon's 4.2 million residents. We get our food from California and other places across the nation. This is an important point to consider when we want to push back against the falsehood that is actually in this rule's package that says quote, because everyone relies on food and clothing, to the extent the rule making impacts agriculture, everyone should be impacted equally. That's just false. This is a dangerous misrepresentation because irrigation has drained Oregon's aquifers, not domestic well users, not municipalities where 85% of the population lives, and not by the residents who get hungry three times per day. Therefore, we consider these very important and, dare I say, crucial rules that will limit the allocation of future water rights to account for the fact that groundwater has been over allocated in every basin in Oregon. We must not punish domestic well users and municipalities by preventing them from access to water for the humans that they need to live every day. We will never wring enough water from cities to conserve our way out of water scarcity. And telling cities that they can't get new water rights because irrigation used up the vast amount of groundwater is grossly inequitable. The governor has called for ending the housing crisis by building new homes and apartment buildings. We cannot expect to address our housing crisis if these rules make water the limiting factor. I submit and I stand upon the statement that growing animal forage, crops and other non-human foods for export is not now and never will be as important as ensuring that our communities have plentiful, plentiful and fresh, clean water. These rules must have a carve out for allowing new water rights for all municipalities because the volume of water that they use is so small compared to irrigation and the value of their water use is so much greater than irrigation, especially the export crops that effectively ship our groundwater out of state. Thank you very much for the time to be here today and share this information. And despite our strident, if not strong critique on some of these issues, we support this rule making unequivocally.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Christopher Hall (Water League)

I'll be brief. As I mentioned, if you caught this earlier, had a chance to provide extensive comments on Thursday in person, but I just don't want to miss the opportunity to throw Water League's full support behind these rules. We're very pleased with the work that the RAC and Water Resources Department has done to get us to where we are today. They are visionary. Yes. I wish they were done 10 to 20 years ago. But the work that brought us to where we are today and the result that the rules are in is great. We will be submitting extensive written comments before the deadline, but those comments will not detract from our unequivocal support for your work.

HARTT Laura A * WRD

From: Clair Klock <klockclair@yahoo.com>
Sent: Wednesday, June 5, 2024 12:49 PM
To: WRD_DL_rule-coordinator
Subject: 2024 Proposed Groundwater Rules testimony

Some people who received this message don't often get email from klockclair@yahoo.com. [Learn why this is important](#)

Chair Quaempts and members of the commission,
I'm Clair Klock - retired farmer and conservation specialist from Corbett, OR.
I urge your support for the proposed groundwater rules presently before you.
While it does not afford complete sustainable management of groundwater resources. These rules are the types of management that if adopted 30 years ago, we wouldn't have the problem we have in the Harney basin and other locations around the state. I personally know of static groundwater loss the past 25 years in the Willamette basin with 25 to 80 inches of rain per year. All the crop circles that have been installed in the arid part of the state has been utterly insane. These ground establish a science based method that allows permitting and withdrawal of permits as the static water level increase or decrease.
Thank you for your work and attention to this critical issue.
Clair Klock

HARTT Laura A * WRD

From: Claire Sykes <claire@sykeswrites.com>
Sent: Monday, April 22, 2024 11:43 AM
To: HARTT Laura A * WRD
Subject: New groundwater rules

You don't often get email from claire@sykeswrites.com. [Learn why this is important](#)

Dear Ms. Hartt and those with the Oregon Water Resources Department,

The new groundwater rules in Oregon? I support them. We *must* protect Oregon's water resources. Our rivers, safe drinking water, and state economy depend on them.

You already know that more frequent and severe drought is headed this way in Oregon. What does that mean for our wildlife, our farmlands, the water we drink? What does that mean for you and your family, for those like me in elderhood and fast approaching old age? What does it mean for "our" children, their children, and their children?

It could be a real mess without these groundwater rules in place.

With these ntelligent, science-based rules, however, we can better ensure enough water for us and for the beautiful nature in our amazing state of Oregon.

Please help keep Oregon flowing.

Thank you.

Sincerely,

Claire Sykes
Freelance Writer
2916 SE 65th Ave.
Portland, OR 97206

(503) 239-4422

www.sykeswrites.com



VIA EMAIL (WRD_DL_rule-coordinator@water.oregon.gov)

June 14, 2024

Laura Hartt - Rulemaking Coordinator
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

RE: Proposed Groundwater Allocation Rules

Dear Ms. Hartt,

The Deschutes Basin Board of Control (“DBBC”) appreciates this opportunity to provide comments on the Oregon Water Resources Department’s (“Department”) February 22, 2024 proposal to amend, repeal, and adopt rules pertaining to allocation of new groundwater rights (“Proposed Rules”).

By way of background, the DBBC is an organization comprised of eight irrigation districts in the Deschutes Basin, which include Arnold Irrigation District, Central Oregon Irrigation District, Lone Pine Irrigation District, North Unit Irrigation District, Ochoco Irrigation District, Swalley Irrigation District, Three Sisters Irrigation District, and Tumalo Irrigation District. The DBBC’s member districts deliver water to over 150,000 acres of farms and ranches, as well as local cities, parks, and schools.

In addition to delivering water within the basin, the DBBC’s members, together with the City of Prineville, are responsible for implementing the Deschutes Basin Habitat Conservation Plan (“HCP”). The HCP encompasses over 480 miles of rivers and creeks and multiple reservoirs in the Deschutes Basin and prescribes conservation measures to restore and enhance aquatic habitats in these waters for species covered by the plan.

Many of the conservation measures in the HCP modify the hydrology of waters in the Deschutes Basin to improve conditions for covered species. To implement these conservation measures, the DBBC’s members have significantly modified the way they store, deliver, and manage irrigation water. As a result, the DBBC’s members must balance ensuring reliable water deliveries to their patrons, while satisfying the conservation measures in the HCP.

The DBBC appreciates the Department’s efforts in this rulemaking to safeguard existing surface and groundwater users, while managing groundwater resources more sustainably. Although the

PO Box 919 - Madras, OR 97741

DBBC Member Districts

*Arnold Irrigation District • Central Oregon Irrigation District • Lone Pine Irrigation District • North Unit Irrigation District
Ochoco Irrigation District • Swalley Irrigation District • Three Sisters Irrigation District • Tumalo Irrigation District
DBBC President -Craig Horrell, 541-548-6047; chorrell@cod.org*

contours of the surface and groundwater connection continue to be investigated, the DBBC believes that the Deschutes Basin leads the state in this area. Accordingly, the DBBC respectfully asks the Department to include a carveout in the Proposed Rules for the Deschutes Basin, which is already the subject of coordinated programs and efforts to conjunctively manage surface water and groundwater, and to ensure that the Proposed Rules do not discourage existing efforts in the basin to conserve water and otherwise meet the objectives of the HCP.

The Proposed Rules Should Include a Carveout for the Deschutes Basin, which is the Only Basin in the State with an Existing Groundwater Mitigation Program

The DBBC asks, first, that the Department include a carveout in the Proposed Rules for groundwater uses in the Deschutes Basin, to encourage the existing, collaborative efforts to conjunctively manage groundwater and surface water in the basin.

The Deschutes Basin is ahead of the rest of the state in addressing the hydraulic connection between groundwater and surface water. Groundwater and surface water have been managed together in the basin for over twenty years. This occurs through the Deschutes Groundwater Mitigation Program (“Mitigation Program”).

As the Department is well aware, the Mitigation Program prohibits a prospective groundwater user from obtaining a new groundwater permit within the Deschutes Groundwater Study Area (“Study Area”) without first securing replacement water to mitigate the effects of the proposed groundwater use on surface water. A permit applicant may provide mitigation through direct implementation of mitigation projects, which convert existing consumptive use surface water right to instream use, or through mitigation credits, which are generated from such projects. The DBBC’s member districts are important partners in the Mitigation Program. A large percentage of the mitigation credits established in the Study Area originate from water rights held by the DBBC’s members.

As currently drafted, the Proposed Rules would stall or otherwise impede implementation of the Mitigation Program. Although the Department has stated that the Proposed Rules do not directly modify the Mitigation Program, the rules would establish new requirements that overlay the existing requirements in the program. The new requirements in the Proposed Rules include the obligation for applicants for a new groundwater permit to demonstrate “reasonably stable groundwater levels.” We understand that this requirement would prevent the issuance of most new groundwater permits in the basin.

Although the Proposed Rules include an offramp to allow the Water Resources Commission to adopt a basin-specific definition of “reasonably stable groundwater levels,” implementing this offramp would require an additional rulemaking. The rules offer little guidance or clarity regarding that rulemaking process. Without question, the rulemaking process to establish a Deschutes Basin-specific definition of “reasonably stable groundwater levels” would require additional time and administrative resources, especially if a subsequent basin-specific rule were litigated.

Further, it is unclear that the proposed definition of “reasonably stable groundwater levels” adequately accounts for artificial recharge that has been occurring in the Deschutes Basin for over a century. The Proposed Rules define “reasonably stable groundwater levels” based on a reference level, which is the “highest known water level unless Annual High Water Levels have been increased measurably by human activity.” Proposed Rules, p. 16. If water levels have been measurably increased by human activity, then “the Department may set a different reference level using best available information.” Id.

In the Deschutes Basin, many forms of artificial recharge may have historically contributed to increased groundwater levels, including application of irrigation water to arid farmland, water storage projects, and other agricultural activities. The effects of these human activities on groundwater levels likely vary across the basin. It is unclear how the Department will determine and account for artificial recharge from these activities, if at all, when calculating “reasonably stable groundwater levels.”

In sum, the Mitigation Program is the only program of its kind in the state and is currently being utilized to mitigate effects of groundwater withdrawals in the Deschutes Basin. The resolution of issues such as “reasonably stable groundwater levels” will require data and time. The DBBC requests that the Department not bring the basin’s existing groundwater Mitigation Program to a halt while these issues are resolved.

The Proposed Rules Should Not Undermine Water Conservation Projects and Ongoing Efforts to Maintain Stream Flows in the Deschutes Basin

The DBBC also urges the Department to ensure that the Proposed Rules do not interfere with ongoing efforts in the Deschutes Basin to conserve water and otherwise meet the objectives of the Deschutes Basin HCP.

As described above, the DBBC’s members are responsible for implementing conservation measures in the HCP that require modifying operation of reservoirs and diversions to maintain minimum flows in rivers and creeks covered by the plan. The HCP was approved by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service in 2020 and 2021, respectively, and the DBBC’s members are bound by the conservation measures in that plan.

In addition, the DBBC’s member districts have historically and are continuing to undertake water conservation projects in the basin, including the lining and piping of district canals and private laterals. These projects allow the districts to implement the conservation measures required under the HCP, while still delivering water to their patrons, which include thousands of farmers and ranchers, schools, and local park and recreation districts in the Deschutes Basin. To date, the DBBC’s members have lined many miles of canals and private laterals resulting in significant water savings. For a significant portion of these projects, one hundred percent of the water conserved by the DBBC’s members through piping and lining projects is dedicated to instream flows.

Although there is little data on the topic, some sources suggest that canal piping and lining projects may contribute to lower groundwater levels in the vicinity of the projects by preventing seepage that would otherwise percolate to groundwater. The relationship between piping projects and groundwater levels is not well-documented. To the extent that declining groundwater levels have been observed in areas where piping projects have occurred, those declining water levels may also be the result of removal of farmland from irrigation, which eliminates recharge that would otherwise occur from on-farm application of irrigation water.

Setting aside any localized effects of piping on groundwater levels, piping projects serve important functions to keep water in streams. By reducing water losses to evaporation and seepage, piping projects allow the DBBC's districts to reduce stream diversions. And the DBBC's members dedicate water that would otherwise be lost to evaporation or seepage to instream uses.

In connection with the rulemaking, the DBBC encourages the Department to take a wholistic view of water management and avoid unintentionally prioritizing groundwater over stream flows. To the extent that a goal of groundwater management is to keep water in streams, water conservation projects (like canal piping) are vital to that end. Meanwhile, a basic principle of our state's water law is that conveyers and users of water should not be required to divert, convey, or use more water than is needed to achieve the beneficial purpose for which the governing water rights were granted. If the DBBC districts are able to reduce their stream diversions while their members are able to continue to achieve the beneficial use provided for under the DBBC district-held water rights, the Proposed Rules should not operate or be construed to preclude or otherwise disincentivize these water conservation efforts.

Accordingly, the Proposed Rules should not undermine water conservation projects or conservation measures in the HCP. As well, the Proposed Rules should not oversimplify the relationship between groundwater and surface water. As an example, the conclusion in the statement of need for the Proposed Rules that "[a]s groundwater sources decline, less surface water becomes available in streams, rivers, and lakes to meet the needs of existing surface water users and to support healthy fish, aquatic habitat, and recreation," may not always be correct. See Proposed Rules, p. 4.

Thank you for the opportunity to comment on the Proposed Rules and please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read 'CH', is positioned above the typed name of the signatory.

Craig Horrell
Board President
Deschutes Basin Board of Control

4/4/2024

To: Oregon Water Resource Department

From: Craig Lacy

I believe the state is correct in developing regulations that will only allow new groundwater permits if it can be proven the area has a stable aquifer and there will be no negative impacts to senior water right holders and nearby streams and springs.

My main concern is that hydrologic change is outpacing our ability to analyze and respond to it. The amount of data we currently collect on water use and ecological needs is far from what is necessary to properly manage the water resources owned by the people of the State of Oregon.

From 2012 Integrated Water Resource Strategy

"Oregon needs to fill the knowledge gap—gathering, processing and sharing water resource information, so that the State can better characterize its water resources for economic development and a healthy environment. This includes taking a look at the interaction between groundwater and surface water, and furthering our understandings of the limits of our water supplies and systems". Chapter 1 page 7

Idaho had a groundwater problem in the NE part of the state. They began a system of measuring all water uses including the depth of the wells and reporting it to the state. It was so successful in aiding management of the resource they then applied the system to the entire state. ✕

In order to determine available groundwater supplies in Oregon much more information is needed. In areas where there already are aquifer depletions, the state should require monthly or more frequent reporting to provide the most accurate assessment of water demand. Question: What percent of the permitted wells in the State of Oregon does ODWD have certified data on? It is impossible to manage something like water without accurate measurement.

Craig Lacy
BEND, OREGON

Oral Comments – Bend Public Hearing (April 4, 2024)

Craig Miller (Oregon Natural Desert Association)

My name is Craig Miller and I'm a GIS specialist for the Oregon Natural Desert Association. I'm a resident of Bend and also a landowner at Summer Lake. I appreciate this opportunity to comment on these newly proposed groundwater rules. As we learned in the information session it's taken almost 70 years to get around to starting to address the problem, and while it's better late than ever, the lack of action up to this point has resulted in unsustainable water extraction that is already causing hardship on people and wildlife alike. I support the new groundwater rules and hope they are fully implemented as soon as possible. Putting it off would be the height of irresponsibility. Unfortunately, though these rules will not address the overuse that is already taking place. Overuse is already creating hardship and tension throughout the state, and we can see these as cautionary tales for what we will face here in Central Oregon if we do nothing. Summer Lake Wildlife Refuge is home to a multitude of iconic bird species including sandhill crane, American white pelican, trumpeter swan, cinnamon teal, white-faced ibis, and more than 300 other species of birds. Sensitive species such as snowy plover, Wilson's phalarope, and yellow rail breed and nest in the Refuge. All of these amazing wetland species are at risk of losing their habitat because of aquifer mining in the Fort Rock/ Christmas Valley Basin. Hydrologic studies in the 1980s has shown that these areas are connected and that diminishing groundwater levels at Christmas Valley is negatively affecting spring water flow at Summer Lake. Not only are the farmers in Fort Rock and Christmas Valley facing financial ruin as their aquifer disappears, the birds and other wildlife are facing the demise of their very existence at Summer Lake. Lake Abert is another victim of irresponsible water extraction. Its unique ecosystem has historically supported up to 20% of the world's population of Wilson's phalarope, during the bird's stopover and preparation for its long non-stop migration to South America. Unfortunately, water overallocation including groundwater has contributed to the lake drying up twice in the past five years and the phalarope is paying for it I mentioned before that the Wilson's phalarope depends on Summer Lake for nesting and other areas too in Oregon. Just this past week a petition was filed to list Wilson's phalarope as endangered under the Endangered Species Act. The combination of severe drought driven by climate change and irresponsible groundwater extraction will continue to accelerate even if no action is taken. The proposed water rules will provide a necessary first step in holding off this human caused disaster, but we cannot let it be the last.

Oral Comments – La Grande Public Hearing (April 18, 2024)

Curt Howell (N/A)

I'm Curt Howell. I'm a local landowner and businessman in the agriculture community. And I would heartily agree with the previous testimony by Commissioner Beverage and Rodney Case that storage is a key part of having groundwater availability. Some of us in this room have been here most of our lives, and we've seen the effects of all this good and bad. And I would recommend highly that OWRD be an advocate for more storage, whether it's in this Basin or others, if we want to improve the whole water situation in the state. As an example, removal of dams in Klamath County has been a complete disaster. And where OWRD is involved in that, I don't really know but it should have been. It's done nothing but destroy livelihoods and fish runs and that's not the right direction. So, to sum it up, we just need storage, storage. Storage and proper management of it. So that's about all I have.

From: dab1219@gmail.com
Sent: Sunday, March 31, 2024 4:13 PM
To: WRD_DL_rule-coordinator
Subject: Hearing RE: Ground Water Permits

Some people who received this message don't often get email from dab1219@gmail.com. [Learn why this is important](#)

Re: Comments for the April 4th Hearing of the Oregon Water Resources Dept.

As long-time Oregonian, I am very concerned about the changes I'm seeing with greatly increased drought conditions and the number and severity of wildfires in our state. It is now imperative that Oregon officials take the necessary steps to assure a sustainable level of groundwater....our most precious resource.

We must first measure the existing water levels and then limit new ground water permits accordingly.

Thank You for your time and consideration of my views.

**D. B. Steadman
9440 SW Lakeside Dr.
Tigard, OR 97224**



Oregon

Tina Kotek, Governor

Department of Fish and Wildlife

Habitat Division
4034 Fairview Industrial Dr SE
Salem, OR 97302-1142
Voice: 503-947-6000
Fax: 503-947-6330
Internet: www.dfw.state.or.us

June 11, 2024



Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
Via email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Proposed Groundwater Allocation Rules

Dear Laura,

The Oregon Department of Fish and Wildlife (ODFW) appreciates the opportunity to provide support for the Oregon Water Resources Department's (OWRD) efforts to modernize the approach to groundwater allocation in Oregon. Groundwater is an important resource that supports ODFW's mission to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by present and future generations. Stronger protections for our state's groundwater (and indirectly surface water) are increasingly relevant as we learn more about the ongoing declines in aquifer levels and face a future under a changing climate that will only exacerbate Oregon's already degraded water quality and quantity conditions.

Current groundwater allocation practices and policies do not fully protect surface and groundwater resources, allowing for groundwater level declines, reductions in summer baseflows and cold-water discharge to streams, and unmitigated year-round impacts to surface flow (including impacts to instream water rights). These practices have degraded fish and wildlife habitat, leading to declines in populations that are difficult and expensive to correct.

The proposed rules will positively impact fish and wildlife by providing year-round protections to existing water rights, including instream water rights, and by halting further degradation of groundwater-dependent ecosystems. The proposed inclusion of groundwater stability assessments and longer-term impact evaluations in application reviews are necessary to reduce future fish and wildlife impacts. The proposed rules will prevent the future injury of existing instream and out-of-stream surface water rights that has occurred under the current groundwater allocation rules.

*To protect and enhance Oregon's fish and wildlife and their habitats
for use and enjoyment by present and future generations.*

ODFW fully supports the proposed rules and commends OWRD for offering proposed rules that provide greater protections for groundwater-dependent ecosystems. ODFW appreciates OWRD's allowance of other state agencies to provide advice and technical assistance in development of the proposed rules.

Sincerely,

A handwritten signature in black ink, reading "Danette L. Faucera". The signature is written in a cursive, flowing style.

Danette Faucera
Water Policy Coordinator



SENATOR DANIEL BONHAM

June 14, 2024

Via Electronic Mail

Oregon Water Resources Department
775 Summer St NE, Suite A
Salem OR 97301

Dear Board Members,

I am writing to encourage the Water Resources Department and the Water Resources Commission to discontinue further consideration of the current proposed rules regarding the future allocation of groundwater resources within the state. As an alternative, I suggest the rules be held in abeyance at the present time.

Given the time expended with the development of said rules, it may be appropriate to reconstitute the rules advisory committee previously engaged in developing the proposed rules. The purpose for this continued review would be further clarification of the rules and how the rules will ultimately impact the future use and management of the state's groundwater resources.

To the extent the proposed rules are intended to be applied to new or future uses of groundwater, I strongly recommend the Department consider establishing a separate division within its administrative rule framework, specifically delineating the new rules are to be applied on a prospective basis and will not adversely impact existing uses. In so doing, I believe this may serve to avoid future controversies associated with the actual intent and application of the rules.

Finally, I recommend additional consideration of the proposed rules and how such rules interface with ongoing planning efforts of the Department. Specifically, the traditional development of basin plans takes into consideration the individual conditions existing within the various water basins of the state. The emphasis on "place-based planning" efforts during recent years serves to address the unique conditions and issues existing within various basins or regions of the state. Suggesting the application of a set of rules to uniformly extend throughout the state seems in direct conflict with basin plans and place-based planning efforts.

In summary, I strongly encourage the Department and Commission give further review and re-evaluation of the proposed rules before advancing the rules.

Respectfully,

Daniel Bonham
Senate Republican Leader, District 26

HARTT Laura A * WRD

From: David Felley <dfelley@eoni.com>
Sent: Wednesday, May 22, 2024 7:29 AM
To: HARTT Laura A * WRD
Subject: Groundwater rules

[You don't often get email from dfelley@eoni.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Ms. Hartt,

I am writing after notification from the Nature Conservancy regarding comments on new groundwater rules being developed by your agency.

I am very concerned about effects of groundwater pumping on fish and wildlife resources in our state. Given the often obscure but clear connections between groundwater and surface water I believe it is critical that there be strong regulations on the use of groundwater resources. Impacts to Great Basin lakes from excessive groundwater development is affecting critical wildlife resources.

Protection of the groundwater resources will also be critical in the future for human use as our state faces longer and more frequent droughts. Research I recently saw presented on the Umatilla basin provides an example of the very slow rate of recharge in the face of high rates of pumping.

I support strong protections of groundwater resources to avoid over-exploitation by big moneyed interests of this barely renewable resource in our state. Thanks for your efforts to this end.

David Felley
807 Penn Ave.
La Grande, OR 97850

HARTT Laura A * WRD

From: HARTT Laura A * WRD
Sent: Wednesday, March 13, 2024 10:03 PM
To: David Stone
Subject: RE: Water rights for small farmers

That is very strange. I did go back through and checked every place I could think of where the email address has been posted and made sure the links all opened correctly. If you learn anything more about the origin of the issue, please do let me know. Apologies for any inconvenience on your end. Have a great evening! Laura

-----Original Message-----

From: David Stone <dns@efn.org>
Sent: Wednesday, March 13, 2024 12:08 PM
To: HARTT Laura A * WRD <Laura.A.HARTT@water.oregon.gov>
Subject: Re: Water rights for small farmers

[You don't often get email from dns@efn.org. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

WRD_DL_rule-coordinator@water.oregon.gov

When I try to compose an email, it puts a "!" At the beginning like this:
!WRD_DL_rule-coordinator@water.oregon.gov and I get a message "invalid email address" and refuses to send it.

Baffling!

On Mar 13, 2024, at 11:38 AM, HARTT Laura A * WRD <Laura.A.HARTT@water.oregon.gov> wrote:

Hi David,

Thank you for your comments. If you wouldn't mind sending me a link to the webpage with the email address that didn't work, I'd appreciate it. I've checked on my end and sent out tests which all went seemed to go through ok.

Laura

-----Original Message-----

From: David Stone <dns@efn.org>
Sent: Wednesday, March 13, 2024 11:23 AM
To: HARTT Laura A * WRD <Laura.A.HARTT@water.oregon.gov>
Subject: Water rights for small farmers

[You don't often get email from dns@efn.org. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Your comment page gives an invalid email address.

You will not be receiving many valid comments because of this.

Please test and correct the incorrect email address and re-send the announcement with the correct email comment address.

Here is my comment. Please forward it to the proper recipient and confirm to me that you have done so.

Thank you.p

Small farmers serve the public, that includes me. They scratch out a living working hard to do that. They should be rewarded, not punished.

Restricting their water rights will put many of them out of business.

This rule change only favors large industrial waters. It's time to level the playing field. You must serve everyone, not just the industry and their lobbyists and lawyers.

Dave Stone
Springfield

HARTT Laura A * WRD

From: Dean Runyan <runyan@easystreet.net>
Sent: Friday, June 14, 2024 12:47 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater rules

[Some people who received this message don't often get email from runyan@easystreet.net. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

It is absolutely imperative that Oregon adopt the strongest possible groundwater management rules. Climate change will challenge Southern, Central and Eastern Oregon in particular, reducing recharge rates and surface flows, while at the same time increasing demand for agricultural and municipal water. Oregon must get in front of this situation as quickly as possible, and in particular should not continue using rules that approve water withdrawals that deplete available water resources. Making hard choices in the face of lobbying pressures will be difficult, but we must do it, or face even more dire consequences in the years ahead.

HARTT Laura A * WRD

From: Delores Porch <verandafay@gmail.com>
Sent: Friday, June 14, 2024 2:53 PM
To: WRD_DL_rule-coordinator
Subject: New Groundwater Allocation Rules

Some people who received this message don't often get email from verandafay@gmail.com. [Learn why this is important](#)

I am in favor of the new rules. I believe that if we don't know what water is available there should be no new permit.

Delores Porch
1212 4th Ave SE #63
Albany OR 97322



Virus-free. www.avg.com

DENNIS LINTHICUM
STATE SENATOR
District - 28



OREGON STATE SENATE
900 COURT STREET NE, S-305
SALEM, OR 97301

Ms. Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
Email: laura.a.hartt@water.oregon.gov

June 12, 2024

RE: Groundwater Rulemaking Proposal

Dear Ms. Hartt,

Groundwater represents the single most important water source for Southern and Central Oregon, including Senate District 28, the district that I represent. Clearly, everyone in this district and in the neighboring districts, comprised of nearly a million Oregonians, has a strong interest in protecting their current and future water resources. These constituents understand their needs, water law and recognize the fallacious nature of the proposed unscientific statewide resource allocation models.

The claim that the new rules for issuing new groundwater permits will stop the over-issuance of groundwater permits might be true, but is not justified as a single statewide policy mandate.

The flow and storage of water in groundwater systems depends too strongly on the hydraulic properties of the various aquifers themselves. The detailed layers of aquifer confinement which make up any specific local groundwater system do not receive proper consideration in the proposed rules for new groundwater allocation permits. Aquifer properties such as, confinement thickness, porosity, hydraulic conductivity and transmissivity, specific storage coefficients and yield will all impact the timing, locations, and streamflow depletion rates through any specific aquifer.

900 Court St. NE, S-305, Salem, OR 97301
(503) 986-1728 • Sen.DennisLinthicum@OregonLegislature.gov

Meaning, the claim that **OWRD's** over-issuances of well-permits is the cause of major state-wide groundwater declines is unjustified. Water right holders and domestic well owners, who rely on groundwater for drinking and household use, may be experiencing declining groundwater levels, as in the Lower Klamath Basin, but this a local aquifer experience which should be validated using approved measurement techniques.

OWRD's technical and legal teams have extensive experience establishing specific hydrogeologic framework dependence on location, location, and location. Senate District 28 priorities demand reframing the proposed rules based upon local evidence and verifiable, site-specific groundwater data and assessments. Therefore, a thorough reconsideration of the proposed groundwater rules would be the most appropriate pathway for moving forward.

Water-shed stakeholders need to have the flexibility to develop place-based solutions in the context of water planning efforts which are already being pursued. Specifically, the new rules carelessly ignore the myriads of human activities that impact groundwater in both positive and negative ways. There are numerous public agencies and qualified institutions which have been chartered with planning, designing, constructing and implementing wastewater treatment facilities, nonpoint source pollution management systems, estuary management plans, fresh-water reservoirs and aquifer recharging operations. None of these have been given sufficient consideration within the proposed rules.

Yet, the proposed rules do impose unnecessary and unclear requirements on local watermasters with districtwide enforcement mechanisms based on ill-defined requirements for the consideration of the “*anticipated impacts*.” Specifically, there is a new requirement including, “*the number of wells that may go dry*” combined with the flow characteristics and functionality of springs and groundwater dependent ecosystems.

This proposed language is but a small sample of last-minute, noble-sounding, assertions that come without any measurable metrics. These rules amount to feel-good bureaucratic insertions that are proposed in rule without sufficient process, vetting, understanding or methodology. The insertion of this language will needlessly hamper place-based planning efforts and put future OWRD actions under litigious scrutiny.

These stipulations must be removed from any rules adopted by the Commission.

In closing, the proposed rules are a one-size-fits-all approach that doesn't consider the significant differences between the various basins or watersheds within the State. The vague and incomprehensible language regarding the consideration of any "*potential for substantial interference*" with surface water sources appears cureless within the context of the rule proposal.

In my view, this means that the Commission would authorize OWRD to impose a moratorium on new groundwater permits throughout the State. This is unacceptable.

Unfortunately, the proposed rules seem to abandon science in favor of political decision-making efforts. This means that an unelected, and unaccountable body of individuals could leverage the regulatory power of the OWRD to deny new groundwater rights for irrigation of crops or other uses. This would effectively curtail further irrigable acreage in rural areas, as well as considerations for data centers, micro-electronic circuit or semi-conductor manufacturing concerns or new housing projects outside of established municipal boundaries.

These constraints will be **deleterious to Oregon's future well-being** by denying the full character, function and sustainability of well-managed groundwater for a wide-array of beneficial purposes.

To resolve these problems, my District constituents request that the Department pause the rulemaking process to allow for additional time to develop more scientifically based methodologies. A proper evaluation of potential groundwater interactions with surface water will enable Oregon to meet our needs and the needs of future generations.

The National Environmental Protection Act of 1969 (NEPA) has long been categorized as a tool to protect endangered species and the environment. However, it is more than that and is more relevant now than ever before because it is our safeguard against government over-reach. **Section 4331.B.2 requires that states** "assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings."

Therefore, I respectfully repeat my call to pause the current rule-making process for further scientific review and deeper analysis.

Sincerely,



Dennis Linthicum
OR State Senate – District 28

HARTT Laura A * WRD

From: Diane Hoobler <hooblercurtis@comcast.net>
Sent: Sunday, June 9, 2024 11:30 AM
To: WRD_DL_rule-coordinator
Subject: Revised Groundwater Rules

[Some people who received this message don't often get email from hooblercurtis@comcast.net. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

I strongly support OWRD's revised groundwater allocation rules.

These changes have been long-needed and, with climate change, they are more important than ever. I support these rules to end the practice of issuing groundwater permits even when OWRD lacks sufficient data to determine if groundwater in a particular area has already been over-appropriated and whether a proposed use is within resource capacity. I also support them to better protect streamflows and cold water inputs. I urge you to promptly finalize the revised rules for sustainable management of this crucial water resource.

Diane Hoobler
297 G Avenue
Lake Oswego OR 97034



**CAROLLO
LAW GROUP**

Dominic Carollo
Managing Attorney

dcarollo@carollolegal.com • 541-957-5900

PO Box 2456, Roseburg, OR 97470
2315 Old Hwy 99 S., Roseburg, OR 97471

June 14, 2024

Via Email and US Mail

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

WRD_DL_rule-coordinator@water.oregon.gov

Re: Comments of Upper Klamath Landowners on the Oregon Water Resources Department's Proposed Groundwater Allocation Rules

I. BACKGROUND

Sprague River Resource Foundation, Inc., Fort Klamath Critical Habitat Landowners, Inc., Water for Life, Inc., Productive Timberland LLC, the Mosby Family Trust, and Sprague River Cattle Company (together, "Upper Klamath Landowners") offer the following comments opposing the Oregon Water Resources Commission and Department's (collectively, "OWRD") proposed Groundwater Allocation rules.

Modifying the administrative criteria for the approval of new groundwater rights, or the curtailment of existing rights, is of the utmost concern in the Upper Klamath Basin where surface water appropriations have been severely curtailed as a result of instream water rights. For many members of Upper Klamath Landowners, existing groundwater rights are the last remaining tool to make productive use of farm and ranchland. Restricting the use of these vital property rights would come at significant cost to Upper Klamath Landowners, possibly forcing many to go out of business entirely.

Given the significance of OWRD's Groundwater Allocation rules, Upper Klamath Landowners urge OWRD to take all possible steps to ensure that the proposed rules not apply to pre-existing groundwater rights and that they are rooted in sound science, due process, and the utmost respect for senior groundwater rights under the prior appropriation doctrine. Additionally, it is important that any Groundwater Allocation rules be capable of consistent application, rather than apply arbitrarily wherever OWRD deems necessary.

Unfortunately, the Groundwater Allocation rules as currently drafted violate due process in many respects, fail basic rulemaking requirements, are not rooted in sound science, and promote inconsistent application of the prior appropriation doctrine through an unnecessarily-complex administrative scheme. Therefore, Upper Klamath Landowners respectfully request OWRD to

revise its proposed Groundwater Allocation rules to bring them into conformity with law and science as explained in these comments.

II. UPPER KLAMATH LANDOWNERS' INTERESTS

Upper Klamath Landowners are the owners of real property¹ in the Upper Klamath Basin² in Klamath County, Oregon. Upper Klamath Landowners' properties enjoy appurtenant surface and ground water rights for irrigation and stock watering. Some of Upper Klamath Landowners' surface water rights have been provisionally recognized in the Klamath Basin Adjudication as having a priority date of 1864. Other Upper Klamath Landowners hold water rights that were adjudicated in the prior adjudication of the Wood River, with pre-1909 priority dates, while some hold water rights that were issued by OWRD after 1909. Within the last few years, Upper Klamath Landowners have all been issued written shut-off orders for their surface water rights, which have resulted from calls to fulfill senior instream water rights held by the United States and have, in many cases, required them to cease all irrigation and stock water use from the Wood River, Williamson River, Sprague River, and/or their tributaries (e.g. Fort Creek, Crooked Creek, Sand Creek, Whiskey Creek).

The shut-off orders inhibiting Upper Klamath Landowners' use of their surface water rights have forced many to solely rely on existing groundwater rights to feed and water their livestock, where possible. Unfortunately, OWRD has a history of trying to regulate these groundwater rights in a manner that violates due process. In 2018, OWRD attempted to regulate 140 wells in the Upper Klamath Basin in favor of instream water rights based on a technical memo dated April 26, 2018, purporting to determine the impact of groundwater pumping on streamflows. The regulation orders sent to affected water right holders were dated and issued a day later, on April 27, 2018, but did not even include the technical memo. Counsel for affected landowners filed ten lawsuits against OWRD challenging this groundwater regulation on the basis that OWRD's regulation orders denied the water right holders due process of law. *See Sprague River Cattle Company v. Byler*, Marion County Circuit Court, No. 18CV201167; *Jacobs v. Byler*, Marion County Circuit Court, No. 18CV26118; *Duane Martin Ranches, L.P. v. Byler*, Marion County Circuit Court, No. 18CV26120; *Newman v. Byler*, Marion County Circuit Court, No. 18CV26124; *Duarte v. Byler*, Marion County Circuit Court, No. 18CV26125; *Miller v. Byler*, Marion County Circuit Court, No. 18CV26130; *Melsness v. Byler*, Marion County Circuit Court, No. 18CV2615; *Wilks Ranch Oregon, LTD. v. Byler*, Marion County Circuit Court, No. 18CV26122; *Edwards v. Byler*, Marion County Circuit Court, No. 18CV28865; *Brooks v. Byler*, Marion County Circuit Court, Case No. 18CV26126. OWRD settled those cases by paying the petitioners' attorney fees and costs and agreeing to consider adopting new groundwater regulation rules.

Following those settlements, OWRD then adopted the Division 25 rules, attempting to regulate groundwater use by existing water right holders in the Off-Project Area of the Klamath Basin if the wells met certain pre-determined criteria established in the rule. OWRD sent shut-off notices to six (6) well owners in the Upper Klamath Basin based on the Division 25 rules. Again,

¹ Commentor Water for Life, Inc., is not itself a landowner or an entity comprised of landowners, but rather serves to represent the interests of water right holders, including water right holders in the Upper Klamath Basin.

² The "Upper Klamath Basin" constitutes the Klamath Basin upstream of Upper Klamath Lake.

one of the affected water right holders filed a lawsuit. *See Brooks v. OWRD*, Marion County Circuit Court, No. 19CV27798. In a final judgment, the Marion County Circuit Court ruled: (1) that OWRD acted without statutory authority because the Division 25 rules effectively declared a critical groundwater area but did not follow the statutory requirements under ORS 537.730-742; (2) the Division 25 rules did not provide adequate due process to existing water right holders prior to regulating off groundwater use; and (3) OWRD's regulation order violated the plaintiffs' due process rights under the Fourteenth Amendment of the U.S. Constitution. OWRD did not appeal this ruling and, thus, does not dispute that the agency committed these serious legal violations in attempting to regulate existing water right holders' use of their wells without providing due process.

Application of OWRD's Groundwater Allocation rules, as proposed, is poised to result in additional due process violations, while ignoring Oregon's water law and rulemaking statutes. Given OWRD's past unlawful attempts to regulate groundwater rights, OWRD must ensure that it not make the same mistakes again. Therefore, for the reasons explained below, Upper Klamath Landowners encourages OWRD to make significant modifications to the proposed Groundwater Allocation rules.

III. COMMENTS

A. Legal Background.

In Oregon's water code, ORS 537.535—.746 regulates the use and appropriation of groundwater. First, ORS 537.535—.630 provide a process for obtaining groundwater rights. Next, ORS 537.665—.720 provide a process for adjudicating groundwater rights. Finally, ORS 537.775—.780 provide OWRD authority to control the distribution of groundwater under existing rights.

ORS 537.775 states that, absent a determination of a critical groundwater area, any order imposing conditions upon wells interfering with other wells or surface water supplies "*shall provide to each party all water to which the party is entitled, in accordance with the date of priority of the water right*" (emphasis added). ORS 537.777 provides OWRD the authority to regulate wells to "secure the equal and fair distribution of ground water in accordance with the rights of the various ground water users." Finally, ORS 537.780 requires that any determination of impairment, substantial interference, or undue interference between a well and a surface water source be based on substantial evidence.

ORS 183.335 provides rulemaking procedures that must be followed by Oregon agencies, including OWRD, when adopting rules. It requires, among other things, that any rulemaking notice include a caption identifying the subject matter of the intended action, a statement summarizing the subject matter and purpose of the intended action in sufficient detail to inform persons whose interests may be affected, and a statement of the need for the rule and how the rule is intended to meet that need. The purpose of these rulemaking procedures is to provide an opportunity for public participation in the rulemaking process. "The policies of an agency in a democratic society must be subject to public scrutiny. Published standards are essential to inform the public. Further, they

help assure public confidence that the agency acts by rules and not from whim or corrupt motivation. In addition, interested parties and the general public are entitled to be heard in the process of rule adoption under the Administrative Procedures Act.” *Sun Ray Drive-In Dairy, Inc. v. Oregon Liquor Control Comm’n*, 16 Or. App. 63, 71, 517 P.2d 289, 293 (1973). Where rulemaking notices fail to follow the requirements of ORS 183.335, rules may be invalidated pursuant to ORS 183.400.

The due process clause of the Fourteenth Amendment to the United States Constitution provides: “nor shall any State deprive any person of life, liberty, or property, without due process of law.” In evaluating due process claims, “[t]he first issue is whether the state has deprived a person of a liberty or property interest within the meaning of the Due Process Clause. If it has, the second is what process is due.” *Stogsdill v. Board, of Parole*, 342 Or. 332, 336 (2007), citing *Wilkinson v. Austin*, 545 U.S. 209, 224 (2005). When a state deprives a person of property without due process, it can be subject to liability for a “taking” without just compensation in violation of the Fifth Amendment of the United States Constitution. See *Klamath Irrigation v. United States*, 129 Fed. Cl. 722, 730 (2016) (citations omitted). A water right in Oregon is a “vested property interest which cannot be divested without due process of law.” *Skinner v. Jordan Valley Irr. Dist.*, 137 Or. 480, 491, *opinion modified on other grounds on denial of reh’g*, 137 Or. 480 (1931) (citations omitted). Therefore, actions by OWRD which restrict use of a persons’ water rights, or which result in encumbrances in one’s property, implicate due process. *Connecticut v. Doehr*, 501 U.S. 1, 12, 111 S. Ct. 2105, 2113, 115 L. Ed. 2d 1 (1991) (“even the temporary or partial impairments to property rights that attachments, liens, and similar encumbrances entail are sufficient to merit due process protection”). When such property restrictions or encumbrances are levied by a state without supplying a party with a meaningful procedural opportunity to protect their rights, due process is violated. *Id.*

B. The Proposed Groundwater Allocation Rules Violate ORS 183.335 Rulemaking Procedures.

OWRD’s Groundwater Allocation rules violate the most basic requirements of ORS 183.335. The procedural mandates of ORS 183.335 require that OWRD accurately describe the intent and subject matter of any rules to allow interested persons to comment. “[I]nterested parties and the general public are *entitled* to be heard in the process of rule adoption under the Administrative Procedures Act.” *Sun Ray*, 16 Or. App. at 71. Nevertheless, the caption and statement of need for OWRD’s proposed groundwater allocation rules erroneously asserts that the rules will only affect the “allocation of new groundwater rights,” whereas the rules themselves appear to *also affect* the distribution of *existing* groundwater rights under rule divisions 9 and 10. This misleading caption and statement of need will dissuade interested persons (i.e., existing groundwater right owners) from commenting, despite the rules seeming to have a very real effect on existing rights. This alone would render the rules unlawful pursuant to ORS 183.400.

During the development of the groundwater allocation rules OWRD tried to assure stakeholders that the rules would only affect new groundwater applications, not existing rights. Nevertheless, the rules continued to propose amendments to division 9, as well as definitions referenced in division 10, in a manner which seemingly could affect existing groundwater rights.

Upper Klamath Landowners repeatedly submitted comments informing OWRD of the proposed rules' effect on existing rights. As will be explained in more detail in these comments, the current version of the proposed rules attempts to quell those concerns related to division 9 but Upper Klamath Landowners fear that the rules still fail to actually prevent impacts to existing rights. Meanwhile, the proposed rules ignore how the amendment of various definitions will affect existing division 10 rules.

It is legal error for OWRD to adopt the proposed groundwater allocation rules without informing *existing* water right owners of the potential effect of the rules. Misleadingly stating that the rules will only affect *new* groundwater right applications, when existing rights may also be affected, prohibits meaningful participation in the rulemaking process. Therefore, Upper Klamath Landowners request that OWRD modify the rules to eliminate any impacts to existing groundwater rights or, alternatively, modify the rulemaking notice to clearly state that the proposed groundwater allocation rules will affect new and existing groundwater rights and explain what those effects will be.

C. The Proposed Rules Create Confusing and Arbitrary Limitations on Future Groundwater Appropriations.

The proposed groundwater allocation rules create confusing and arbitrary limitations on future groundwater appropriations that OWRD should reconsider.

The proposed groundwater allocation rules are unnecessarily convoluted. Cross references between various definitions, divisions, and individual rules require water right holders to conduct an exhaustive review and analysis to determine a rules' intended scope and meaning. For instance, the definition of "declined excessively" states, among other things, that an excessive decline includes a decline which is determined to "substantially interfere with a surface water source as defined in OAR 690-008-0001(10)." To determine whether the definition of "declined excessively" is met in any situation, one then must turn to the definition of "substantial interference." However, the definition of "substantial interference" contains its *own* cross references. That is, one cannot determine if the "substantial interference" definition is satisfied unless one turns to the definition of "potential for substantial interference" in ORS 690-009-0020(6). *That definition* then requires an analysis of streamflow depletion as described in OAR 690-009-0040 or OAR 690-009-0060. Thus, to obtain the definition of "declined excessively," one would need to turn to *at least* three different rules, two additional definitions, and a streamflow depletion analysis process. It should not be that difficult for water right holders, or water right permit applicants, to determine what "declined excessively" means.

The convoluted nature of the proposed rules only serves to amplify their arbitrary restrictions on new groundwater rights. The rules' attempt to create a one-size-fits-all process for determining whether *any* Oregon aquifers have "reasonably stable groundwater levels." If an aquifer does not fit within these arbitrarily prescribed limits, new appropriations are prohibited. Moreover, even if data is insufficient to show whether aquifers have reasonably stable groundwater levels, the proposed rules require that OWRD *assume* that groundwater levels are not stable, again prohibiting new appropriations.

It is unsound policy to try to create a unified standard for determining a groundwater reservoir's capacity to support new appropriations. Every aquifer in Oregon is different, and while some may not have the capacity to support new appropriations, that is not true of all aquifers. There are many factors that can cause an aquifer to decline, while still sustainably supporting new groundwater allocations. OWRD should not limit future appropriations of water based on arbitrary drawdown limitations for all groundwater basins in the state. Instead, a systematic study of Oregon's groundwater systems should be completed before rules restrict appropriations on an arbitrary basis. The proposed rules should be delayed or rejected until those studies can occur.

D. Amendments to Division 9 May Have a Real, But Uncertain, Effect on Existing Water Rights Without Regard for Sound Policy, Science, or Due Process.

Upper Klamath Landowners understand the proposed groundwater allocation rules to have the potential to be used for regulating existing groundwater rights pursuant to division 9. While OWRD has repeatedly assured that existing rights will not be impacted, the rules themselves create an indiscernible regulatory scheme that Upper Klamath Landowners fear will harm existing groundwater users.

OWRD's amendments to division's 8 and 9 create a, yet again, unnecessarily convoluted regulatory scheme. In division 8, the definition of "substantial interference," "substantially interfere," and "unduly interfere" are materially changed. This alone has a substantial effect on division 9, and would purportedly still pertain to the regulation of new *or existing* rights which may "substantially interfere" with a surface water source. In the definitions section of division 9, the definition of "potential for substantial interference" itself turns to the division 8 definition of "substantial interference." Next, proposed OAR 690-009-0040 creates a process for determining hydraulic connection and the potential for substantial interference between a groundwater right and surface water source.

The proposed groundwater allocation rules attempt to bifurcate the analysis of hydraulic connection and potential for substantial interference for new groundwater rights versus existing groundwater rights. Proposed ORS 690-009-0050 declares that, for controlling or regulating groundwater rights, OWRD shall apply the 1988 version of ORS 690-009-0040, which is readopted as ORS 690-009-0060. However, that 1988 version still references certain terms which have been redefined in the proposed groundwater allocation rules. In other words, by changing certain definitions, including that for substantial interference and potential for substantial interference, it appears that OWRD is changing how it analyzes substantial interference between *existing* groundwater rights and surface water rights. Thus, the incredibly-confusing bifurcated regulatory analysis proposed in the groundwater allocation rules fails to insulate existing groundwater rights from the proposed rule changes.



Unfortunately, it is very difficult to understand the new bifurcated process OWRD is proposing for division 9. Upper Klamath Landowners therefore raise the following objections³ to the entire division 9 process, and urge OWRD to reject any modifications to division 9 at this time.

1. The Proposed Division 9 Rules Do Not Protect Groundwater Users' Due Process Rights to a Contested Case Hearing.

One glaring omission from the proposed changes to division 9 is any protection of due process rights. As explained above, the Court in the *Brooks* case very explicitly held that OWRD could not regulate a groundwater user—even a junior user—based on a determination of “substantial interference” without first providing the groundwater user an opportunity to contest OWRD’s findings. The Court explained:

Everyone agrees that water rights are property rights. Everybody agrees that the extent, if at all, to which the junior water right holder can use theirs is dependent on whether the senior people are satisfied.

But nevertheless, I think there is still some kind of property right in that junior water right holder. And in particular, the Plaintiff's argument is the basis on which you are interfering with our rights is a finding that we are interfering with the surface water rights. And you made that finding without us having an opportunity to put on evidence and cross-examine your witnesses and talk specifically about our well.

And I agree with the Petitioners that telling them they can go to the Court of Appeals and argue that there wasn't substantial evidence in the record is not a very good due process substitute for the reasons that were articulated. They're stuck with a limited kind of record from a rulemaking proceeding that doesn't include calling witnesses and cross-examine, and they're stuck with an extremely differential standard of review, the substantial evidence standard, as opposed to having an opportunity to put on evidence and so forth.

And I would also add that even if they, I guess, enter the second claim for relief, which I'll confess to not having looked at very much since it wasn't an issue. But even if they get this Court to review for substantial evidence and they would have the opportunity to make a record and call witnesses and cross-examine, but it's still a substantial evidence review standard. So I believe also that the Petitioners' due process rights were violated by regulating them off their well based on this administrative rule.

Troy & Tracy Brooks v. OWRD (“*Brooks v. OWRD*”), Marion County Circuit Court Case No. 19CV27798 (Feb. 10, 2020) (Transcript Volume 1 of 1 at 33).

³ These objections were previously raised by Upper Klamath Landowners during the development of the proposed groundwater allocation rules, and are being raised again here because OWRD did not address the objections described.

The holding of the Court was that neither ORS 183.482 nor ORS 183.484, including “substantial evidence” review before the Circuit Court with the opportunity to develop a record, were sufficiently protective of groundwater users’ due process rights. Therefore, the Court found that the Brooks’s due process rights were violated by OWRD’s substantial interference finding. Despite this explicit holding that a finding of substantial interference and subsequent groundwater regulation triggers due process rights, OWRD has not acknowledged this issue in the present proposed rules.

The proposed Division 9 rules require OWRD to make affirmative findings of hydraulic connection, substantial interference, and timely and effective relief prior to regulating groundwater rights which are at least 500 feet from a surface water source.⁴ Nonetheless, the rules provide no due process for groundwater users to address and challenge these findings by presenting contrary evidence, calling or cross-examining witnesses, taking discovery, etc. This is a very substantial omission in the proposed rules. If OWRD applies the proposed Division 9 rule without allowing for such due process, *Brooks v. OWRD* tells us that such an order would violate groundwater users’ due process rights. The proposed groundwater allocation rules should be rejected for this reason.

2. The Proposed Division 9 Rules Must Require Site-Specific, Reasonably Certain Scientific Proof of Substantial Interference.

Upper Klamath Landowners retained a professional engineer and water modeling expert with decades of groundwater modeling experience to review the proposed Division 9 rules. The opinion reached by Upper Klamath Landowners’ expert, and shared here, is that the proposed Division 9 rules take too-simplistic an approach to determining “substantial interference.” By doing so, the proposed rules give OWRD a green light to order sweeping groundwater regulations based on oversimplified and downright incorrect assumptions about hydraulic connectivity and interference. This too presents a due process issue, as the proposed rules seem intentionally designed to allow OWRD to deprive groundwater users of their property rights without even demonstrating the type of “reasonable scientific certainty” which must precede such a deprivation, largely shifting such a burden onto the groundwater users. *See, e.g., State v. Sampson*, 167 Or. App. 489, 505, 6 P.3d 543, 555 (2000); *State v. Trujillo*, 271 Or. App. 785, 794, 353 P.3d 609, 615 (2015); *Z R Z Realty Co. v. Beneficial Fire & Cas. Ins. Co.*, No. 9708-06226, 1999 WL 34001829, at *4 (Or. Cir. Oct. 15, 1999). Therefore, OWRD must modify the proposed Division 9 rules by better defining the tools OWRD must use when making determinations under Division 9, and identifying the evidentiary standard which must be satisfied.

The proposed Division 9 rules do little-to-nothing to identify the analytical process OWRD must follow to determine substantial interference and, ultimately, issue groundwater controls. Instead, the rules rely on generalized statements that any determination must be based on the application of “generally accepted hydrogeologic principles” or the “best available information.” What constitutes these principles or the best available information is largely left to the agency’s discretion. No limiting factors are placed on OWRD’s ability to make its substantial interference

⁴ As explained in the following section, this requirement presents its own due process concerns which must be addressed.

determination. Most glaringly, the proposed Division 9 rules leave the door open for OWRD to determine substantial interference without any consideration of site-specific factors, or the *actual* effect of a given well on a given surface water source. Ultimately, what the proposed Division 9 rules appear to authorize is for OWRD to regulate groundwater uses based on assumptions of substantial interference, without regard for actual site-specific hydrogeological conditions. Under the proposed rules there is no guarantee that OWRD will go beyond simple assumptions and simple conceptual models to analyze whether substantial interference will occur. This can allow OWRD to adopt a simplified analysis in a complex, multi-layer aquifer system for the purpose of justifying groundwater controls. Ultimately, this results in a burden-shifting analysis, where the proposed rules put the burden on the groundwater user to demonstrate why controls are not justified, rather than keeping the burden on OWRD for demonstrating why controls are justified. This presents a due process issue, allowing OWRD to regulate groundwater uses without having to first demonstrate with reasonable scientific certainty that such regulation is necessary to alleviate substantial interference.

Ultimately, to respect groundwater users' due process rights OWRD must have the burden of proving that a given well will interfere with a given surface water source, based on a reasonable scientific certainty, before it issues a control for the groundwater use. Satisfying this burden cannot be accomplished without relying on site-specific data. To remedy this issue within the proposed rules, the rules must recognize that OWRD needs to use site-specific data to develop a site-specific "conceptual model" of the aquifer system in question, and then decide what tools, data analyses, and models should be applied to analyze the physical system in question and assess if their conceptual model is accurate. Only then may OWRD determine if there is substantial interference.

3. The Proposed Division 9 Rules Must Better Define "Effective and Timely Manner."

While the requirement that groundwater controls provide relief in an effective and timely manner is vital to the Division 9 rules, the definition of "effective and timely manner" is amorphous, incapable of consistent application, ripe for abuse, and, like the above section indicates, allows for unlawful groundwater regulation.

The proposed definition of "effective and timely manner" "means that regulation will result in the addition of *any* water to the surface water source during the *relevant* time period." (Emphasis added). This language could allow OWRD to arbitrarily determine what constitutes "any water" or "the relevant time period." There is no limiting factor in this definition to prevent completely arbitrary agency action, including where the agency determines that regulation would result in even a molecule of additional water reaching the surface water source during the "relevant time period." The definition is therefore incapable of providing *any assurances* to groundwater users that OWRD will not regulate groundwater uses on indefensible grounds.

This definition of "effective and timely manner" is particularly concerning because the Division 9 rules allow OWRD to look infinitely into the future to determine whether substantial interference will result between a groundwater use and senior surface water use, and in many instances the rules allow OWRD to assume that substantial interference does result simply by a

well's proximity to surface waters. And, as OWRD staff explained during the development of the groundwater allocation rules, if *any* groundwater use is projected far enough into the future, it will *always* result in interference with surface water sources.

The effective and timely manner standard is crucial to provide a limitation on OWRD's authority to regulate groundwater users based on this assumption that groundwater uses *always* effect surface water sources *eventually*. Without it, there will be no bounds on OWRD's discretion to control any groundwater use which will eventually affect a senior surface water right, no matter the *time* or *scope* of such an impact. For this reason, the definition of "effective and timely manner" must be made more precise. Specifically, it should be confined to significant and quantifiable "additional water" and it must be water that would be available within the specific season of use of the surface water right at issue.

The proposed rules attempt to create some sidebars to the "effective and timely manner" definition by stating that OWRD shall determine "effective and timely manner" "on the basis of the best available information."⁵ But, as stated in the above section, what constitutes the best available information is largely left to the agency's discretion. So yet again, the proposed Division 9 rules fail to acknowledge that site-specific conditions must control any analysis, including the analysis of whether groundwater regulations will result in effective and timely relief. Therefore, OWRD should modify the rules to require adherence to standard industry practice for analyzing *site-specific* groundwater systems. This requires using site-specific data to develop a site-specific "conceptual model" of the groundwater aquifer system in question, deciding what tools, data analyses, and models should be applied to analyze the groundwater aquifer system in question to test the conceptual model for accuracy, and then using the data, model and tools to assess if there would be "effective and timely" relief from the groundwater controls.⁶

⁵ Use of the term "considering the best available information" seems to excuse OWRD from any obligation to gather information; that language should be stricken and replaced with "considering site-specific information". The definition of "best available information" can then be changed to the definition of "site-specific information" by eliminating the reference to models and other information.

⁶ Rules within the Oregon Department of Environmental Quality provide examples OWRD may follow to resolve the lack of specificity within the proposed Division 9. For example, DEQ uses a specific metric such as the 7-day average of the daily maximum (7dAM) water temperature to assess if surface water exceeds a state water temperature standard such as 17.8 C, for salmonid rearing on some rivers. The temperature standard (340-041) is specific to the water body, time of year and threatened and endangered species present in each water body. The numerical values of the temperature standard are based on the threatened and endangered species present and their life stages. The current understanding of the 7dAM statistic is that it's based on fish habitat needs, while also acknowledging that one- or two-day spikes in water temperature may not be an issue for fish habitat purposes, and yet when a 7-day average of these daily maximum water temperatures exceeds the standards there is more concern for fish habitat and the stream is listed under the Clean Water Act 303(d) list, and DEQ then develops a Total Maximum Daily Load (OAR 340-042) and Water Quality Management Plan. DEQ even has a published Internal Management Directive (IMD) (<https://www.oregon.gov/deq/Filtered%20Library/IMDTemperature.pdf>) for Temperature Water Quality Standard Implementation. The Division 9 rules need similar approaches to groundwater management, where specific definitions for hydraulic connection, substantial interference, and "effective and timely" are defined, perhaps even on a basin specific-basis, specific groundwater goals need to be develop for each basin, and a published IMD should be developed by OWRD on how groundwater-surface water systems will be analyzed and where simplified assumptions may be appropriate and where site-specific data and models are more appropriate. There should be a published IMD by OWRD on data quality objectives for groundwater data and a regular call (as DEQ does for surface water quality data)

To summarize, OWRD must establish limiting factors within the definition of “effective and timely manner” to correctly balance and regulate interference between surface and groundwater uses. The definition must contain a standard which will ensure that any groundwater control makes a measurable difference in surface water flows within some reasonable period of time (e.g., within an irrigation season). Without limiting factors, the “effective and timely” standard does nothing to prohibit OWRD from arbitrarily regulating all groundwater uses due to some amorphous “future” surface water interference based on projections looking infinitely into the future. Moreover, the rules should recognize that any analysis must be based on site specific information, not oversimplified assumptions which may have limited, or no, applicability to the aquifer systems present in Oregon. Upper Klamath Landowners strongly urges OWRD to reject the proposed groundwater allocation rules for this reason.

4. The Proposed Division 9 Rules Should Eliminate Arbitrary Classifications.

The existing Division 9 rules contain arbitrary distinctions between OWRD’s regulatory duties depending upon a well’s distance from a surface water source. If wells are within 500 feet of a surface water source (regardless of the depth or complexity of the aquifer system at issue), OWRD is not required to determine whether regulation of that well would provide relief to the surface water source in an effective and timely manner. For wells over 500 feet (but within one mile) of a surface water source, OWRD *would* need to determine whether regulation of the well would provide timely and effective relief to the surface water source. For wells over a mile from a surface water source, OWRD may only regulate them through a critical groundwater area designation. Likewise, under OAR 690-009-0060 all wells located less than ¼ mile from a surface water source that produce water from an unconfined aquifer shall be *assumed* to be hydraulically connected to a surface water source.

The proposed Division 9 rules keep these same distinctions. Once again, wells within 500 feet of a surface water source can be regulated regardless of the time it takes to provide relief to the surface water, while wells over 500 feet from a surface water source can only be regulated if such regulation would provide effective and timely relief.⁷ And, the regulation of wells within a ¼ mile of surface water sources is made immensely easier because OWRD can *assume* a hydraulic connection between the groundwater and surface water sources.

Ft. Klamath *et al.* strongly urges OWRD to require that *any* regulation of groundwater users under Division 9 only occur after notice and opportunity for a hearing if (1) the well at issue is *actually connected* to a surface water source, and (2) such action would provide effective and timely relief to senior water rights within a surface water source.⁸ This will ensure that all

for groundwater data from the community and users before a science-based basin study is undertaken and groundwater wells are regulated. These science-based processes and objectives are missing from Division 9 rules.

⁷ This very relaxed standard for wells within 500 feet of a surface water source is similar to that declared unlawful in the *Brooks* case, as it exceeds OWRD’s statutory authority.

⁸ Ft. Klamath *et al.* do not take issue with the Division 9 rules’ statement that wells over one mile from a surface water source may only be controlled through a critical groundwater area designation, and believe that this one-mile threshold should be retained. Nonetheless, even those wells over one mile from a surface water source, which can only be

groundwater users are treated fairly, and will require that OWRD not regulate groundwater users on account of arbitrary assumptions regarding the effect of wells in proximity to surface water sources.

5. The Proposed Division 9 Rules Fail to Define Very Critical Terms.

There are additional terms used in the proposed division 9 rules that are either undefined, or so broadly defined that they are incapable of consistent application. For instance, the proposed division 9 rules do not contain a threshold standard for when an interference between a well and surface water source rises to the level of “substantial” interference. Largely, the term “substantial” seems to have little-to-no actual meaning in the rule, despite being a very critical part of the statutory scheme. *See, e.g.*, ORS 537.780. Failing to give the term “substantial” real affect in the proposed groundwater allocation rules is legal error.

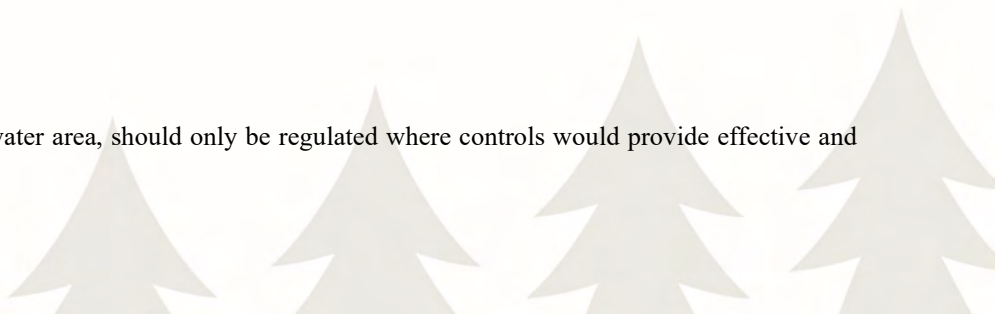
The proposed rules also do not define “generally accepted hydrogeologic principles.” Currently, the division 9 rules require OWRD to use generally accepted hydrogeologic principles. But what these principles are is undetermined, and they may even extend to staff’s comment that essentially any groundwater use has some effect, however tiny, upon surface water. OWRD can and must extract and identify the specific principles it wishes to make into Oregon law through rulemaking from the sources it has cited. It is an independent violation of due process of law to make “law” that can only be guessed at by reference to sources outside the Oregon Administrative Rules.

Additionally, the definition of “hydraulic connection” lacks any time or magnitude component. “[S]aturated conditions . . . that allow water to move” could refer to one molecule moving over 20,000 years, or appreciable flows that can actually impact users. At the least, the regulatory definition should be changed to require a measurable quantity of water to move between groundwater and surface within a single irrigation season. Because these terms are so ill defined, the proposed groundwater allocation rules should be rejected.

E. The Proposed Groundwater Allocation Rules Silently Modify Recent Critical Groundwater Area Rules.

In 2023 OWRD adopted new rules governing the designation of critical groundwater areas. Under those rules, the Commission may adopt rules designating critical groundwater areas where groundwater levels have declined excessively, where there is a pattern of substantial interference, or where groundwater supplies are overdrawn, among other circumstances. The proposed groundwater allocation rules amend these various terms. The definition of “declined excessively” would be changed substantially, as would the definitions of “substantial interference” and “overdrawn.” This will modify the meaning of the critical groundwater area rules in unintended ways.

regulated through a critical groundwater area, should only be regulated where controls would provide effective and timely relief.



At no point in the rulemaking notice does OWRD acknowledge the effect of these definition changes on the existing division 10 rules. This leaves the public uninformed, and does not allow interested parties to meaningfully participate in the development of OWRD's rules. This also adds to the confusing nature of these rules. Earlier in these comments Upper Klamath Landowners described the circular analysis that would need to occur just to determine whether certain aquifer conditions met the definition of "declined excessively." Under the proposed groundwater allocation rules, that circular analysis would need to occur under division 10 whenever OWRD designates a critical groundwater area on the basis that groundwater levels have declined excessively.⁹

The modification of the definition of "substantial interference" may have the biggest effect on division 10. By redefining "substantial interference" in division 8 as currently proposed, OWRD would be authorized to designate critical groundwater areas where two wells simply interfere with one another, even if the aquifer in general is being utilized sustainably. This seems incompatible with the legislative intent of the critical groundwater area tool.

It appears to be an ill-considered effect of the proposed groundwater allocation rules that they will substantially modify division 10. Therefore, Upper Klamath Landowners urge OWRD to ensure that division 10 is not changed by the groundwater allocation rules. Failure to do so would violate rulemaking procedures, and could result in unlawful critical groundwater area designations in the future.

IV. CONCLUSION

Upper Klamath Landowners respectfully request that OWRD revisit its proposed groundwater allocation rules consistent with the foregoing.

Sincerely,



Dominic M. Carollo
Nolan G. Smith
Attorneys at Law

NGS/kh
Cc: client

⁹ This could result in very duplicative analysis, as patterns of substantial interference can trigger critical groundwater area designations, but so can groundwater levels which have declined excessively which, as defined in the proposed groundwater allocation rules, includes aquifers where there is substantial interference. This makes little sense.

Oral Comments – La Grande Public Hearing (April 18, 2024)

Donna Beverage (Union County Board of Commissioners)

I'm Donna Beverage, a Union County Commissioner and also the convenor of the upper Grand Ronde River Watershed Place-based Water Planning Group. Agriculture in Oregon accounts for approximately 85% of the state's water use which includes groundwater. While most water users are in agreement that we need to protect our groundwater from over pumping where water levels are in decline, the proposed changes go too far. Implementing a one-size fits all for all of Oregon is not a prudent decision and would be implementing rules that in many areas have no data to support that decision. These rules will stunt economic growth in our cities as well as hurt those in agriculture that feed us and care about abundant and clean water. OWRD could resolve this problem by making sure that the water allocation decisions are made only after the necessary data is collected to back up those decisions. I do like the objective on page 13 that states that updating the groundwater allocation to be more protective of existing water right holders. And on page 14 the comment "meets additional commission standards and rules" is very vague and could change from year to year, and that scares me. Upper Grand Ronde Planning Group included in our implementation plan, and I'm going to read verbatim what we talked about. There is significant uncertainty with groundwater supply. At this time, the Upper Grand Ronde lacks sufficient groundwater monitoring wells, long-term trend data, pumping and use data, and data regarding the surface water interactions. All of these are needed to inform strategic groundwater resource planning and management. And earlier in the comments, he said that you guys were not using data from wells that were next to reservoirs because those aren't declining, and I'm just wondering why you wouldn't be using that that. Just shows that storage does help to keep the water levels up. And lastly, this public meeting was advertised but mostly without a time and a place. Thank goodness a local farmer did some investigating to help us find out when and where. And then again, one size does not fit all in the state water rulemaking.

Oral Comments – Bend Public Hearing (April 4, 2024)

Doug Riggs (Central Oregon Cities Organization)

For the record, my name is Doug Riggs with the Central Oregon Cities Organization. I'm here to bat cleanup for this august group that has gone before me, and I will try not to repeat what you've just heard from my three colleagues. I do want to emphasize the nine cities of COCO have been working to be responsible stewards of water in this region for almost 25 years. The collaborative efforts we helped established have had tremendous successes as Michael Mayor Preedin have noticed. I want to acknowledge that these rules have been modified since the initial drafts and in response to earlier criticisms; however, they still implement a system that makes a dramatic U-turn and reverses course in three areas. First, over the past years the state has urged regions to take responsibility and use place-based planning processes to gather key stakeholders and work to plan for and implement change, but this proposal abandons that principle. Second, the state has urged and supported the lining and piping of canals, and this proposal needs to recognize the positive impacts and the obvious results of that principle. But this proposal fails to adequately recognize these facts and the impact that unnatural leaking canals have had on artificially driving up certain well levels. This is particularly true with the WRD's reliance on wells near the region's old leaky canals where drops in water levels were expected as lining and piping processes took place. The problem is illustrated specifically for instance with the Department's frequent citation the Pine Nursery well as an indicator for this study. As a result, this proposal appears to punish the region for these beneficial efforts. The rules need to put a balanced analysis of intentional human-caused actions which simply take levels back to natural readings such as this at the front of the calculations not as an afterthought. And three, the state has for more than 50 years encouraged careful, planned responsible growth inside of UGBs, but this proposal actually disincentivize is that standard; as such, it abandons the principle set forth so clearly in Senate Bill 100. The impact of all these decisions is clear in two cases. The rules will, number one, drive up water bills for residents in all the cities of Central Oregon, and two, make it very difficult if not impossible to meet the Governor's goal of creating 36,000 new housing units throughout the state. This is backed up WRD's own analysis. In the report's fiscal section, it notes that quote rate payers may experience higher water bills because of rising costs. Later the report notes that the rules may force cities to update their comprehensive plans quote to rebalance economic priorities to achieve these goals, in other words, setting aside the goals of job creation and family wages for our residents. Cities need certainty, and as Mayor Fitch noted in detail, cities are required to respond to state housing, land use, public safety standards. These groundwater rules should not ignore these laws. Today, we'd make three recommendations. First, automatically grant place-based planning authority to regions like the Deschutes, which have (1) have existing collaborative systems in place to identify opportunities to meet water goals; (2) have demonstrated clear progress in the past decade or more such as increasing stream flows, and (3) have demonstrated a commitment to conservation, for instance through clear city metering, cost responsibility, landscaping standards and investments in water conservation measures. There should be an immediate opportunity to move to a place-based planning option without a three to five-year alternative rule option. While we appreciate that the rules may provide a potential offramp for basin-specific rule, in addition, the side boards put on that offramp, at the last minute after the 8th RAC meeting was over, are unclear and unnecessary. The place-based planning option should be ramp number one for responsible basins. Second recommendation is that the

final rules should recognize that basins which have seen almost all wells decline 10 to 20% in a 200-foot saturated aquifer are different in the basins which have seen some wells decline by 3 to 5% in a 1,000- foot saturated aquifer. The rules should take that into account from the get-go. The rules should also take into account basins in which some wells are beginning to show recovery, as we are seeing here in the Deschutes. And third and finally, the rules should not disincentivize carefully planned conservation-minded growth within urban growth boundaries, but instead perversely incentivize unmonitored, unregulated growth which plays no part in the cost responsibility for sharing water resources outside of UGBs. That is what the current version of the rules does, and this needs to be addressed immediately and before the rules are presented in Commission. Public support providing is committed to supporting and providing more detailed written testimony which is important, and we urge you to consider it. Again, thank you very much for the time and as always the nine cities and Central Oregon cities organization stand ready to take an active role in finding real answers and science-based approaches to water stewardship in this basin.

HARTT Laura A * WRD

From: Duncan Kerst <rdkerst@gmail.com>
Sent: Wednesday, June 12, 2024 3:59 PM
To: WRD_DL_rule-coordinator
Subject: Oregon Ground Water - New Rules

Some people who received this message don't often get email from rdkerst@gmail.com. [Learn why this is important](#)

Dear Laura Hart

Please see my thoughts below;

The new rules will result in more sustainable management of Oregon's groundwater.

The new rules will ensure better protection of streamflows and cold water inputs to Oregon rivers and streams from the impacts of over-pumping hydraulically-connected groundwater.

Challenges associated with the impacts of climate change make it even more important for the state to stop over-issuing groundwater permits.

The new rules will end the practice of "defaulting to yes" to new groundwater rights when the state lacks data to determine whether it has already over-appropriated groundwater in a particular area, and whether a proposed new use is within the capacity of a water resource.

The method by which Oregon issues new groundwater permits has long been in need of an overhaul, and I look forward to the adoption of the proposed rules.

Thanks

Duncan Kerst

DWAYNE YUNKER
STATE REPRESENTATIVE
DISTRICT 3



OREGON HOUSE OF REPRESENTATIVES

March 13, 2024

Ms. Laura Hartt
Water Policy Analyst
Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301

Re: Groundwater Allocation Rulemaking Public Comment

Dear Ms. Hartt:

I am writing to submit into the record a public comment on the Oregon Water Resources Department's Groundwater Allocation Rulemaking proposal.

I have reviewed the Notice of Proposed Rulemaking dated Feb. 22, 2024 on the Department's website. I am deeply concerned that the new rules, if implemented, will be overly restrictive with respect to issuing new groundwater permits in the state of Oregon.

Before changes to groundwater allocation rules are made, it is important to consider the current environment we face with respect to housing availability in the state of Oregon. The governor is working to address Oregon's severe housing shortages. As a state representative and also in my professional capacity as a real estate broker in Grants Pass, I know placing additional restrictions on groundwater permits for new developments could make it challenging to meet our goals for new homes, especially in Oregon's rural areas.

Oregon's current housing crisis makes getting the science right on evaluating interference with surface water sources very important. I believe more study in this area is crucial before rule changes are made. I would suggest the Department take a second look at how other states with climates similar to Oregon's conduct their evaluations.

I strongly encourage the Department to pause the groundwater allocation rulemaking process to allow for additional time to develop more scientifically based methods for evaluating interference with surface water sources.

Sincerely,

Representative Dwayne Yunker



E. WERNER RESCHKE
STATE REPRESENTATIVE
DISTRICT 55

13 June 2024

To: Ivan Gall, Director
Oregon Water Resources Department

CC: Governor Tina Kotek
Oregon Water Resources Commission

Subject: Concerns about OWRD Groundwater Rule Making

I write to share **several concerns** with the direction and implementation of proposed ground water rules by the Oregon Department of Water Resources.

First, the rule-making begins with the premise that OWRD does not have the authority to do what is necessary to meet its responsibilities for the people of Oregon. This premise dismisses the fact that the Department already has several tools at its disposal to meet its obligations. **I highly recommend a review** of such authorities and identify problems associated with the administration of such statutes before continuing down the path to create new, and rather significant administrative, rules.

Examples of such existing authorities include:

- ♦ Critical Ground Water authority
- ♦ Groundwater Limited Areas
- ♦ The Commission's authority of Order of Withdraw
- ♦ Serious water management problem areas

My second concern is that previous conversations with OWRD have disclosed that the newly proposed ground water rules would be prospective, and not impact current water users. **I strongly urge a clarification** of then rules, so that this fact is not an ambiguous but clear for all to understand.

Third, I do not appreciate the state-wide nature of the rules. Each water basin throughout the state is very different in nature. A state-wide, one-size-fits-all approach is the wrong way to meet Oregon's water needs. What is good for the Harney basin may very well be detrimental to the Klamath basin. This singular view ignores the facts on the ground (and under the ground).

Fourth, place-based planning has involved local experts and water users to solve complicated regional problems. Moving forward with the proposed rules negates much of the work achieved by these groups. Why not continue to work with these regional experts, whose livelihoods depends on an adequate and sustainable supply of water?

Finally, by law OWRD is required to consider multiple factors in its evaluation process. For instance, ORS 537.525 requires that the Department prioritize water for human consumption — a significant factor to ensuring sufficient housing for our residents, and a key goal of our Governor.

ORS 537.525 requires that the Department's policies ensure, "Adequate and safe supplies of ground water for human consumption be assured..." State Land Use Goal 9 requires cities to plan for adequate land and public services for economic growth opportunities over 20 years. Goal 10 requires cities to provide adequate housing. Goal 11 requires cities to provide services, including water serves and planning for long range public services.

OAR 690-005-0010 **requires state rules to consider and incorporate these factors** — "This rule establishes policies and procedures for assuring agencies compliance with statewide planning goals, assuring compatibility with local comprehensive plans; coordinating with local state and federal governments and special districts in land use matters...."

Yet looking at the rule-making documents, they merely give a head nod to these statutory requirements. There are only 3 or so sentences in the rules even attempting to answer these statutory mandates.

How, then, does these proposed rules comply with the law? Furthermore, doesn't neglecting these specific susses leave OWRD and this rule-making process open to future legal challenges?

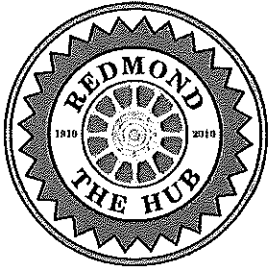
Given the significant feedback and resistance to the proposed rules **I recommend not moving forward** and instead pursuing a regional approach to rule making, if any new rules are truly necessary.

Sincerely,



E. WERNER RESCHKE

State Representative, HD 55
The Crater Lake District



CITY OF REDMOND
Office of the Mayor

411 SW 9th St
Redmond OR 97756

April 19, 2024

via email

RE: Water Resources Commission

Dear Governor Kotek,

Enclosed is a copy of a letter the Redmond City Council will be sending to the Oregon Water Resources Commission before the end of May.

We have significant concerns regarding the Commission's and Water Resources Department's failure or refusal to consider the significant effect of two key decisions currently before them:

- One is the proposed rules; and
- Second is the anticipated denial of Redmond's current application for 5.12 cfs of water to serve one of the fastest growing cities Oregon.

Both policy decisions will handicap the ability of the cities in the Deschutes Basin to comply with the Statewide Planning Goals as well as our own acknowledged comprehensive plans.

In the context of these developments the Central Oregon Cities Organization (COCO) is holding a Water Summit at 1pm, on May 16 at the Redmond City Hall. The purpose is to discuss the current state of our basin and to see if we can find a path forward on how to balance the social, economic, environmental and energy challenges facing Central Oregon.

We believe a plan comprised of regulation and conservation for all users in our basin is a better plan than a statewide rule basically establishing a very difficult if not impossible bar to additional water. That rule may make sense for a different aquifer with much less capacity and less recharge, but it makes little sense for the Deschutes which already has controls such as a cap of 200CFS for non-exempt ground water in an aquifer that has a recharge of approximately 4,000 cfs each year.

We would be pleased if you can come to listen and engage in the dialogue. However, if you cannot, we would appreciate if one of your staff could.

Hope all is well otherwise.

Ed Fitch, Mayor



CITY OF REDMOND
Redmond City Council

411 SW 9th St
Redmond OR 97756

April 19, 2024

via email

Oregon Water Resources Commission

Dear Commissioners:

With this letter we hope to convey some significant concerns, but also some suggestions of how the hard work associated with the rulemaking effort can avoid being wasted by landing in either a court of law or usurped by legislation or both.

At this time, we think the rules are vulnerable due to the following:

1. The proposed rules fail to account for the significant differences in the geologic conditions of each basin.
2. The Commission and Department have embraced contradictory or inexplicable positions:
 - A. The WRD infers or suggests on its website that the decline in the aquifer is solely because of excessive pumping – that may be true in other basins, but it is certainly not a true statement regarding the Deschutes Basin – unless the Department is referencing exempt wells.
 - B. There is a 200 cfs cap on non-exempt groundwater permits under current law in the Deschutes Groundwater Mitigation Program. However, there is a recharge of the aquifer at a rate of over 4,000 cfs. There is no cap on exempt wells.
 - C. The general consensus on the Deschutes Basin is that the decline is based upon a combination of climate change, the piping of irrigation canals and pumping. From our perspective some of the decline is also based upon an artificial initial reference level that was the result of 100 plus years of leakage from the irrigation canals.

D. The WRD claims there is no water available for municipalities, yet it allows billions of gallons of water to be pumped out of our aquifer each year by exempt wells. The WRD and State will continue to allow more wells outside of urban areas instead of access to water for cities, particularly the fast-growing cities of Central Oregon which are demonstrating and will continue to adhere to a high standard of stewardship through conservation measures.

These points, however, do not constitute the most significant flaw with the proposed rules. The main problem is that the rule is being adopted in a legal vacuum.

Both the Water Resources Commission and the Department have a statutory and regulatory obligation to:

A. Prioritize water use for human consumption. ORS 537.525 sets forth the State's groundwater policies and provides in subsection (5), "Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses."

B. Comply with the Statewide Planning goals and assist state and local jurisdictions to comply with those goals such as:

Goal 9: requires cities to plan for adequate land and public services for economic growth and development opportunities over the next 20 years.

Goal 10 which requires cities to provide adequate housing.

Goal 11 requires the cities to provide public services, including water service and plan for long range public service needs.

Goal 14 which requires cities to plan for increased urbanization.

C. The requirements to comply with these goals and assist cities are set forth in the Commission's own administrative rules which appear to have been ignored. They are:

OAR 690 -005-0010

"... this rule establishes policies and procedures for: assuring agency compliance with statewide planning goals; assuring compatibility with local comprehensive plans; coordinating with local, state and federal governments and special districts in land use matters; and resolving land use disputes.

OAR 690-005-0020

(1) Land use and water management are integrally related. Statewide planning goals require comprehensive plans to include inventories of, and mechanisms to protect local water resources. State water laws require the Commission to protect the public interest in all waters of the state. Recognizing the responsibility vested in both state and local government to manage and protect water resources, the Commission places a high priority on complying with statewide planning goals and achieving compatibility with local comprehensive plans.

(2) In any action pursuant to a program identified in OAR 690-005-0025, the Commission and Department shall comply with the goals and be compatible with local comprehensive plans to the greatest extent possible, as required by and consistent with the full range of statutes governing land use and water management as set forth in OAR 690-005-030. Note, this includes applications for permits and statewide policy formation.

OAR 690-005-0030

(1) All Commission and Department actions pursuant to a program identified in OAR 690-005-025 shall comply with the statewide planning goals.

(2) Except as provided in section (3) of this rule, the Commission and Department shall comply with the statewide planning goals by taking actions which are compatible with acknowledged comprehensive plans as required by OAR 660-030-0065(3) and provided in OAR 690-005-035 (Compatibility with Acknowledged Comprehensive Plans).

OAR 690-005-035

(1) Except as provided in section (5) of this rule, Commission or Department actions taken pursuant to a program identified in OAR 690-005-025 shall be compatible with acknowledged comprehensive plans. Note: section 5 requires dispute resolution procedures if the actions are not compatible.

These are not meaningless obligations. Instead of working with state and local jurisdictions the WRD has done the opposite by putting up major roadblocks for cities to comply with the goals and incentivizing growth outside of the UGB's with more and more unregulated exempt wells.

The avoidance of addressing exempt wells is inexplicable. The 18,000 plus exempt wells in the Deschutes Basin pump an estimated 9 billion gallons each year from the aquifer. Some may question this estimate, but it may end up being a very conservative one. By statute the owners of each of these wells can pump up to 15,000 gallons per day (ORS 537.545). The 9 billion figure is based upon a daily average of only 1,500 gallons per day. The Department has stated on several occasions that this pumping of water by owners of exempt wells is of no consequence.

By way of contrast, the City of Redmond with 13,000 water connections pumps a little over 2 billion gallons a year for 38,000 citizens as well as all the businesses and public institutions in our community. The City of Bend has 26,000 water connections and pumps about 4.5 billion gallons a year. The City of Sisters pumps approximately 350 million gallons a year to serve a population of 3,000 residents and businesses. In other words, if more water is being pumped by about 40,000 rural residents than Bend, Sisters and Redmond collectively while these cities serve 150,000 residents as well as hundreds of businesses and public institutions. The department, however, states there is no more water available for Redmond and presumably no additional water for any other city in our basin.

The cities are not looking for a free pass on water. We believe mitigation instead of prohibition is an approach more consistent with state law and the Commission's own responsibilities under its administrative rules. Some, like Water Watch, have testified that cities can be more efficient in our use of groundwater. We agree. All the cities in Central Oregon are actively engaged in additional conservation measures to reduce the per capita consumption in our communities – a per capita number that is but a fraction of those pumping water outside the of urban areas via exempt wells.

Cities, however, still need certainty that we will have access to water in the future based upon increased efforts in conservation. We also believe it is time for the Commission to work with the legislature to regulate exempt wells by metering and monitoring with an appropriate cap on usage.

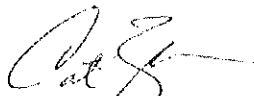
In sum, we believe the Commission can either work with the Deschutes Basin collaborative partners and the legislature to take a more holistic approach to water conservation basin wide or incorporate into this rulemaking process (as well as with current municipal applications) a balanced approach or an ESEE type approach which recognizes not only the relatively finite nature of this resource but also recognizes the vital responsibility and obligations cities have in meeting the social, economic, environmental and energy needs of our citizens particularly in light of the numerous state and federal mandates (including the statewide goals) cities must meet.

We do hope we can forge a sensible solution on these matters. We urge the Commission not to adopt the proposed regulations until more work can be done to create a balanced approach.

Thank you for your service and hard work.



Ed Fitch
Mayor



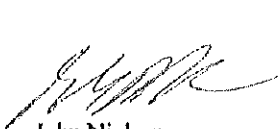
Cat Zwickler
Council President



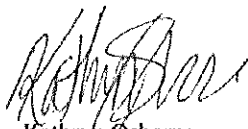
Shannon Wedding
City Councilor



Clifford Evelyn
City Councilor



John Nielsen
City Councilor



Kathryn Osborne
City Councilor



Tobias Colvin
City Councilor



Bend, Culver, La Pine, Madras, Maupin
Metolius, Prineville, Redmond, Sisters

Executive Summary

June 6, 2024

The nine cities that make up Central Oregon Cities Organization (COCO) have a combined population of over 150,000 and rely largely on groundwater to meet their water supply needs. COCO is disappointed that the Oregon Water Resources Department's (OWRD) proposed Groundwater Allocation rules do not address the obligations and requirements for municipal water providers as well as the unique hydrogeologic framework of the Upper Deschutes Basin. Below are a few highlights of COCO's concerns followed by detailed comments:

- **COCO has heard repeatedly that even though groundwater pumping is a small part of the puzzle in the Upper Deschutes, it's the only element of the water budget OWRD staff feel as though they control. COCO's question is: to what benefit and at what cost?** In the Upper Deschutes basin, a moratorium on the issuance of new groundwater permits and cessation of groundwater pumping will do little to help achieve the Commission's desired policy objective to "arrest or reverse groundwater level declines." And over the next 20 years, new canal piping projects, funded in part by OWRD, will eliminate more artificial recharge in the central part of the Upper Deschutes Basin than all the groundwater pumping in the Upper Deschutes Basin for all purposes combined. The Commission is poised to make the future water supply for Central Oregon's growing communities beholden to artificially elevated groundwater levels benefitting from a century of artificial recharge.
- **The proposed rules, as currently written, are ambiguous and do not provide certainty with respect to implementation.** For example, the proposed rules provide no framework for how OWRD will account for the impacts of human activities on groundwater levels and contain several terms and criteria that are not defined and without examples. The proposed rules do provide an off-ramp to develop basin-specific rules, however, the proposed rules offer a pathway burdened with vague and inappropriate criteria and no commitment to staffing and funding.
- **Despite COCO's requests, there remains no accounting of the cost of alternatives to obtaining new groundwater rights under the terms of the Deschutes Basin mitigation program.** And OWRD continues to erroneously identify, as the primary alternative to obtaining new groundwater rights, the acquisition of other existing groundwater rights for transfer, despite there being no pathway for the approval of a groundwater right transfer in the Upper Deschutes basin.
- **OWRD and the Commission have not adequately addressed the impact of the rules in the context of Oregon's statewide planning goals and acknowledged comprehensive plans.**

Introduction

Groundwater from the Upper Deschutes Basin is a major source of water supply for members of the Central Oregon Cities Organization (COCO), established in 1998. COCO member cities have a strong interest in this water source and take pride in being responsible stewards of the resource. The nine member cities have a combined population of over 150,000 people. COCO's purpose is to promote common interests of the cities in Central Oregon, including issues related to water. For over 25 years COCO has been an active participant in basin-wide collaboratives, including the Deschutes Water Alliance, the Basin Study Work Group, and the current Deschutes Basin Water Collaborative. Through this active collaboration COCO has demonstrated its commitment to finding basin-wide solutions and has spearheaded numerous successful legislative efforts to improve Deschutes Basin water management. It is with this foundation of experience and spirit of collaboration that COCO provides the following comments on the Oregon Water Resources Department's (OWRD) hearing draft rules issued March 1, 2024.

In April 2023, OWRD initiated a rulemaking with the objective of updating groundwater allocation rules to be more sustainable and protective of existing water users, both instream and out-of-stream. OWRD's proposed rules address two key considerations relating to groundwater resources in Oregon: interactions between groundwater and surface water, and groundwater level declines. With respect to the latter, OWRD staff expressed on numerous occasions that the Water Resources Commission identified domestic water supply wells going dry as a major concern and that their goal is to adopt rules that will "arrest or reverse" groundwater declines statewide.

COCO supports OWRD's efforts to manage and protect the groundwater resource in the Upper Deschutes Basin. COCO understands that losing the use of domestic water supply wells is devastating to those who depend on them for water. And COCO's member cities are all too familiar with the increased cost of drilling water supply wells. However, COCO is concerned that—**in the Deschutes Basin specifically—the Department's proposed rules will have little or no impact on groundwater levels, while putting at risk the ability of COCO's members to meet their obligations to plan for the water supply needs of the fastest growing region in the State.**

COCO has four major points of concern, including the unsuitability of the rules in the Deschutes Basin, uncertainty about how the rules will be implemented, the impact on the ability of cities to plan for their future water needs, and the restrictions the rules impose on a basin specific groundwater allocation rulemaking.

- 1) **The Deschutes Basin is unique. Unlike in other basins around the state, applying the proposed one-size-fits-all rules to the Upper Deschutes Basin will have little impact on groundwater levels.**

One of COCO's overarching criticisms of the proposed rules and associated rulemaking process is that OWRD has walked back its commitment to place-based planning. Rather than relying on numerous peer-reviewed studies and hydrologic models developed for the Upper Deschutes Basin, the proposed groundwater allocation rules are a one-size-fits-all, state-wide approach. The result will be a set of groundwater allocation rules that do not make sense for the Upper Deschutes Basin, and it will require multiple years of locally driven rulemaking to get it right.

Groundwater levels in wells near the Cascades, upgradient of irrigation canals, closely reflect variability in annual precipitation. In wells more distant from the Cascades, the response of groundwater levels to precipitation is attenuated. Recent groundwater level trends seen at these wells reflect a long-term precipitation deficit. In the center of the Deschutes Basin, where groundwater level declines are most significant, at least 75 percent (an overwhelming majority) of groundwater declines have been caused by an extended period of lower precipitation that began in the early 1990s. The Upper Deschutes Basin receives over 4,000 cubic feet per second (cfs) of annual recharge. Groundwater pumping is equivalent to approximately 2 percent of the annual groundwater recharge. Moreover, the Deschutes aquifer has a saturated thickness of approximately 1,000 feet within a single geologic formation. (Gannett et al., 2017). **This is fundamentally different from other basins in Oregon, where groundwater declines are occurring because pumping exceeds annual recharge.**

The abundance of available research on the Deschutes Aquifer is the result of an investment the state made over 20 years ago to engage in an in-depth study of the aquifer. While OWRD has come under criticism for failing to collect, analyze, and use groundwater data in its groundwater allocation decisions, the Upper Deschutes is a shining counterexample: the State worked with the USGS to develop a comprehensive model of the aquifer and developed a regulatory program to ensure that the effects of groundwater pumping on the basin's Scenic Waterways would be offset through a program to mitigate the impact of pumping on surface water for new permits.

Despite all that work, the Upper Deschutes Basin will now be subject to limits on the issuance of new groundwater permits which do not make sense for the Basin's massive, unconfined aquifer. The publications from OWRD's own studies illustrate the futility of regulating groundwater pumping as a tool for managing groundwater levels. Figure 16, from Gannett and Lite 2013, one of multiple follow-up studies to the work of USGS and OWRD, shows effects of increases in groundwater pumping from 1994 through 2008 on water levels at a well in the La Pine subbasin. The Commission should take note that Figure 16 shows that there was no discernable impact of increased groundwater pumping from 1994 through 2008 in this area. There hasn't been a significant increase in groundwater pumping since 2008, either. Had OWRD acted earlier to stop issuance of all new groundwater permits, disallowed new exempt water supply wells—and even curtailed all existing pumping—water levels would be the same as they are today.

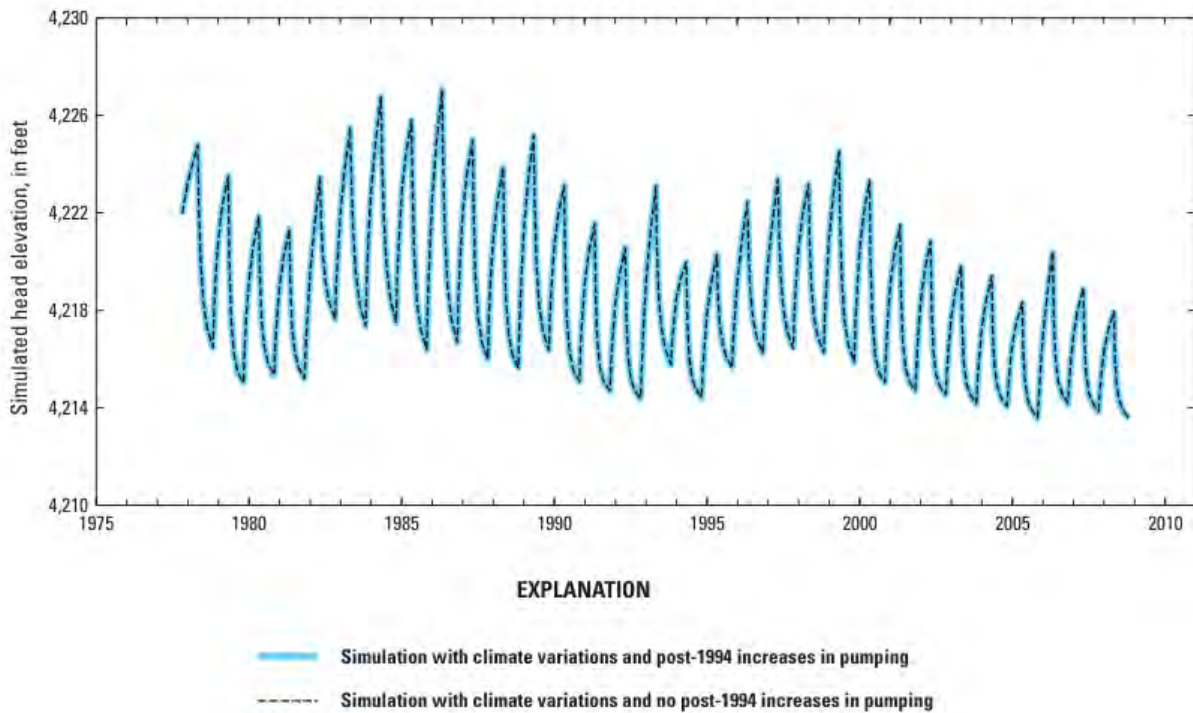


Figure 16. Simulated head elevations in observation well 21S/11E-19CCC, a 100-foot deep well in the La Pine subbasin, central Oregon. Lines showing simulated head elevations with and without post-1994 pumping increases are coincident on the graph, indicating very limited impact from post-1994 pumping increases. Effects of post-1994 canal lining are too small to show at the scale of this graph. Location of observation well is shown in [figure 4](#).

Likewise, Figure 24 shows the impacts of increased groundwater pumping from 1994 through 2008 on water levels in a well near Redmond. Again, there have not been significant increases in groundwater pumping since 2008, as COCO members have aggressively ramped up water conservation efforts. Moreover, there has been little increase in groundwater pumping for other uses either, as the scarcity and cost of mitigation credits under the Deschutes Basin Groundwater Mitigation program *already acts as a significant constraint on new groundwater appropriations*. As shown in the chart, had the Department acted to freeze groundwater pumping at 1994 levels water levels would only be a few feet higher than they are now.

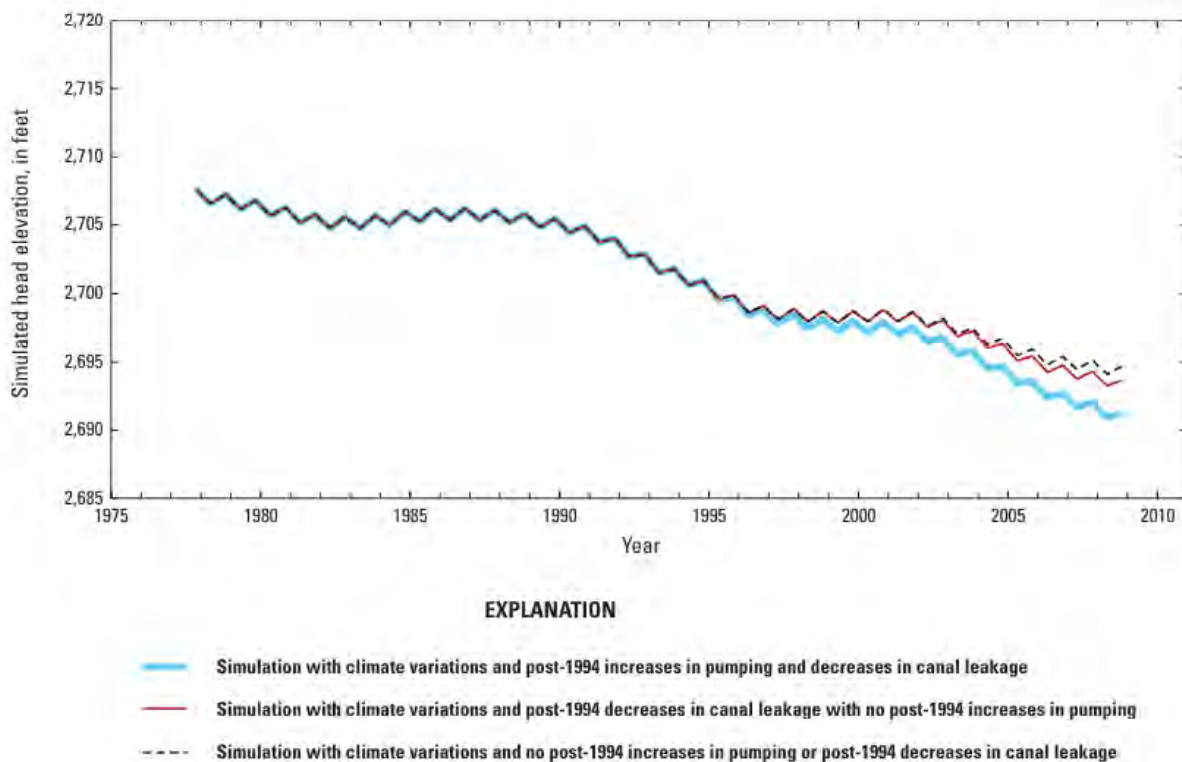
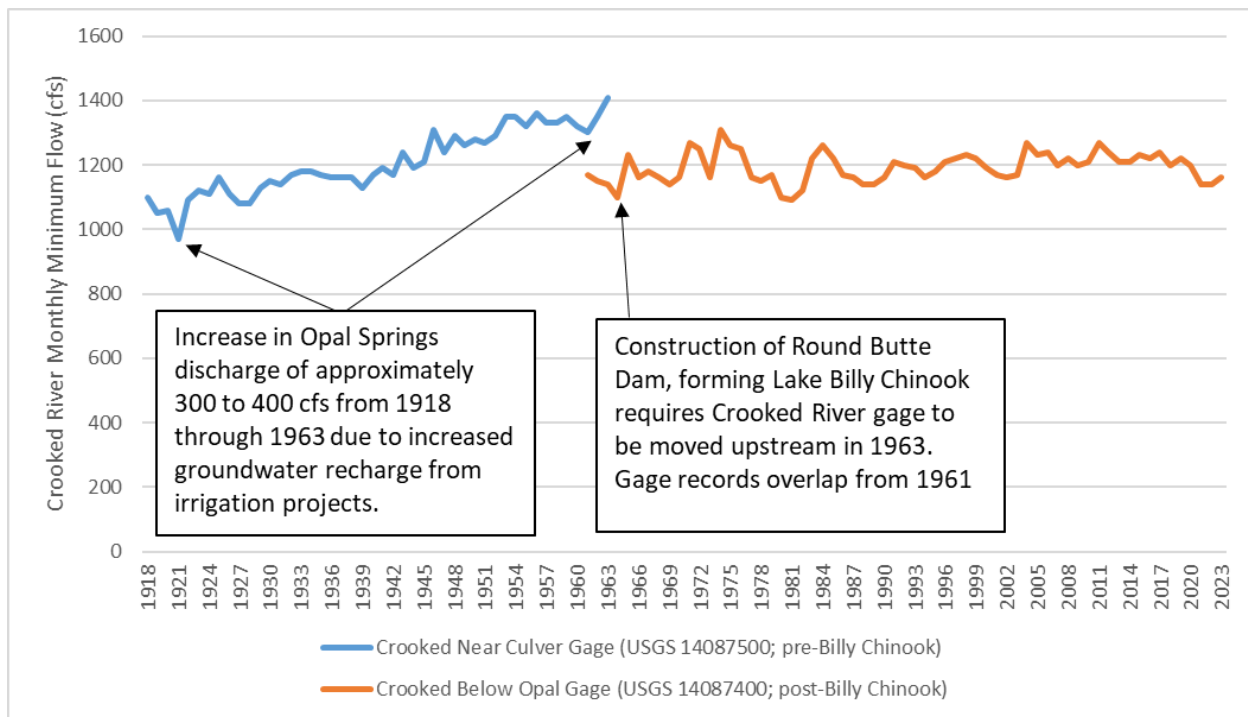


Figure 24. Simulated head elevations in well 15S/13E-18ADD1 near Redmond, Oregon.

In fact, groundwater levels remain much higher now than they were over a century ago. The figure below shows the discharge of the Crooked River above Lake Billy Chinook from 1918 through the present. This data documents the significant increase in spring discharges in the Lower Crooked River that have resulted from canal construction and associated leakage and on-farm losses. According to OWRD's own study, total groundwater pumping in the entirety of the Upper Deschutes Basin averages 76 cfs per year. As shown in the figure, increased discharge just to the Crooked River between Osborne Canyon and Opal Springs increased by 4 to 5 times that amount from 1918 through 1963.



Since 2008, OWRD has funded the piping of many miles of irrigation canals up-gradient of the Redmond well in Figure 24. These projects, some of which have been completed and some of which are in progress, will eliminate over 50,000 acre-feet of recharge annually, equivalent to the total volume of all groundwater pumping in the Upper Deschutes basin—including exempt wells, permits that pre-date the mitigation program, and permits that require mitigation. COCO supports piping irrigation canals and using those improvements in efficiency to shore-up water supplies for instream use and junior water users, as COCO’s partners at the Deschutes Basin Board of Control are doing. Funding canal piping projects in Central Oregon is critical. But for OWRD to use entirely foreseeable declines in groundwater levels due to canal piping as the basis for limiting the ability of the fastest growing cities in the state to obtain new groundwater rights is unacceptable.

2) There is considerable uncertainty about how the proposed rules would be interpreted by OWRD staff.

Throughout the Rules Advisory Committee (RAC) process, COCO heard from OWRD staff that one of their goals was to provide clear, consistent, and quantitative criteria for establishing if water is available for new groundwater allocations. While COCO appreciates this goal, several of the proposed rule provisions are ambiguous and it is unclear how the rules will be applied in the Upper Deschutes Basin. For example, the proposed definition of “Reasonably Stable Groundwater Levels” (proposed 690-008-0001(9)) indicates that annual high-water levels are to be measured at “one or more representative wells in a groundwater reservoir or part thereof...”

COCO has received mixed messages from OWRD staff regarding how they plan to identify “representative wells” when calculating Annual High Water Levels. COCO has heard that OWRD intends to limit its analysis to “spatially relevant wells,” which seems to imply certain limitations on proximity. The significance of such limitations on proximity are unclear in the Upper Deschutes, where OWRD has, until recently, recognized that there is a single, large, hydraulically connected aquifer. That finding was the basis for the Deschutes Basin

Groundwater Mitigation Program. The potential for individual OWRD staff members to interpret the rules differently and introduce dramatic shifts in how water availability is analyzed creates an unacceptable level of uncertainty for COCO.

Similarly, the same definition indicates that, to measure total decline, the “reference level shall be the highest known water level unless Annual High Water Levels have been increased measurably by human activity, in which case the department may set a different reference level using best available information,” again without definition or example. COCO assumed, in previous comments, that the rule reference to “human activity” referred to cases exactly like those in the Upper Deschutes Basin, where OWRD is supporting efforts to eliminate long-standing sources of artificial recharge that have elevated groundwater levels and spring discharges. But during discussion with COCO, and at a recent Groundwater Advisory Committee (GWAC) meeting OWRD cited a desire for the rules to accommodate the influence of surface water reservoir management on adjacent wells, and that staff do not have any framework in mind for evaluating cases like those in the Upper Deschutes Basin.

Secretary of State auditors and the public have identified a lack of information about groundwater systems as a primary reason for the over-allocation of groundwater resources in other parts of the State. Policymakers and the public have argued in support of funding groundwater studies to provide sufficient information for OWRD staff to make scientifically sound decisions about how to allocate scarce groundwater resources. It is discouraging that, in a basin where we have already funded so much research and collaboratively developed regulatory programs in response to that information, there remains so much ambiguity in how that science is interpreted and how the proposed rules will be implemented.

Proposed rule revisions: The proposed rules should be revised to include examples and eliminate ambiguity in terms and concepts under the proposed definition of “Reasonably Stable Groundwater Levels,” (proposed 690-008-0001(9)) including “representative wells” and “increased measurably by human activity.” Definitions should recognize that “human activity” that increases or decreases water levels can also affect the *rate* of water level decline. These terms and concepts are uniquely relevant in the Upper Deschutes Basin. It is astonishing that after multiple years of effort, eight RAC meetings, and over ten months that we are without concrete examples of how the rules will be implemented, and that the impact of the proposed rules on COCO members remains unclear.

COCO requests that the proposed rules under 690-008-0001(9)(a)B specifically address how “human activity” will be considered in establishing Annual High Water Levels in order to address and acknowledge the long-term effects of artificial recharge and canal piping on water levels in the Upper Deschutes Basin. COCO’s access to groundwater supplies in the future should not be subject to maintaining artificially elevated water levels. The proposed rules currently put that burden on the applicant. The impacts of “human activity” should also be considered in the rate of decline considerations in 690-008-0001(9)(a)(A).

3) While doing little to influence groundwater levels, the proposed rules will impose significant costs for COCO members.

A. OWRD’s analysis of the costs to municipal water suppliers; and identification of water supply alternatives are not adequate.

The Cost of Compliance statement that accompanies the public notice of the proposed rulemaking describes but does not quantify the potential costs that municipalities will bear because of the proposed groundwater allocation rules. The cost of compliance statement identifies challenges like the “need to explore additional water conservation and efficiency measures and/or acquire existing water rights through the transfer process.” No attempt is made to quantify the ‘how’ and ‘why’ of these costs or to recognize the unique challenges in the Upper Deschutes Basin faced by COCO members. This demonstrates an unwillingness to fully consider municipal water issues in this rulemaking.

The success of water conservation efforts is typically measured in reductions in *per capita* demands on an *annual* basis. But COCO members’ operations are constrained by the *maximum instantaneous* rates of their water rights. Water conservation measures may help to realize small reductions in the maximum instantaneous rate of demand, but due to the nuances of the timing of customer water use and water system operations, water suppliers can’t rely on the implementation of specific water conservation measures to obviate the need for a new water right in all circumstances. In short, cities will not be able to conserve their way out of this situation.

Without the ability to pump at a higher rate, under a future permit, continuing to meet peak water demands and retain sufficient reservoir storage to meet fire flow needs will require a significant expansion of treated water storage infrastructure. Reservoirs are expensive to construct and maintain. One COCO city recently spent over \$20 million to construct a new treated water storage facility. Storage reservoirs also require significant amounts of land and need to be paired with booster pumps. In short, expansion of finished water storage is an expensive and inefficient way for cities to limit the maximum instantaneous rate of their demands. Importantly, this approach won’t result in any reduction in groundwater pumping demands. It will only shift the timing of those demands.

As an alternative, OWRD suggests that cities can acquire other existing groundwater rights for transfer to municipal use. But OWRD doesn’t identify how many other groundwater rights are available, who owns them, or what they are for. Nor has anyone identified whether any such rights are subject to transfer. Based on OWRD’s own study of the Deschutes Aquifer, OWRD’s hydrogeologists had previously approved transfers of groundwater rights over large distances. But OWRD’s recent technical findings now suggest that OWRD believes the Upper Deschutes Aquifer is not homogeneous, leaving a lack of clarity as to what water rights, if any, can actually be transferred to use by COCO cities. Even if there were such clarity, how much would these water rights cost to obtain?

OWRD’s suggestion that COCO members could transfer existing groundwater rights to municipal use also makes no mention of the fact that OWRD has completely ceased processing all groundwater transfers in the Upper Deschutes Basin at the request of the Confederated Tribes of the Warm Springs (CTWS) while CTWS and OWRD develop a process to review the impact of proposed transfers on CTWS’s treaty reserved water rights. In light of the concerns CTWS has raised, OWRD’s statement that COCO members can simply “acquire existing water rights through the transfer process rather than develop new rights to meet future demands” is not accurate and an oversimplification. COCO understands that CTWS’ concerns may lead to the creation of an intergovernmental panel to establish the criteria for evaluating injury to

CTWS' treaty reserved water rights. It has been suggested that this, in turn, may require additional study of the Upper Deschutes Aquifer. COCO supports CTWS efforts to ensure that OWRD evaluates the potential for injury to their water rights consistent with the language in their settlement agreement with the State. Nevertheless, COCO members will be wary to invest the time and resources to evaluate transfers of existing water rights to municipal use without a clear understanding of OWRD's hydrogeologic and legal framework for evaluating groundwater transfers in the Upper Deschutes Basin. The proposed rules appear to simply focus on how to say "no" without providing any clarity on potential, specific water supply alternatives such as transfers.

Specific requests: The Cost of Compliance statement provided with the public notice of the proposed rules (page 10 of 31) should be revised to: a) quantify the costs to water suppliers of re-engineering water systems to meet future demands without access to new water rights (e.g., expanding treated reservoir storage), and b) clearly state that OWRD does not currently have a process in place to approve the transfer of groundwater rights for other uses to municipal use in the Upper Deschutes Basin.

B. Increased housing density and associated reduction in irrigated area will not obviate the need for new water rights.

Over the past several years, the Legislature, Governor, and local officials have worked to remove artificial and costly barriers to expanding housing supply, including eliminating limitations on density, parking minimums, height restrictions, and even relaxing the constraints of Urban Growth Boundaries (UGBs) in specific cases. These policy changes are intended to help cities build *more housing units more quickly*. This is urgently needed, and COCO cities welcome the expansion of housing supplies. With such high demand for housing, COCO cities had already begun to experience a shift toward higher density residential unit construction.

During a Water Resources Commission meeting in November 2023, both an OWRD staff member from Central Oregon and the Department of Land Conservation and Development (DLCD) told the Commission that anticipated higher density, multi-family development patterns would reduce irrigated area in Central Oregon cities, in turn reducing municipal water demands and eliminating the need for new water rights. While COCO members appreciate the impact of increased density on *per capita* water demands, the OWRD and DLCD commenters misapplied this metric when they implied that reductions in per capita water use would significantly reduce cities' 20-year projected demands at buildout of their existing UGBs, the metric of interest when requesting a new water right.

A more appropriate unit for evaluating water demands at buildout of the existing UGB is *gallons per acre*. Charts in the attached **Appendix** show water use at several housing developments in Redmond on a per unit and per acre basis, respectively.

In short, if recent housing reforms are successful in encouraging both more rapid construction of new housing units and construction of a greater number of housing units within the existing UGB, that will likely have meaningful positive impacts on housing affordability, but it will result in COCO cities growing more rapidly than previously projected. Because water demands on a per-acre basis will increase, water demands at buildout of the existing UGB will likely be higher than forecast, all other things being equal.

This is exactly the pattern that has already begun to appear in Redmond’s population and water demand data. In its 2015 forecast Portland State University projected that Redmond’s population would grow to 39,812 by 2035, an average annual growth rate of 1.81 percent. Redmond expects to exceed that population within a year, having grown nearly three times as quickly as projected over the past decade, even as total water demands have grown at one-third the rate of the water service population. In the end, demands grew at about the same rate as projected, even as per-capita demands were reduced by nearly 20 percent.

Year	Total Annual Demand (MG)	Estimated Water Service Population	Gallons Per Capita Per Day (gpcd)
2014	2093.7	26770	214
2023	2439.1	38208	175
Annualized Growth Rate (%)	1.70%	5.08%	-2.90%

To reiterate: over the past several years, there has been much hard work to remove artificial and costly barriers to expanding housing supply, including eliminating limitations on density, parking minimums, height restrictions, and even relaxing the constraints of UGBs in specific cases. The Commission’s application of the proposed ‘one-size fits all’ groundwater allocation rules to the Upper Deschutes Basin—where they will have little impact on groundwater levels—stands in opposition to all those efforts.

Specific Requests: The Cost of Compliance statement that accompanies the public notice of the proposed rulemaking includes the following language: “Rising costs also may require local governments to revise their comprehensive plans by rebalancing projected water supply needs to ensure they are able to meet conflicting demands, including provision of affordable housing.” COCO requests that OWRD revisit this language in light of the more rigorous evaluation of the relationship between housing supply and water demand shown in the Appendix.

C. The proposed rules fail to consider the legal and state-policy requirements placed on cities.

Both the Water Resources Commission and the Department have an obligation as described in its 1990 State Agency Coordination Program and associated administrative rules in OAR Chapter 690, Division 5 to “comply with the statewide planning goals by taking actions which are compatible with acknowledged comprehensive plans....” (OAR 690-005-0030). This rulemaking has not addressed planning goals relevant to COCO members, including:

Goal 9, which requires cities to plan for adequate land and public services for economic growth and development opportunities over the next 20 years.

Goal 10, which requires cities to provide adequate housing and provide for the appropriate public facilities to support housing development.

Goal 11, which requires the cities to provide public services, including water service and plan for long range public service needs.

Goal 14, which requires cities to plan for increased urbanization.

COCO remains deeply disappointed that neither the OWRD staff nor the Commission have addressed in any meaningful manner these unique legal requirements on cities as the proposed rules were developed. At no point during the rulemaking process did the RAC or OWRD staff focus on these respective Goals and whether the new rules were in alignment with statewide planning goals

COCO members are already subject to myriad forms of OWRD oversight. We measure and report water use, static water levels in wells, and are required to develop and implement Water Management and Conservation Plans (WMCPs), which are approved by OWRD. The WMCP rules impose requirements that limit water loss, require specific kinds of fee structures, conservation messaging, and implementation of other kinds of conservation programs.

Specific Requests: The proposed rules should also acknowledge that cities will require access to additional water rights to meet the needs of growing populations and to comply with their own acknowledged comprehensive plans. COCO is not seeking a free pass; we are seeking rules that acknowledge the science of the Upper Deschutes Basin, as well as the economic, social (housing) policy objectives of the Legislature and the Governor. As stated previously, COCO members understand that meeting the legal and policy objectives placed on COCO cities through the allocation of additional groundwater will require careful consideration of place-based and relevant resource concerns, rigorous requirements for water conservation and management, and rigorous conditions for long-term monitoring. The Commission must direct staff to evaluate the proposed rules in light of the legal requirement to comply with statewide planning goals and each city's acknowledged comprehensive plan.

- 4) **While COCO recognizes that OWRD tried to provide an opportunity for basin-specific rulemaking to supersede the statewide rules, this element of the proposed rules is not adequate.**

After multiple comments by COCO, OWRD staff included a provision allowing for the Commission to adopt a basin-specific definition of "Reasonably Stable Groundwater Levels" through a basin program rule. Initially, this basin specific opportunity included various caveats as to maximum allowable groundwater decline and rates of decline. After considering RAC input from COCO and others that these caveats and sidebars would hamper, not enhance, a locally-drive place-based planning approach (especially in the Deschutes Basin, given the hydrogeologic framework and the need for basin stakeholders to have the flexibility to develop place-based solutions in the context of all the basin water planning efforts already underway), OWRD staff provided draft rules at RAC meeting #7 and the final RAC meeting #8 without the previous stipulations.

Unfortunately, without any additional discussion or process OWRD staff inserted into the public hearing draft rules language making specific stipulations about future basin-program

rulemakings. This language, which was never discussed with the RAC, requires that basin program rules “must consider...the anticipated impacts” of the new definition on:

- A) The number of wells that may go dry; and
- B) The character and function of springs and groundwater dependent ecosystem; and
- C) The long term, efficient and sustainable use of groundwater for multiple beneficial purposes.

COCO members have numerous questions about these required elements. What do B) and C) mean? What kind of analysis will be required? Does the information even exist? How would a place-based planning group use this “guidance” in developing rules? In the Deschutes Basin are these questions not already part of the discussion on how to improve the Deschutes Basin Groundwater Mitigation Program?

Moreover, with respect to criteria A), requiring consideration of “the number of wells that may go dry” would require an Upper Deschutes Basin specific rulemaking process to engage in a misleading analysis of local conditions.

The Department’s intent in referencing “the number of wells that may go dry” will perpetuate disinformation about how the proposed rules will affect water levels in the Upper Deschutes Basin. The language of Criteria A is a reference to the Department’s February 10, 2024, memo, “Susceptibility of Oregon wells to being dried by water level declines.” Table 1 of the memo identifies thousands of wells that “would be dried” by declines of various thresholds, including some 8,000 wells in Deschutes County that “would be dried” by declines of 50 feet. **The discussion states that “[the] analysis helps to illuminate the cost of increasing the allowable total decline in the proposed definition of Reasonably Stable Groundwater Levels.”**

The reality is that in the Upper Deschutes Basin the Commission’s adoption of updated groundwater allocation rules will have little or no influence on the number of wells that would go dry. The analysis in the memo does not consider at all whether pumping of groundwater, or regulation thereof, would or even could have any influence on groundwater levels. Indeed, of the 8,000 wells the Department identifies that “would be dried by a decline of 50 feet,” in Deschutes County it appears that the overwhelming majority are located in the La Pine Subbasin in Townships 20 to 22 South, Range 9 to 11 East. There are 6600 wells in this area that were completed less than 50 feet into the saturated section of the aquifer. Yet OWRD’s own research shows that pumping is such a small part of the water budget in this area that it has no influence on water levels (again, see figure 16 from Gannett and Lite 2013, above)

This illustrates one of the key missteps in the analysis described in the Department’s memo: an extensive history of the aquifer provides little reason for a well driller to penetrate the aquifer by more than 50 feet. By counting all wells that *don’t* penetrate the aquifer by 50 feet or more as “susceptible to declines of 50 feet,” the analysis also so labels any well deliberately constructed to reasonable depths within *aquifers reasonably assumed not to be susceptible to declines of 50 feet*. As a result, this methodology inevitably vastly overstates the real potential for wells to go dry as a result of increasing the total decline threshold in the proposed definition of Reasonably Stable Groundwater Levels.

Given the lack of applicability to criteria (A) in the upper Deschutes Basin and the ambiguity of criteria (B), these last-minute rule additions—which were inserted without adequate

stakeholder vetting in the RAC process—are a significant rulemaking process misstep that needs to be addressed. More importantly, for OWRD to require such elements in a basin program rulemaking unnecessarily binds future Commissions and presupposes that the Department’s own place-based planning process would otherwise be deficient at identifying and navigating stakeholder concerns. COCO continues to believe that such sideboards for a place-based groundwater allocation rulemaking are not needed; however, if the Commission desires “guidance” for a future locally based rulemaking option under proposed 690-008-0001(9)(d), COCO requests that the Commission adopt the following considerations in lieu of what is currently proposed:

- (A) High public interest in potable water supply;
- (B) Whether other OWRD requirements already cap or otherwise limit groundwater allocations;
- (C) The existence of a mitigation program that offsets impacts of groundwater pumping on surface water;
- (D) The influence of human activities on groundwater levels;
- (E) Groundwater pumping as a share of the total water budget.

Specific Requests: The proposed rules impose unnecessary and unclear requirements on the basin program rulemaking process, requiring consideration of the anticipated impacts of the new definition on “the number of wells that may go dry” and character and function of springs and groundwater dependent ecosystems. This proposed rule language was added at the last minute without sufficient process and vetting, and needlessly binds future Commissions and placed-based planning efforts. These stipulations should be removed from any rules adopted by the Commission. However, if these sidebars remain, COCO requests that the Commission replace the currently proposed considerations with those suggested by COCO to better reflect the reality of an Upper Deschutes Basin place-based planning process. Specifically, COCO requests the following changes to OAR 690-008-0001(9)(d) as follows:

The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission's authority in ORS 536.300 and 536.310. Any proposed superseding basin program definition must consider, at a minimum: ~~the anticipated impacts of the new definition on:~~

- (A) High public interest in potable water supply;**
- (B) Whether other OWRD requirements already cap or otherwise limit groundwater allocations;**
- (C) The existence of a mitigation program that offsets impacts of groundwater pumping on surface water;**
- (D) The influence of human activities on groundwater levels;**
- (E) Groundwater pumping as a share of the total water budget**

Summary

Groundwater from the Upper Deschutes Basin is a major source of water supply for COCO member cities. We have a strong interest in this water source and take pride in being responsible stewards of the resource. We support OWRD’s efforts to manage and protect the groundwater resource in the Upper Deschutes Basin. But it is disappointing that after multiple years of input to OWRD the proposed rules reflect little consideration of COCO’s concerns and suggestions. The fastest growing region in the state is left with no real alternatives for water

supply and can only pursue a vague framework for locally based groundwater allocation rulemaking that is without staffing, funding, and any timeline for initiation or completion.

Sincerely,

Ed Fitch
Chair, Central Oregon Cities Organization

A handwritten signature in black ink, appearing to be 'Ed Fitch', written in a cursive style.

Cc: COCO Members

**Appendix: Additional Discussion Regarding Relationship between Density,
Water Demand, and Population Growth**

The graphics below shows a few important trends:

- 1) Figure 1 shows that new housing developments subject to a recent development code modification that allow no more than 25 percent of irrigable area to be covered in turf reduce per unit (Prairie Crossing, Redtail Ridge, in part) reduced water use by 30 to 50 percent compared to similar developments that are approximately 20 years old (NW Rim Area).
- 2) Figure 1 shows that multi-family developments are even more efficient on a per-unit basis. Note that this analysis includes all common areas associated with each development, including irrigated areas around multi-family units, to ensure an apples-apples comparison of land use types.

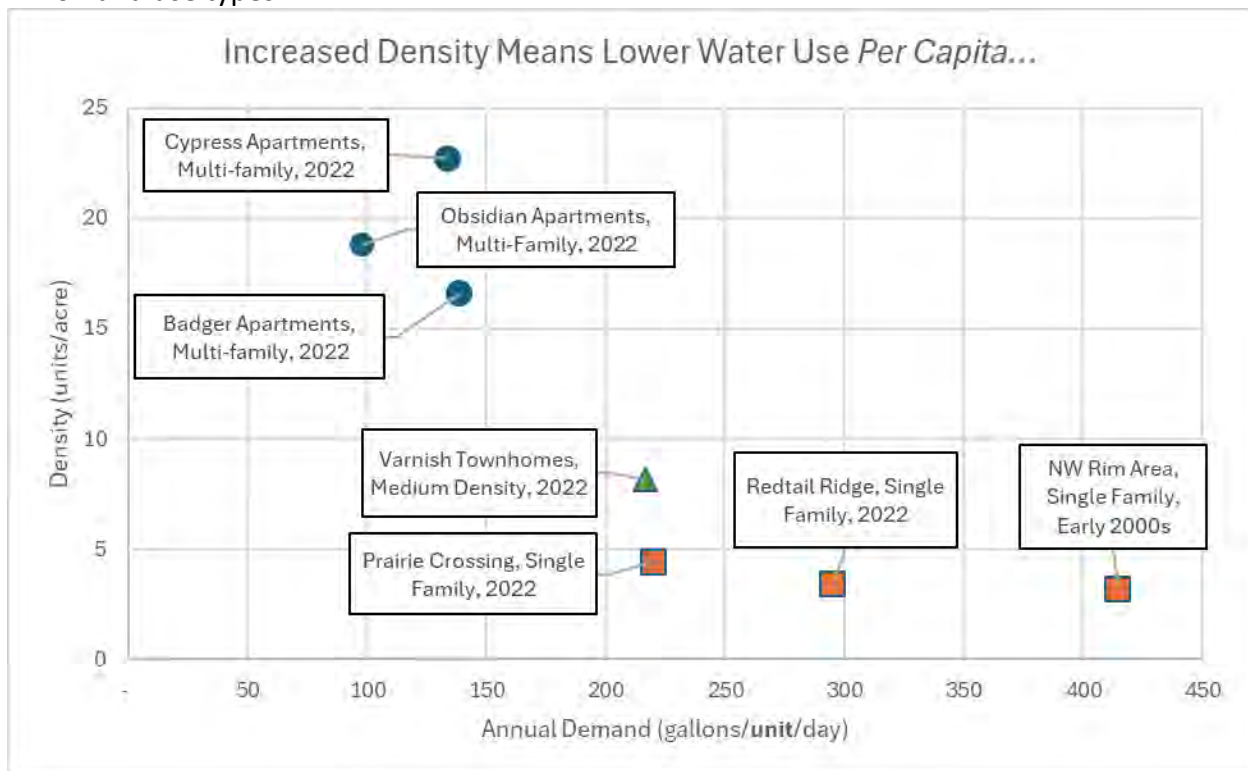


Figure 1: Housing density and water demand per unit in Redmond housing developments.

- 3) Figure 2 shows that water use is higher on a *per-acre* basis in dense developments.
- 4) Figure 3 shows the actual and projected rates of population growth in Redmond over the past decade. Central Oregon is a wonderful place to live. There is significant pent-up demand for new housing. Note that this chart is not intended to criticize the Portland State population forecasts, but it's important to recognize that they have consistently under-projected Redmond's population growth. It appears that, instead of just shifting forecast population growth from less dense to more dense housing types, adding more dense housing types accelerates population growth beyond initial projections. This reflects exactly the increase in housing supply that policies encouraging construction of denser housing types envisioned.

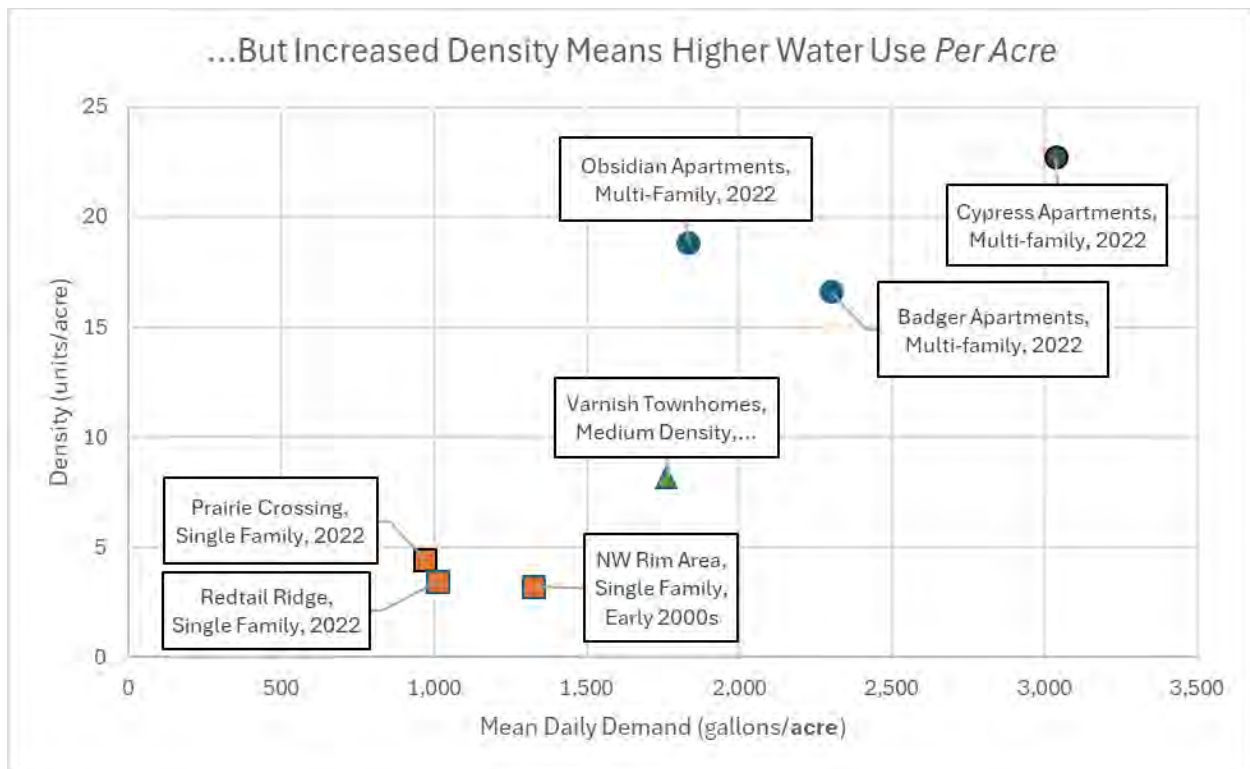


Figure 2: Housing density and water demand per acre in Redmond housing developments.

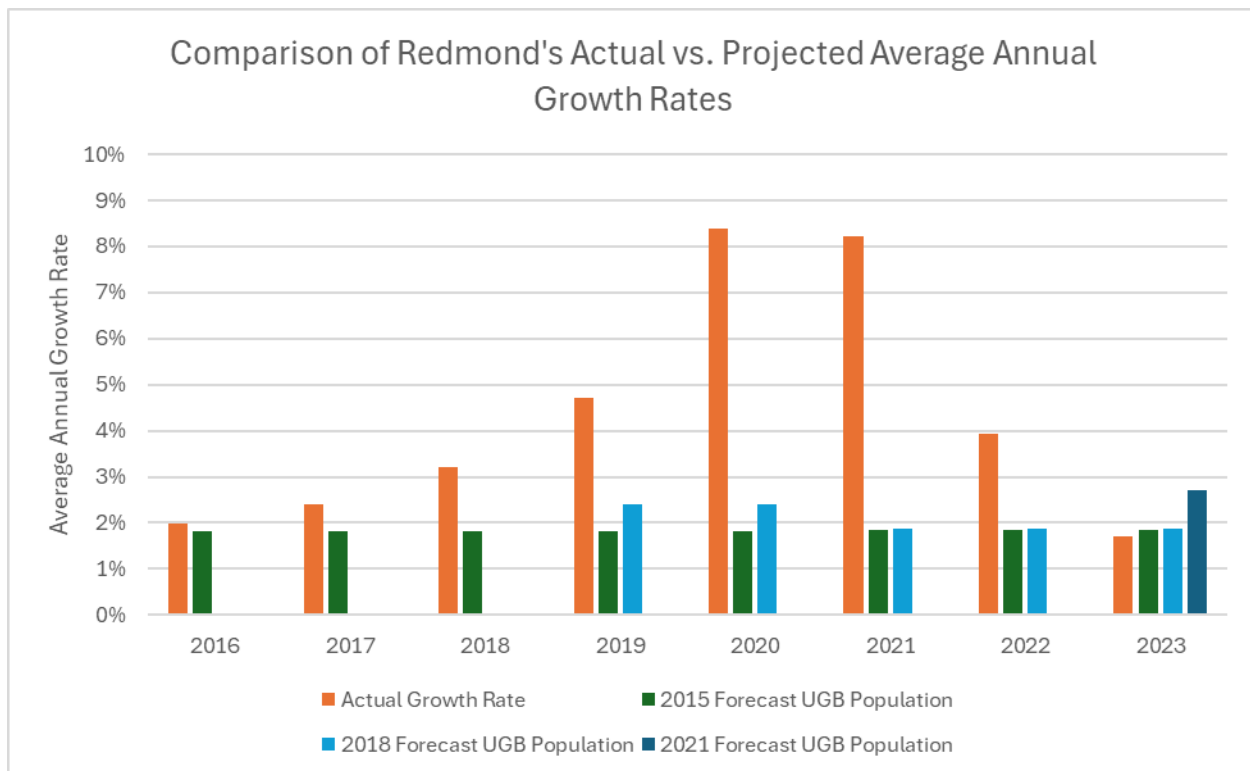


Figure 3: Forecast and actual rates of population growth in Redmond, 2016 – 2023.

- 5) Figure 4 illustrates the relationship of water demand and population growth to total and per-capita water demands. While water use is becoming more efficient *per capita*, owing in part to increases in density, total water demands have continued to grow at about the same rate the population had been forecast to grow a decade ago.

Year	Total Annual Demand (MG)	Estimated Water Service Population	Gallons Per Capita Per Day (gpcd)
2014	2093.7	26770	214
2023	2439.1	38208	175
Annualized Growth Rate (%)	1.70%	5.08%	-2.90%

Figure 4: Growth of Redmond's water service population, annual water demand, and per-capita water demand, 2014 through 2023.

Oral Comments – Bend Public Hearing (April 4, 2024)

Ed Fitch (City of Redmond)

My name is Ed Fitch. I'm the Mayor for the City of Redmond. I'm afraid all the hard work associated with this rulemaking effort will be frustrated and short lived by either a court decision or legislation, or both. One of these or both will or should occur because the proposed rule fails to account for the significant differences in the geologic conditions of each basin. The Commission and Department have embraced contradictory positions. The order infers on its website that the decline in the aquifer is solely because of excessive pumping. That may be true in another basin but is certainly not a correct statement regarding the Deschutes Basin. In the Deschutes Basin, there is currently a 200 cubic feet per second cap on groundwater permits that are not exempt. But there's a recharge of the aquifer of over 4,000 cubic feet per second. The general consensus on the basin has been indicated before is that this decline is based on climate change. Piping and pumping, but the decline is also based upon an artificial benchmark, as this aquifer has received over 100 years of artificial recharge by the canals in our area. The Water Resources Department claims there's no water available for municipalities but allows billions of gallons of water to be pumped out of our aquifer each year by exempt wells. And WRD and the state of Oregon will continue to allow more wells outside of urban areas, instead of providing access to water for growing cities. All this is not even the most significant flaw with the proposed rule. The main problem is that the rule is being adopted in a legal vacuum. Both the Commission and the Department have a statutory and a regulatory obligation to prioritize use for human consumption and to comply with the statewide planning goals and assist state and local jurisdictions to comply with those goals. Those goals include goal nine, which requires cities to plan for adequate land and public services for economic growth and development opportunities over the next 20 years. Goal ten, which requires cities to provide adequate housing. Goal 11, which requires cities to provide public services, including water service and plan long range for those service needs. And goal 14, which requires cities to plan for increased urbanization. The requirement to comply and assist is set forth in the Commission's own administrative rules, which have been ignored with this rulemaking. For example, in OAR 698-005-0020, the Commission notes that the land use and water management are integrally related. Statewide planning goals require comprehensive plans to include inventories of and a mechanism to protect important local water resources. State law requires the Commission to protect the public interest of all waters in state but recognizing that responsibility is vested in both the local and state government to manage and protect water resources. And the Commission places a high priority on complying with statewide planning goals and achieving compatibility with comprehensive plans. It also notes in OAR 690-005-0030 that except as provided in these rules, the Commission and Department shall comply with the statewide plan goals by taking actions that are in parallel with acknowledged comprehensive plans as required by law. These are not meaningless obligations for the Commission or the Department. Instead of working with state and local agencies and particularly cities, Water Resources Department has done the opposite by putting up major roadblocks for cities to comply with the statewide goals and incentivizing growth outside of urban gross boundaries with more and more unregulated, exempt wells. For example, there are approximately 18,000 exempt wells in our basin that pump an estimated 9 billion gallons each year from the aquifer. The Department stated to us directly that this drawdown of 9 billion gallons a year is of no consequence. But on the other hand, the City of Redmond pumps a

little over 2 billion gallons a year. Bend utilizes about 4.5 billion gallons a year to service 150,000 people, together with businesses, retail and industry. The Department, however, states there is no more water for Redmond and presumably any other city in our basin. The cities are not looking for a free pass on water. We believe that mitigation instead of prohibition is an approach more consistent with state law and the Commission's own responsibilities under its administrative rules. All of our cities are actively engaged in additional conservation measures to reduce the per capita consumption our communities, a per capita number that is but a fraction of those users outside the urban areas in some. We believe the Commission must incorporate into this rulemaking process a more balanced approach, which recognizes the importance of working with cities and other water utility providers so that collectively the Commission and cities and utilities can meet the requirements of statewide land use goals and provide the necessary mitigation tools to prevent to preserve the sustainability of the aquifer.

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Ed Fitch (Central Oregon Cities Organization)

I'm the current chair of the Central Oregon Cities, but going back 25 years ago, I was the Mayor of Redmond and that's when we formed Central Oregon Cities. So, this is like Deja vu when I worked on 25 years ago with water as well. I've also been involved in land use since 1978, both as city attorney, county council and private attorney. One thing I learned about our land use system is that everything within our social framework in Oregon is being defined within our land use system. All change in Oregon is basically defined within our land use system. It governs where we can live, governs where our roads go, and governs just about every aspect of social engagement and development in Oregon since the 1970s. And in that light, I want to note that when we were in Burns, I think last September, we noted that these statewide goals are also part of our discussion in terms of forming water policy. And the Water Resources Commission, as well as the Department also has a legal obligation under law and also by interagency agreement to analyze whatever action or statewide policy is being developed within the framework of our land use system. And I'll just give you some examples from the administrative rules. And 690-005 and these all pertain to the Water Resources Commission and Department, it provides that the administrative rules you have established procedures for ensuring agency compliance with statewide planning goals, as well as local comprehensive land use plans, and requires coordination with local, state and federal governments in land use matters. 690-005-0020 notes that land use and water management are integrally related. Statewide plan goals require a comprehensive plan to include inventories and mechanism to protect local water resources. The rule goes on to note that the Commission, Water Resources Commission, places a high priority on complying with statewide planning goals and achieving compatibility with local comprehensive plans. The rule also provides that any action identified in 690-005-0025, the Commission and the Department shall comply with the goals and be compatible with local comprehensive to the greatest extent possible. 25 notes that this applies to both applications and permits, but it also applies to statewide policy and 690-005-0030. It provides that, except as provided in subsection three, the Commission and Department shall comply with the statewide planning goals by taking actions that are compatible with acknowledge comprehensive plans. In general, this provision requires the Commission to make written findings if the Commission's actions are incompatible with acknowledged comprehensive plans. If it is incompatible, if there is a conflict between our local comprehensive plans and the action of the Commission or the Department, mediation is required under your own rules. It's also required under your interagency program, which you adopted and, not you but the agency adopted in 1990. Oh, from our perspective, over the course of the last year or two, there has not been any concrete efforts to talk with cities in particular, about how the water rule proposal is going to be compatible or not compatible with or acknowledge comprehensive plans. There's been absolutely zero discussion on that basis, and yet you're required by your own rules to adopt written findings about how you try to do that. And it has not been done. Now, we totally appreciate that after two years of effort, you guys are under a lot of pressure to do something, because we do have a significant issue with water in Oregon. We are willing to help in any way we can, to collaborate to make sure this works for both our water resources and the future of our cities. But we have to have that

discussion. And, our recommendation is that instead of going through mediation under either the rules or the interagency program, that the Department and Commission and, you know, city organizations, we have one for Central Oregon, also we have a League of Oregon Cities, sit down and say, how can we deal with this to come up with a positive and win-win situation, which I think we can, to both protect the aquifer and ensure cities can comply with the statewide planning goals. That solution is out there, but it's going to take discussion to get there. And we are more than willing to do that. I think the Governor's office is willing to help on that. But it's an important, very, very important issue for the future of our state, to both protect the resource and assure that we can comply with our land use system.

- *Question from Commissioner Joe Moll*

Mayor Fitch and I do have a question. Thank you again for, all of you for hosting us here. So, listening to some of the words, comply, achieve compatibility, I get a read that from your perspective, the water distribution system is subservient in some way to comprehensive plans and growth plans. Am I reading that right? Because my sense is that the land use system was established to achieve compatibility in this dynamic equilibrium and over time, as things like population growth that outstrips projections, land use plans adapt and change to that. But am I reading right that you feel like the Water Resources Commission, the Department is compelled to comply with projected growth as defined?

- *Response from Ed Fitch*

No, I don't think that's right. What I do think is correct is obviously growth is limited by what resources we have. Whether it's transportation, whether it's water, sewer, all those are can have limiting factors in some fashion or another. But we all know that in terms of trying to find a balance between the needs of our land use system and the requirement cities, the mandates have not just in land use, but across the board from federal and state government, and the limited resources we have, how can we do both? We haven't had that conversation. And that's where the problem lies. I think we need to have that. I do think that with enhanced conservation, coordination, we can both protect the aquifer and to the best extent, rates, extent possible within that limitation, allow for cities to move forward.

HARTT Laura A * WRD

From: Elisabeth <elisabeth.parcoca2023@gmail.com>
Sent: Thursday, April 4, 2024 9:58 AM
To: WRD_DL_rule-coordinator
Subject: Water rights for irrigation

Some people who received this message don't often get email from elisabeth.parcoca2023@gmail.com. [Learn why this is important](#)

Hello,

I understand that water is a finite resource and appreciate the government protecting it. However, how is putting small family farmers out of business the best course of action? I'm sure the large and environmentally toxic factory farms will manage to remain in business, and even take over, and this is a problem! How about you help the small farmers to become more water efficient? How about you give them time to meet permit requirements- a fix-it ticket of sorts?

PLEASE protect public waters AND small farmers by finding solutions favorable to both. Perhaps you can look at what is already working well for other communities (or countries!) struggling with water shortages, such as here: <https://www.oecd.org/climate-action/ipac/practices/israel-s-sustainable-water-management-plans-d81db5f5/> . Or, maybe permit funding can be used to fund grants to small businesses to reduce the cost of becoming more water efficient (drip irrigation, for instance). Or whatever else you come up with-- I'm sure you are well informed and intelligent people. Please do the right thing and protect both our water and our small family farmers.

Thank you,

Elisabeth Parco



BOARD OF COUNTY COMMISSIONERS

PUBLIC SERVICES BUILDING

2051 KAEN ROAD | OREGON CITY, OR 97045

June 10, 2024

Ms. Laura Hartt
Water Policy Analyst
Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301

Re: Groundwater Allocation Rulemaking Public Comment

VIA EMAIL

Dear Ms. Hartt:

On behalf of Clackamas County, we submit for your consideration this public comment regarding the Oregon Water Resources Department's Groundwater Allocation rulemaking proposal.

While Clackamas County has no direct jurisdiction on groundwater allocation, we do recognize the proposals under consideration will affect both state and local goals for increasing housing production and improving access and livability for rural communities. Water needs vary across the state, and even across individual counties. A statewide approach may not adequately address the needs and challenges of specific regions, and could lead to inequitable distribution and utilization of ground water.

Moreover, agriculture, nurseries and green houses are one of Clackamas County's key business clusters. Water rights and allocations are closely linked to maintaining this important part of our economic landscape. We see and hear annually that cost of entry remains a barrier to growing small and medium sized farms and farm-ownership. Additional restrictions and barriers, however well intended, need to be married with solutions that are actionable and funded. The proposed rules state strongly that "investments and innovations" will be required for growth and "changing water realities." However, many rules that require investments often go unfunded. At a time when local governments are addressing multiple unfunded mandates, we suggest there should be further thought given to how the state will support local communities with these innovations and initiatives, especially as we strive to meet housing production goals and support rural economic growth.

We request the Department take a second look at how other states with climates similar to Oregon's conduct their evaluations, and to consider the shared goals listed here that the state and local governments are daily working to address.

Sincerely,



Tootie Smith, Chair
Clackamas County Board of Commissioners

June 11, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street N.E., Suite A
Salem, Oregon 97301

<Laura.a.hartt@water.oregon.gov>

RE: Proposed Administrative Rules – Groundwater Allocation

The purpose of my letter is to reiterate several issues which I discussed at the public hearing on the proposed groundwater allocation rules held in Central Point on May 16, 2024.

I represent half of the Klamath basin and am acutely aware of controversies surrounding the use and management of our state's water resources. The sound, appropriate management of such resources is without question critical to the vitality of our state.

I am extremely concerned about what the new rulemaking will do in our basin. Considering the ongoing controversies surrounding water management within the Klamath basin, I fail to see how a new set of administrative rules governing groundwater regulation, applied on a statewide basis, is the most prudent course we may undertake. Conditions within our basin are unique in many regards from other basins throughout the state. The comprehensive application of the proposed rules fails to take into consideration the unique issues facing those who reside in the Klamath basin. Similarly, suggesting an application of these rules on a statewide basis does not take into consideration the very real differences between every geographical area of the state.

Opposing the statewide application of the proposed rules, I previously suggested the Department, in conjunction with the Commission, establish a pilot program within one or two basins of the state to allow for an evaluation of the efficacy of such rules.

In light of continuing questions surrounding the rules, I made an inquiry with the Department as to intent, specifically whether the proposed rules would impact existing groundwater wells or whether such rules would be designed to regulate future or prospective groundwater wells. I was informed by the Department that the intent of the rules would be to regulate future uses and would not extend to existing uses on a retroactive basis.

With this in mind, I strongly encourage the Department to thoroughly review the proposed rules and modify all provisions that may lack clarity as to the application of the rules.

Enhanced regulation of groundwater resources must take into consideration the unique conditions and circumstances surrounding a proposed individual withdrawal. A blanket approach to groundwater regulation woefully fails to recognize the various conditions associated with individual groundwater uses.

With respect to the construction of the administrative rules, I once again recommend separating the provisions of the proposed rules from existing administrative rules. This may be accomplished by establishing a new division within the rules and specifically stating such rules would extend to groundwater allocations on or after an effective date of the rules. I believe this would serve to eliminate future confusion over the ultimate intent of the rules. It may also serve to avoid unnecessary challenges and perhaps litigation over the intent of the rules.

While I recognize a considerable amount of time and effort has been expended during the current rulemaking process, I strongly encourage the Department, as well as the Commission, to not pursue the proposed administrative rules as currently drafted. Making a few changes, especially the specific division of the new to old, would put many people's minds at ease.

Thank you for your time and consideration in this process.

Blessings,

A handwritten signature in black ink, appearing to read 'Emily McIntire', enclosed within a large, loopy oval shape.

Emily McIntire

Oral Comments – Central Point Public Hearing (May 16, 2024)

Emily McIntire (District 56, Oregon House of Representatives)

For the record, my name is Emily McIntire. I'm a state representative for District 56. I am here tonight with some comments that have been provided to me. I represent this district and a lot of people and a lot of concern over how these are moving forward, which I think you're going to continue to hear tonight. So, I'm going to run through some of these. I'm not going to read it word for word, but these rules are not easy to understand. They're not easy to put together. That's one thing. Throughout this entire process, I think as it was just mentioned, we already have the ability to do a lot of the things that are being made in these rules and I'm not sure why we need the new rules. It was just said to me maybe for timing and things like that, but we already have the current ability and we're making some pretty broad changes to what we currently have and there isn't a lot of understanding as to why. Also, the Department has previously indicated the proposed rules are prospective in nature and will not serve an impact to regulate existing uses of groundwater. Yet there are examples, e.g., 690-009-001(2). It says these rules apply to all wells as defined in ORS 537.515(9) and to all proposed and existing appropriations of groundwater. So right there that already says that it is applying to existing appropriation. As I've been stated before I am sure and in previous comments, we have multiple different basins. We are not the Harney Basin. The Klamath Basin is not the Harney Basin. And the Klamath Basin shares the basin with Northern California, an issue all its own. To take our current statewide water system that has worked maybe not in the best of ways, especially in the Harney Basin, has worked for well over 100 years, and to change it now without actually considering especially with the scientific data that we have, without having a more regionally based solution, which doesn't make a lot of sense to me. Why we would do kind of an archaic, one-size-fits-all rule for a state when we have so much more data and ability to manage it so much differently. There's other things in the rules that I think are just not clear. In 690-008-0001(9)(b), it says if water level data are insufficient to perform either test for a given year, then the Department will presume that the groundwater levels are not reasonably stable unless. I just have some concerns when having there be words like "presumption" or "maybe" or "shall" rather than it being very clear, very specific definition on what we're actually going to be looking at. I will submit the rest of these for a review rather than read them all here so everyone can have more time. But just to also throw out there, if there were some changes made based on the comments tonight, I think you would get a lot more support throughout the state. Obviously, I don't think that this is going to be stopped, though I would love for it to be and be redone. But you're getting a lot of really good information from people that are trying to give you insight and listening to what they have to say and making some of these changes will make a huge difference. So, thank you for your time.

TO: Oregon Water Resources Department (OWRD)

FROM: Eric Dittmer

SUBJECT: CommentsOWRD Groundwater Allocation Rulemaking process

DATE: May 22, 2024

I'd like to compliment the staff of the Oregon Water Resource Department (OWRD) and the Oregon Water Resources Commission (OWRC) for their work in addressing increasingly complex water resource and management issues. Oregon's water is clearly a limited resource facing increasing demands and should be managed accordingly.

I have been involved in water resource issues in Jackson County in the past and have some familiarity with the subject. The efforts in drafting the Integrated Water Resources Strategy and the proposed Groundwater Allocation rulemaking are examples of a positive, proactive approach in improving equitable water use in Oregon.

I support the work OWRD is doing in revising groundwater regulations.

In a recent comment letter to OWRD, WaterWatch of Oregon noted:

"There are several important ways the state's proposed rules will align with existing statute, and put Oregon on a better, more responsible [path to groundwater sustainability](#). The new rules will:

- Define "reasonably stable" groundwater levels and prevent new groundwater permits from being issued when groundwater levels are not reasonably stable.
- Establish the amount and type of data needed to determine whether groundwater levels are reasonably stable – and require denial of a permit application if that data is not available.
- Protect senior surface water rights – including instream water rights – by requiring a full accounting of the impacts of proposed pumping on hydraulically connected rivers and streams. This marks an important improvement, as the state's practice over the last several decades has resulted in an issuance of groundwater permits that has injured senior surface water rights."

The proposed rules will begin to address the problems I encountered when preparing a groundwater reconnaissance study for Jackson County in the 1990's:

- Inadequate groundwater information with incorrect and misleading well log data (too many 5 gals per minute flow test results as needed for getting bank loans)
- Challenges in determining long term yields in fracture-controlled storage and recharge.

- Inadequate data on surface/groundwater interconnections
- The burden of proof on well interference issues was with the owners of existing wells with earlier water rights.

These problems have been largely addressed since then but increasing demand and climate change put additional stress on our limited groundwater resources.

I support the OWRD's proposed groundwater allocation rule revisions because they include:

- goals for managing groundwater more sustainability.
- addressing interconnections between surface and groundwater
- recognizing the impacts of climate change and increasing demands from a growing population
- current inequities in groundwater management are addressed.

For example:

I support deleting the term “commercial” from ORS 537.545 (1)(b). The ongoing OWRD Groundwater Allocation Rulemaking process can be the appropriate mechanism to make this logical revision.

Commercial crop sales by farmers that sell their crops to farmers markets should be allowed, if not encouraged. There are several reasons:

- The amount of water involved is miniscule compared with large scale commercial operations with much of their produce shipped out of state.
- Policing owners of small farms selling to local farmers markets based on this ORS statute is a waste of time compared to the overwhelming need to address excessive water usage by both large commercial farms and the water accessed illegally by cannabis growers. The latter uses deserve more active regulation.
- In the past water enforcement of existing regulations was largely on a complaint basis. Sending letters of warning to target those selling crops to farmer's markets seems awkwardly punitive.
- Growing, selling, and consuming crops through farmers markets saves on transportation costs and reduces our carbon footprint.

Proactive approaches to address known groundwater problems are needed now more than ever. Thank you for this opportunity to comment!

Eric Dittmer

2217 Milford Dr. Medford, Or.

Dear Ms. Hartt,

I am Erika Fitzpatrick, a rancher from Eastern Oregon near Juntura, OR. My family has been ranching in Oregon for 4 generations and I currently have two young children who I hope to give the opportunity to continue ranching here if they desire.

I am very concerned about the groundwater allocation rules proposed by the Oregon Water Resources Department. While it is true that certain areas in Oregon have experienced groundwater declines that negatively impact water users, the same cannot be said for all areas of the State. The proposed rules will create an effective moratorium on practically all new groundwater use in the State, even in areas that have no issues with groundwater over-use. This approach is extreme, does not balance economic use with sustainability, and will create an unnecessary cap on all future growth and development in Oregon.

The Department should take a more targeted approach to groundwater management. Oregon already has basin plans for surface water basins and some groundwater basins. The Department should study the needs of each groundwater basin, and create regulations in the basin plans that adequately address the unique features, demands, and potential strains in each aquifer. The Department was already directed by the Legislature in HB 2018 (2021) to start the process of studying and creating groundwater budgets for each groundwater aquifer. The Department should use that existing process as a stepping stone to put in place rules that make sense for each basin. The Department can prioritize basins that are most at risk for being overdrawn, so the State can avoid future negative consequences.

Finally, the Department has adequate authority to address current groundwater issues while it studies the groundwater basins and creates regulations unique to each basin. The Department can designate “serious water management problem areas” to prevent further use where justified while the groundwater aquifer is studied and new rules are developed. The Department can continue to deny applications where it knows that groundwater is not available and new uses will injure

existing water rights. The Department should use the tools it already has in a more effective way to better manage the resource.

The Oregon Water Resources Commission should reject the proposed groundwater allocation rules and require the Department to study each groundwater basin (as it is already required to do by law), and then develop regulations, as needed, on a basin-by-basin basis, to address any discovered groundwater basin issues. Thank you for your careful consideration of this important issue.

Sincerely,

Erika Fitzpatrick

HARTT Laura A * WRD

From: gail shooting star <gailshooting_star@hotmail.com>
Sent: Monday, March 25, 2024 8:53 AM
To: WRD_DL_rule-coordinator
Subject: Small farmers water rights

Some people who received this message don't often get email from gailshooting_star@hotmail.com. [Learn why this is important](#)

It is devastating to learn how government is targeting small farmer businesses water usage when organic, conscious farmers are adhering to practices that Industrial farming ignores; they who contaminates soil AND water and destroys soil viability, poisons the food with toxic fertilizers and weed control, that feeds millions-hence our unhealthy, diseased U. S. populations!

Is this another way big industries throw their power around to disenfranchise its competition, by buying regulations and government with money as power?

It is not sane to destroy the people's right to healthy food and domestic animal production, by the most conscientious in the production of food, with government oversight, eradication and control!

This individual does not sleep well in the realization of these regulations and laws. What about the future of our families and generations to come? We are prohibited from being sovereign beings. PLEASE! PUT SOMEONE IN POWER TO STOP THIS OVERTAKING OF OUR RIGHTS! OVERRULE CITIZEN'S UNITED! IT HAS BECOME EVIL.

Sincerely,
G Barton

HARTT Laura A * WRD

From: Gail Sabbadini <ggsabba@gmail.com>
Sent: Monday, April 15, 2024 4:19 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rules

Some people who received this message don't often get email from ggsabba@gmail.com. [Learn why this is important](#)

I support the proposals by the OWRD to make Oregon's groundwater more stable in light of current and ongoing climate change and the previous drain on Oregon groundwater from over issuing pumping permits. Protection of streams, rivers, and springs in Oregon depends on stable groundwater into the future. Fresh water is a valuable and limited asset and the utmost care should be taken to assure that it is monitored, sustained and carefully managed.

Gail Sabbadini
Retired Biologist
Bend, Oregon

HARTT Laura A * WRD

From: Gail Sabbadini <ggsabba@gmail.com>
Sent: Tuesday, June 11, 2024 8:39 PM
To: WRD_DL_rule-coordinator
Subject: New groundwater rules

Some people who received this message don't often get email from ggsabba@gmail.com. [Learn why this is important](#)

Please protect groundwater from overuse by changing permitting rules. Default to no, not yes. It is more important than ever before to make the limited fresh water resources more sustainable and protected from waste and contamination.

Gail Sabbadini
Retired Biologist
Bend, Oregon

From: sumgj@charter.net
Sent: Tuesday, May 21, 2024 3:09 PM
To: WRD_DL_rule-coordinator
Subject: Submittal for 2024 Groundwater Rulemaking

WRITTEN SUBMITTAL FOR THE 2024 GROUNDWATER RULEMAKING ADMINISTERED BY THE OWRD

Disclaimer: My written submittal here is strictly as a water user, and I profess not to imply I'm an expert on anything I'm about to say!

I recently attended the OWRD public hearing in Central Point, OR on 5-16-24. I was there primarily to learn more about the state's groundwater issues. I did not testify. I live in Jackson County and my statements are mainly about the Rogue Water Basin, but they are equally applicable to the state's other 18 water basins.

Back when I was in 8TH grade, I got the privilege for "Job Day" to attend and learn about the inner workings of the Los Angeles Metropolitan Department of Water and Power. My primary thought and concern then was – I wonder where we are going for lunch! I can now only blame the "Teenager Syndrome" for my indifference back then.

LA's main water sources then and now still come from ground water, California state's interconnected water projects, and primarily the Colorado River Aqueduct. Back then they were serving a population of 9 million, now, 60 years later – the serviced population is 19 million. Unfortunately, I'm sure a large portion of its citizenry takes it for granted.

Today, I now have started to suffer from "The Old Man Syndrome" with justifiable concerns of the wellbeing of one of our most important natural resources - the Rogue Water Basin. At some point, will our growing population's demand for water exceed the available natural water sources for the Rogue Basin? Thankfully, the recent awarding of \$97 million dollars to the Medford Water Commission's Water Supply Resiliency Program will help to potentially mitigate water issues for years to come.

However, in addition to all the great work of various Water Conservation groups in the Rogue Valley and those in the profession of water management to include the Medford Water Commission, in the Rogue Basin; we all - as individuals, also need to serve as gate keepers of this precious resource. This primarily means that all of those that serve on various county and city commissions/committees in the Rogue Basin have the shared responsibility to help protect and insure the future viability of our water sources.

We have been so fortunate to inherit an exceptional water system due mainly in part to the foresightedness of our forefathers. Please keep their earlier efforts in mind when evaluating any newly proposed developments; for our water sources have become more precious than ever lately because of the several years of the ongoing drought and hotter summers.

We all need to be shepherds of our available water sources and I only ask for everyone to be conscientious stewards and carry forward due diligence on this matter. It ultimately affects every one of

our lives and the variety of wildlife species and plant life around us. I only wish I could come back here in another 60 years to find out that all is well in the Rogue Water Basin.

I am in full support of OWRD's proposal to issue fewer water right applications when the available groundwater resources are in question.

Sincerely – Gary Sumrak, 2485 Pinebrook Circle, Medford, OR 97504, Home Ph: 541-772-7279

HARTT Laura A * WRD

From: Gary Young <gyoung@bluemtnranch.com>
Sent: Monday, May 13, 2024 1:16 PM
To: WRD_DL_rule-coordinator
Subject: Water protection, enhancement, regeneration, resilience

Some people who received this message don't often get email from gyoung@bluemtnranch.com. [Learn why this is important](#)

Start by acknowledging no real difference between “ground water” and “surface water”. The sooner we do the better off we will be. If they are not connected then the water table is too low and raising should be the goal.

Thanks,

Gary Young
Box 13
Paulina, Or 97751
541-279-7572

John Wesley Powell suggested all political boundaries should be based on watersheds.

I believe we need policies and rules that encourage aquifer recharge and large natural filtration basins/floodplains in any available area, beginning at and prioritizing the higher elevations of our watersheds, leaving the maximum opportunities for more retention at each successively lower level.

Gravity and erosion will tend toward rapid and concentrated drainage of watersheds. Thankfully beaver and buffalo helped brake this process until they were considered more valuable skinned. Hooved grazing animals, constantly moving, herd trained by predators or otherwise, leave in their wake a lightly tilled and manured stubble, not excessively harvested, ideal for enhancing grass production and cover. Man-made means for spreading, retention and recharge are merely modern extension of the beaver's eco-knowledge.

Artificial waterway channelization, for various purposes of convenience, has been way overdone. Compared to the 19th century, we have very little healthy functioning floodplain where waterways are constantly changing course, spreading and slowing the water, recharging our aquifers.

I believe we need policies and rules that tend against rapid channelization and encourage the slowing and spreading of early spring thaw, as high in watersheds as possible. We can no longer depend on or expect a slow melt off of winter snow pack.

<https://www.bluemtnranch.com/water-concerns>

Book recommendation: “Call of the Reed Warbler” by Charles Massy

Is it too late to regenerate the earth? Call of the Reed Warbler shows the way forward for the future of our food supply, our Australian landscape and our planet. This ground-breaking book will change the way we think of, farm and grow food. Author and radical farmer Charles Massy explores transformative and regenerative agriculture and the vital

connection between our soil and our health. It is a story of how a grassroots revolution – a true underground insurgency – can save the planet, help turn climate change around, and build healthy people and healthy communities, pivoting significantly on our relationship with growing and consuming food.

Using his personal experience as a touchstone – from an unknowing, chemical-using farmer with dead soils to a radical ecologist farmer carefully regenerating a 2000-hectare property to a state of natural health – Massy tells the real story behind industrial agriculture and the global profit-obsessed corporations driving it. He shows – through evocative stories – how innovative farmers are finding a new way and interweaves his own local landscape, its seasons and biological richness.

At stake is not only a revolution in human health and our communities but the very survival of the planet. For farmer, backyard gardener, food buyer, health worker, policy maker and public leader alike, Call of the Reed Warbler offers a tangible path forward for the future of our food supply, our Australian landscape and our earth. It comprises a powerful and moving paean of hope.

Gary Young

Box 13

Paulina, Oregon 97751

541-279-7572

Sent from my iPad

HARTT Laura A * WRD

From: Gavin Leslie <gavin37leslie@gmail.com>
Sent: Tuesday, June 4, 2024 9:01 AM
To: WRD_DL_rule-coordinator
Subject: Bend City groundwater permit

Some people who received this message don't often get email from gavin37leslie@gmail.com. [Learn why this is important](#)

Discussion on water use by municipalities focuses primarily on supply side issues. Demand side solutions are deemed set in stone, particularly population growth. Curbing the unbridled development of central Oregon until water supply is properly understood is an obvious step in bringing demand and supply into equilibrium.

At present, we seem to be analogous to hikers in dense fog, close to a known cliff edge but determined to forge ahead blindly.

Gavin Leslie
Bend OR



Food & Wildlife for the Future

June 14, 2024

Attn: Laura Hartt
Oregon Water Resources Department
Laura.a.hartt@water.oregon.gov

Re: OWRD Groundwater Rule Comments

The Proposed rules have many issues that make them problematic at best.

First, I don't believe the Department has fully described why the changes are necessary and has not fully discussed why the tools the Department currently has to regulate groundwater don't work. For example: Critical Groundwater designation, designations of groundwater limited areas or the Commission's authority to withdraw areas from further appropriation. There needs to be some specific examples of concern to warrant such a change to groundwater rules.

I think it would be advantageous for the Department to start over and establish a new division within existing administrative rules addressing the regulation of groundwater on a prospective basis. This would eliminate confusion over the application affecting or impacting existing uses. When the Department changes definitions, it is nearly impossible to distinguish between old rules and existing rules when written in the same division.

I appreciate the Department has tried to put up a fire wall in the latest draft rules, but it doesn't go in depth enough.

OWRD's amendments to Divisions 8 and 9 create an unnecessarily convoluted regulatory scheme. In Division 8, the definition of "substantial interference," "substantially interfere," and "unduly interfere" are materially changed. This alone has a substantial effect on Division 9, which would still purport to pertain to the regulation of new *or existing* rights which will "substantially interfere" with a surface water source. In the definitions section of Division 9, the definition of "potential for substantial interference" itself turns to the Division 8 definition of "substantial interference." Next, proposed OAR 690-009-0040 creates a process for determining hydraulic connection and the potential for substantial interference between a groundwater right and surface water source.

The proposed groundwater allocation rules attempt to bifurcate the analysis of hydraulic connection and potential for substantial interference for new groundwater rights versus existing

groundwater rights. Proposed ORS 690-009-0050 declares that, for controlling or regulating groundwater rights, OWRD shall apply the 1988 version of ORS 690-009-0040, which is readopted as ORS 690-009-0060. However, that 1988 version still references certain terms which have been redefined in the proposed groundwater allocation rules. In other words, by changing certain definitions, including that for substantial interference and potential for substantial interference, it appears that OWRD is changing how it analyzes substantial interference between *existing* groundwater rights and surface water rights. Thus, the incredibly confusing bifurcated regulatory analysis proposed in the groundwater allocation rules fails to insulate existing groundwater rights from the new proposed rule changes

The proposed Division 9 rules do little-to-nothing to identify the analytical process OWRD must follow to determine substantial interference and, ultimately, issue groundwater controls. Instead, the rules rely on generalized statements that any determination must be based on the application of “generally accepted hydrogeologic principles” or the “best available information.” What constitutes these principles or the best available information is largely left to the agency’s discretion. No limiting factors are placed on OWRD’s ability to make its substantial interference determination. Most glaringly, the proposed Division 9 rules leave the door open for OWRD to determine substantial interference without any consideration of site-specific factors, or the *actual* effect of a given well on a given surface water source. Ultimately, what the proposed Division 9 rules appear to authorize is for OWRD to regulate groundwater uses based on assumptions of substantial interference, without regard for actual site-specific hydrogeological conditions. Under the proposed rules, there is no guarantee that OWRD will go beyond simple assumptions and simple conceptual models to analyze whether substantial interference will occur. This can allow OWRD to adopt a simplified analysis in a complex, multi-layer aquifer system for the purpose of justifying groundwater controls. Ultimately, this results in a burden-shifting analysis, where the proposed rules put the burden on the groundwater user to demonstrate why controls are not justified, rather than keeping the burden on OWRD for demonstrating why controls are justified. This presents a due process issue, allowing OWRD to regulate groundwater uses without having to first demonstrate with reasonable scientific certainty that such regulation is necessary to alleviate substantial interference.

In 2023, OWRD adopted new rules governing the designation of critical groundwater areas. Under those rules, the Commission may adopt rules designating critical groundwater areas where groundwater levels have declined excessively, where there is a pattern of substantial interference, or where groundwater supplies are overdrawn, among other circumstances. The proposed groundwater allocation rules amend these various terms. The definition of “declined excessively” would be changed substantially, as would the definitions of “substantial interference” and “overdrawn.” This will modify the meaning of the critical groundwater area rules in unintended ways.

The modification of the definition of “substantial interference” may have the biggest effect on Division 10. By redefining “substantial interference” in Division 8 as currently proposed, OWRD would be authorized to designate critical groundwater areas where two wells simply interfere with

one another, even if the aquifer in general is being utilized sustainably. This seems incompatible with the legislative intent of the critical groundwater area tool.

As indicated above, you can see that including the proposed changes in the current Division rules causes confusion between existing groundwater appropriations and future groundwater appropriations. While the Department has indicated during public meetings that the proposed rules will not interfere with existing groundwater use, there is a possibility that courts could adopt the new definitions in future challenges.

Therefore, it is imperative that the Department create a new division that establishes rules for new appropriations separate from existing appropriations.

Future regulation must be on a specific site basis, as opposed to the “one size fits all” approach that the proposed rules seem to promote. The proposed rules seem to be contradictory to all the work the Department has accomplished with Basin Planning. Groundwater reacts so differently to soil and geologic conditions that trying to define interference with such a broad approach is problematic.

It was brought to the attention of the Department during the RAC meetings that the proposed rules put a regulatory moratorium on any new groundwater rights within the State boundaries. This is especially concerning in the Klamath Basin area without first coming to an agreement with the California Water Resources Control Board. It is commonly acknowledged that the wells along the California border are drawing water out from under Oregon. Regulating Oregon landowners’ ability to compete with landowners in California is unjust.

Water for Life respectfully requests OWRD amend the proposed groundwater allocation rules consistent with the above concerns.

Glenn Barrett

On behalf of Water for Life, Inc.

Oral Comments – Bend Public Hearing (April 4, 2024)

Glenn Barrett (Water for Life)

I'm Glenn Barrett I'm from Bonanza, Oregon down in Klamath County and also represent Water for Life. In general format as presented, I would say the rules are a little bit difficult to digest. It takes a little while to get through them. I want to thank the Department for addressing the issue of existing groundwater rules or groundwater and how these rules affect them, and the Department indicated rules are perspective in nature and will not serve to impact existing uses. The intended application of the rules should be further clarified throughout the proposed modifications. To this end, the Department may consider creating a new division within the rules to further clarify. There are several areas in the rules that depend on presumptions, and I don't think that should be as we go forward. And as far as the clarification of 690-009-0010 subsection 2, the rules apply to all wells as defined in ORS 537 and to proposed and existing appropriations of groundwater. This appears to extend to existing clarification existing uses and needs clarification. Excuse me here. So anyway, there's several areas that I think need further clarification on the existing uses, and again I thank the Department for taking that in consideration during the RAC meetings.

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Glenn Barrett (Water for Life)

I'm Glenn Barrett, representing Water for Life today. I'm also a rancher from Bonanza, Oregon, which is east of Klamath Falls. I've been involved with both groundwater and stored water issues in the past and been on Integrated Water Resource Committee in the past, as well. First off, I really want to support Greg Kupillas' comments earlier. I think he was spot on. Throughout the process, I visited a lot of the RAC meetings, and my big concern is how it affects current water rights. potentially. And the Department has changed things, and I appreciate their changes that they made to try to protect current water uses. And they have made it. They spelled out a lot of times during their public meetings that it would not affect current uses. But I think I feel it still has potential, specifically when it comes to the new definitions that they're coming up with. And while the Department may not utilize those new definitions resulting in regulation of existing use, I think the courts will if it's included in the proposed rules, I think the best way to handle that is to have a new division established with the new rules, so it clearly puts a border between how we regulate existing uses versus the new appropriations. I think also as written, the one size fits all will be contradictory to the basin planning that the state has worked so hard on. And I think that needs to be looked at as well. And, down on the Klamath Basin, restricting new uses as the proposed rules will, I think, puts the Oregon citizen at a huge disadvantage. While California is still developing new groundwater and pumping water outside from under Oregon's borders. And until we can collaborate with the neighboring states, Washington might have the same issues. Idaho, I'm not sure, but definitely in the Klamath Basin. Before, to restrict the uses of the Oregon citizens, we need to collaborate with California. We will be submitting further comments.

Oral Comments – Central Point Public Hearing (May 16, 2024)

Glenn Barrett (Water for Life)

I'm Glenn Barrett, a rancher over from Bonanza, Oregon. I have irrigated pastures and I'm also representing Water for Life. And I have testified a few times and been somewhat involved with your process. But I really think we should start over. We should establish a new Division within existing administrative rules addressing the regulation of groundwater a perspective basis. By changing definitions, it affects current, I believe it'll still affect the rules on the existing water rights. I don't think we've set up a strong enough firewall and by having a new Division could do that clearly. Even though it would somewhat change the as we were told tonight, the changes in the Deschutes River Basin, I think that can be more easily done and be more clear about it. The presented rules are convoluted at best. Very few individuals may be able to gain full context of the rules as presented, and there's too many references and cross references. And throughout the rule making process, the Department still has not been clear and clearly defined or identified the problems with the current administration of existing authorities such as critical groundwater areas, designation of groundwater limited areas, Commission authority to withdraw areas from further appropriations are tools that the Department can still use. And I don't think it's been clearly defined why those rules aren't working. You've mentioned Harney County going into a critical groundwater area and therefore you have to basically buy back 2,500 acres of irrigated ground, but you still have tools available to regulate. I think the future regulations must be more on a specific site basis as opposed to one-size-fits-all. And I just again highlight the existing significance between various basins and regions of the state that too general of an approach with using models and whatnot will not work.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Glenn Barrett (Water for Life)

I'm Glenn Barrett Rancher down in Bonanza, Oregon and President of Water for Life. I think the proposed rules have many issues and they're problematic at best. I don't believe the Department has fully described why the changes are necessary and have not fully discussed why the tools the Department has already to regulate groundwater doesn't work, such as critical groundwater designation, designations of groundwater limited areas, or the Commission's authority to withdraw areas for further appropriations. I think it would be advantageous for the Department to start over and establish a new Division within the existing administrative rules addressing the regulation of groundwater on a prospective basis. This would eliminate confusion over the application of affecting or impacting existing uses when the Department changes definition. It is nearly impossible to distinguish between old rules and existing rules when written in the same Division. I appreciate the Department has tried to put a firewall on the latest draft rules but doesn't go in depth. You know OWRD's amendments to Divisions 8 and 9 created an unnecessarily convoluted regulatory scheme. In Division 8, the definition of substantial interference, substantially interfere or unduly interfere are materially changed. This alone has a substantial effect on Division 9, which would still purport to pertain to the regulation of new and existing rights which will substantially interfere with surface water source. And in the definition section of Division 9, the definition of potential for substantial interfere itself turns in to the Division 8 definition of substantial interference. Next, proposed OAR 690-009-0040 creates a process for determining hydraulic connection and the potential for substantial interference between a groundwater right and surface water source. The proposed groundwater allocation rules attempt to bifurcate the analysis of hydraulic connection and potential for substantial interference for new groundwater rights versus existing groundwater rights. The proposed 690-009-0050 declares that for controlling regulating groundwater rights, OWRD shall apply the 1988 version of ORS 690-009-0040, which are re adopted as 690-009-0060. However, that 1988 version still references certain terms which have been redefined in the proposed groundwater allocation rules. In other words, by changing certain definitions, including that for substantial interference and potential for substantial interference, it appears OWRD is changing how it analyzes substantial interference between existing groundwater rights and surface water rights. Thus, an incredibly confusing bifurcated regulatory analysis proposed in the groundwater allocation rules fail to insulate existing groundwater rights for new proposed rule changes. In 2023, OWRD adopted new rules governing the designation of critical groundwater areas. Under those rules, the Commission may adopt rules designating critical groundwater areas where groundwater levels have declined excessively, where there is a pattern of substantial interference, or where groundwater supplies are overdrawn, among other circumstances. The proposed groundwater allocation rules amend these various terms. The definition of declined excessively would be changed substantially. As with the definitions of substantial interference and overdrawn, this will modify the meaning of the Critical Groundwater Area rules in unattended ways. The modification of the definition of substantial interference may have the biggest effect on Division 10. By redefining substantial interference in Division 8 as currently proposed, OWRD would be authorized to designate critical groundwater areas where two wells simply interfere with one another, even if the aquifer in general is being utilized sustainably. This seems incompatible with legislative intent of the critical groundwater area tool. Further, future

regulation must be on site specific basis as opposed to one-size-fits-all approach that the proposed rules seem to promote. And then it was also brought to the attention of the Department during their RAC meetings that the proposed rules put a regulatory moratorium on any new groundwater rights within the state boundaries. This is especially concerning the Klamath Basin area without first coming to an agreement with the California Water Control Board. It is commonly acknowledged that the wells along the California border drawing water out from under Oregon. Our regulating Oregon landowners without regulating California puts the landowners in Oregon in an unjust light.



Oregon Ground Water Association

2755 Commercial St SE, Ste 101-333

Salem, OR 97302

(503) 390-7080 Fax (614) 898-778 6

June 13, 2024

Ms. Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department
725 Summer St. N.E. Ste. A
Salem, Oregon 97301

RE: Public Comments on Proposed Groundwater Allocation Rules

Dear Ms. Hartt:

On behalf of the Oregon Ground Water Association, I am providing the following comments on the proposed Groundwater Allocation Rules.

First, I would like to summarize my qualifications: I have a Master's degree in Hydrology and Water Resources from the University of Arizona. I am a Registered Geologist and Certified Water Rights Examiner in Oregon, and a Licensed Geologist with Hydrogeology specialty in Washington. I have been involved in the protection and management of groundwater resources in some manner for over 35 years. In the last 21 years, I have dedicated most of my professional career to applying my background in hydrogeology and water rights for the purpose of assisting farmers, nursery operators, vineyard owners, and commercial and industrial clients with their water right needs. Our company works throughout Oregon, but mainly in the Willamette Valley. I am currently the Chair of the Oregon Groundwater Association's Government Affairs Committee. I also served on the Rules Advisory Committee (RAC) for these proposed rules. I am not listing my qualifications to sound impressive, but to let the reader know that my academic and technical qualifications are at least on par with those of the OWRD Groundwater Section staff, and that I have considerable knowledge on the subjects relevant to the proposed rules from many years of work in the private sector as a hydrogeologist and water right consultant.

The following discussion and comments come directly from a comment letter I submitted previously on behalf of the Oregon Ground Water Association following the seventh RAC meeting. Since that meeting, none of the changes made to the proposed rules have altered my perspective. Therefore, what follows is a fairly comprehensive discussion of the concerns we have about the proposed rules, and our suggestions for moving forward.

INTRODUCTION

The population of the planet continues to grow, especially in underdeveloped countries. We will continue to have the need to produce more food to feed the world, so it would seem foolish to intentionally forgo opportunities to finish developing the limited amount of prime farmland that is not

covered with water rights. But that is exactly what the proposed groundwater allocation rules will do in their current form.

The current proposed rules rely on three basic tests to allow issuance of a new groundwater right permit. These three tests are: 1. Reasonably stable water levels, 2. No potential for substantial interference with surface water, and 3. Groundwater is available within the capacity of the resource. As I have said in previous comments in RAC meetings and in testimony before the Commission, these three tests form the legs of a three-legged stool. If any one of these tests (i.e., legs of the stool) fails, the stool will collapse and a permit cannot be issued. The third test, or leg of the stool, which is whether groundwater is available within the capacity of the resource, is pretty straightforward, since it only requires that the requested rate of pumping does not exceed what could be expected from a similarly constructed well in the area. This standard should not be too much of a challenge for an applicant to meet or for the Department to verify. Which really leaves us with two main challenging issues to address with these rules: reasonably stable water levels; and the potential for substantial interference with surface water.

REASONABLY STABLE WATER LEVELS

Throughout the rulemaking process, there has been a strong emphasis on developing rules that were firmly based in sound science. The Department has recently put a great deal of effort into developing a system for determining if water levels are reasonably stable. Overall, the approach developed by the OWRD for determining if groundwater levels are reasonably stable appears to live up to the objective of developing rules well founded in science, and I applaud the Department's efforts on this issue.

POTENTIAL FOR SUBSTANTIAL INTERFERENCE

I believe there still remains much work to be done to develop a solid, science-based foundation for determining if there is substantial interference with surface water. First, there must be a determination if there is a hydraulic connection between the proposed well(s) and nearby, effected surface waters. If there is a hydraulic connection, and the impacted stream is shown to be over-appropriated according to the WARS database, there will be a finding of the Potential for Substantial Interference (PSI). A finding of PSI will toll the death knell for that application. Inherent in making the PSI determination is the assumption that *any* degree of hydraulic connection with a stream that is already over-appropriated (according to WARS) will result in "substantial interference" with that stream. This assumption seems to be based largely on the principals discussed in the US Geological Survey report by Barlow and Leake (USGS, 2012). Barlow and Leake describe how, under very specific hydrogeologic conditions, a pumping well will eventually cause depletion of a nearby stream in an amount equal to the full pumping rate from the well (USGS, 2012). To model these impacts, the Department may use certain simple analytical models for estimating streamflow depletion, such as Jenkins (1968, 1970) and Hunt (1999, 2003). The way these simple models operate, it is impossible to get a result of zero stream depletion, especially if the models are run "...over the full term of the proposed or authorized groundwater use..." (proposed OAR 690-009-0040(4)), that is, in perpetuity. Concerns about these various factors are discussed in further detail, below.

Hydraulic Connection

We have been told that the Department will not change how they determine hydraulic connection for these new rules. Consider, however, that the distance limits imposed by the existing rules (i.e., ¼ mile and 1 mile) will no longer be in effect. This means the Department can look for hydraulic connection with streams at any distance from the proposed wells. There needs to be practical limits on how far to look for hydraulic connection. For example, does it make sense to go beyond the boundaries of the

water availability basin in which the proposed well is located? Also, when in the Willamette Valley, does it make sense to even consider hydraulic connection with nearby, shallow streams when there are several tens of feet of Willamette Silt overlying the shallowest productive water bearing zone?

As stated in Justin Iverson's Master of Science Thesis (Iverson, 2002), "...the low hydraulic conductivity of the [Willamette Silt] provides a hydraulic buffer to depletion of streams bottoming in the WS [Willamette Silt] under pumping stress generated in the underlying WA [Willamette Aquifer]. Volumetric balance analysis shows that less than 1% of the water removed from the aquifer at a pumping well near the river was recharged to the Willamette Silt from the Pudding River." These results were from an analysis of a pumping well located only about 100 feet from the Pudding River and screened in the Willamette Aquifer only a few feet below the bottom of the Willamette Silt. Limitations under the existing rules constrain locating new wells to distances more than ¼ mile (1,320 feet) from any nearby stream. Furthermore, many irrigation wells are completed at greater depths to develop more productive water bearing zones which are further separated from the overlying Willamette Silt by intervening semi-confining layers of silt and clay. Therefore, the findings in Iverson's thesis likely represent a worst-case scenario. This suggests that making an assumption of hydraulic connection based on the theoretical possibility that it may occur at some infinitesimal level is not a method based on sound science.

Barlow and Leake Report

The Department seems to be relying completely on the theories presented in Barlow and Leake (USGS, 2012) to assume that pumping a well will result in stream depletion equal to the full pumping rate for any nearby, hydraulically connected stream within some reasonable timeframe. These theories are only strictly applicable to a system where a single, unconfined aquifer is discharging to a single stream. Barlow and Leake (USGS, 2012) states:

In many areas of the United States, groundwater systems are composed of a vertical sequence of aquifers in which an upper, unconfined aquifer is underlain by a series of one or more confining beds and confined aquifers, such as is illustrated in figure 1 [below]. In many other areas, however, the ground-water system consists of a single, often unconfined, aquifer underlain by geologic formations, such as crystalline rock, whose permeabilities are so low that the formation can be assumed to be impermeable to groundwater flow. Aquifers of this type are used throughout the report to illustrate many of the factors that affect streamflow depletion by wells.

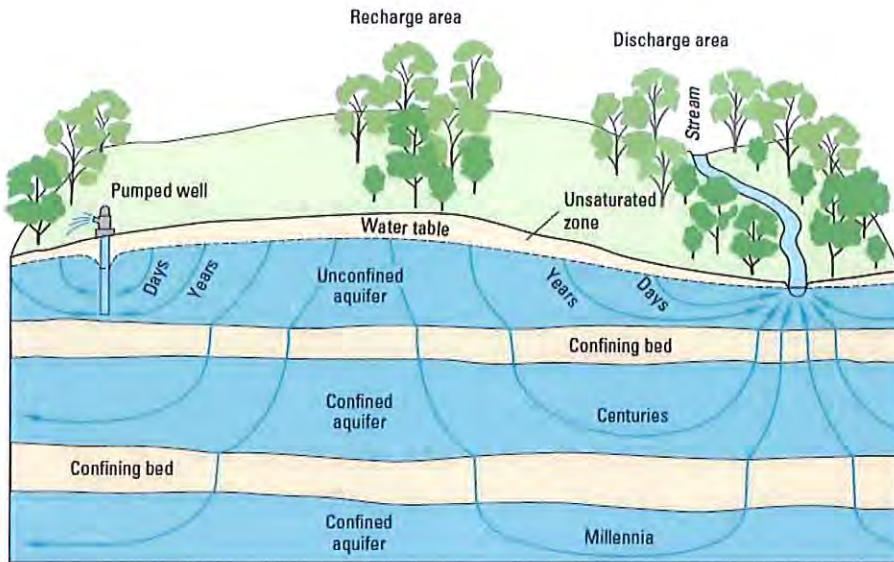


Figure 1. Groundwater flow paths in a multi-aquifer groundwater system. Groundwater flows from recharge areas at the water table to discharge locations at the stream and well. The residence time of groundwater can range from days to millennia (modified from Winter and others, 1998).

If it is not clear from the above quote, the principles discussed in the Barlow and Leake report are directly applicable only to systems consisting of a single, unconfined, aquifer underlain by effectively impermeable geologic formations. Throughout Oregon, most aquifer systems which are hydraulically connected to surface water do *not* fit that description, but are instead more likely to be characterized by a groundwater system similar to what is shown in Figure 1, above, which is to say, a much more complex system consisting of multiple layers of confining or semi-confining beds and confined or semi-confined aquifers. In the Willamette Valley, the groundwater system is similar to what is shown in Figure 1, but with a thick layer of Willamette Silt over the top of everything. In most places, the Willamette Silt is so thick that the nearby streams are not even close to incising all the way through it. Consider, therefore, the common situation where you have an irrigation well constructed to develop water from a deeper water-bearing zone, illustrated by the deepest confined aquifer shown in Figure 1, above. Even *without* the presence of the Willamette Silt, the time for a pumping impact to reach the nearby stream from this deep well could be on the order of millennia. If you factor in the presence of several 10s of feet of Willamette Silt separating the bottom of the stream channel from the uppermost water-bearing zone, the possible pumping impacts from a deep well will be considerably reduced even further. Furthermore, none of the assumptions used in Barlow and Leake (USGS, 2012), or in the Jenkins (1968, 1970) and Hunt (1999, 2003) models, account for the upward flow of groundwater through an underlying aquitard that is induced from pumping in a shallower aquifer, as described by Butler, et al. (2007). According to Butler, et al. (2007), upward flow (leakage) through an underlying aquitard becomes an increasingly important component of the recharge to pumping wells with increasing distance from the stream.

It should be clear from these discussions that there are far too many complexities in these groundwater systems to be able to reliably predict the impact on individual streams following the assumptions and using the simple models typically employed by the OWRD. Thus, the broad application of these theories and models to the very complex aquifer systems found throughout most of the state is just not consistent with the objective of developing sound science-based rules.

The time frame for estimating potential pumping impacts on streams must also be considered. The currently proposed rules allow for estimating pumping impacts for the expected life of the water right. For a permanent water right, that means into infinity. As discussed above, under many circumstances, the theoretical pumping impacts to streams may not be realized for thousands of years. It is

reasonable to expect that the way we cultivate and irrigate crops will continue to evolve, and in just 50 to 100 years we will likely be farming much more efficiently and using much less water than today. So, does it make sense to run the analytical stream depletion models (such as the Jenkins or Hunt models) out more than several decades? To do so with the assumption that the use will remain the same in perpetuity is not in keeping with the intent to write rules based in sound science.

Water Availability Reporting System (WARS) Database

One primary area of concern is the reliance on the current WARS database to determine that a nearby stream is over-allocated, which will trigger a finding of PSI. This use of the WARS database relies on two assumptions: 1. that the WARS database is an accurate measure of the water available in the stream; and 2. that surface water availability is a relevant factor in determining if groundwater is available for additional development. Each of these assumptions is discussed further below.

Accuracy of WARS Database. The WARS database was developed in the early 1990s using streamflow data from 1958 through 1987, and estimates of irrigation consumptive use based on the crop water requirements of the types and acreages of crops grown in Oregon in 1990 (OWRD, 2002).

Probably the main uncertainty with reliability of the WARS database lies with the estimates of irrigation consumptive use. It is probably fair to assume that these estimates were reasonably accurate at the time they were made. However, in the 34 years since these estimates were made, economic and market factors have forced many farmers to adopt more efficient methods of irrigation. Also, since that time, few additional acres of irrigation from surface water sources have been approved. Therefore, it is possible, even likely, that the consumptive uses in 1990 were significantly greater than they are today. This would result in the WARS database over-estimating consumptive use and thereby underestimating actual water availability. In any event, the WARS database is outdated and may not be a reliable measure of surface water availability.

Another concern about the WARS database is how instream water rights are incorporated into the surface water availability calculations. The WARS database provides surface water availability at two exceedance levels, 50% and 80%. This means that at 50% exceedance levels, the amount of available water shown in the database is expected to be met or exceeded 50% of the time. Similarly, at 80% exceedance, the amount of available water shown in the database is expected to be met or exceeded 80% of the time. So, a 50% exceedance level is a lower bar than an 80% exceedance level. Instream water rights are established based on how much water is available at 50% exceedance (the lower bar). However, the instream water rights established at 50% exceedance are subtracted from the 80% exceedance flows (the higher bar) to derive water availability at 80% exceedance. This process is completely illogical and unscientific, and only results in further diminishing the 80% exceedance flows, which are the flows applied when evaluating a new groundwater permit.

Relevance of Surface Water Availability. If groundwater levels are determined to be reasonably stable, then the aquifer fits the definition of a sustainable groundwater source in accordance with Gleeson et al. (2020). This would suggest that groundwater is available for further development. However, if a new well is proposed to develop water from that stable aquifer, and that well is determined to be hydraulically connected to a stream that is over-appropriated according to the WARS database, then the proposed new use will be summarily denied. This seems to conflate surface water availability with groundwater availability, and raises a number of questions. First, we need to understand how the surface water sources came to be over-appropriated. Did the OWRD simply approve too many surface water rights before they had a better idea of how much water was available? Has the State issued too many instream water rights which in many cases has resulted in over-

allocation of streams? Do we even need to consider the WARS data when groundwater levels are determined to be stable?

Fundamentally, if groundwater levels are stable, the aquifers will continue to discharge water to the streams as they always have. Therefore, when groundwater levels are stable, it seems that surface water availability is completely a function of the out of stream consumptive uses and instream demands. In other words, when the groundwater system is stable, surface water over-allocation must be the result of other factors that are separate and independent of the groundwater system. This suggests that the primary determining factor for allowing a new groundwater use *should be reasonably stable groundwater levels*.

RECOMMENDATIONS FOR CONSIDERATION

I have discussed a number of concerns related to making a determination of PSI in the proposed new rules. They include:


- Broadly theoretical assumptions of hydraulic connection;
- Too much reliance on broadly applied hydrogeologic theory from Barlow and Leake (USGS, 2012);
- An outdated WARS database; and
- Irrelevance of surface water over-allocation when groundwater levels are stable.

All of the above issues illustrate that the methodology in the proposed rules for determining PSI do not meet the same scientific standard that is currently being applied to the rules for determining if groundwater levels are reasonably stable. The proposed rules for determining PSI are really just a rubber-stamp process for denial of new applications. This might be an acceptable approach (if not overly cautious) if the Department was only concerned with protecting fish. However, the Department is obligated by law to balance allocation of the state's water resources for all uses.

If the Department is truly committed to developing *all* of the groundwater allocation rules to the same science-based standard, then more time needs to be dedicated to developing the rules for determining PSI. At a minimum, the determination of reasonably stable water levels should become the primary, real-data, science-based factor for determining groundwater availability. A finding that groundwater levels are reasonably stable should be sufficient to determine that groundwater is available for further development, unless there is clear evidence that hydraulically connected surface water sources are experiencing historically declining flows. This evidence could be from the record of surface water regulation or historical streamflow measurements.

I don't claim to have all of the answers. There may be other factors that could be considered. It might require formation of a blue-ribbon work group of hydrologists, hydrogeologists, and water rights experts to come up with a comprehensive set of recommendations. If so, it would necessarily mean a pause in finalizing the rules, but the delay would not need to be unduly long. There is a lot at stake and so it is important that we get these rules right while we still have the chance.

Respectfully,


Gregory E. Kupillas, R.G., C.W.R.E.
Pacific Hydro-Geology Inc.
Chair, Government Affairs Committee
Oregon Ground Water Association



Page 6 of 7

Expiration Date: 1/1/2025



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Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Greg Kupillas (RAC Member; Pacific Hydrogeology, Inc.; Oregon Groundwater Association)

Thank you for the opportunity to testify here today. My name is Greg Kupillas. I'm a hydrogeologist and a certified water rights examiner working out of Molala, Oregon. I've got over 35 years of experience in groundwater resources management. And over the last 21 years, I've been dedicated mostly to water right consulting, primarily in the Willamette Valley area. I served on the Rules Advisory Committee for these proposed rules. I'm here today representing the Oregon Groundwater Association as the chair of that organization's Government Affairs Committee. But I'm also representing my clients, the farmers, vineyard owners, and nursery operators throughout Oregon for whom water rights are so vitally important. In the literature provided by the Department for this rule making effort, one of the first things stated is that quote, Oregon's groundwater resources are being used at an unsustainable rate, unquote. This statement implies that we are running out of groundwater everywhere in the state, which is simply not true. We measure groundwater levels throughout the Willamette Valley every March in over 100 wells for many of our clients, as required by their water rights. This March, in response to the wet winter we had, we saw that water levels had increased in the great majority of the wells as compared to the 2023 levels, in some cases two and two to three feet. In most areas that we work in in which we work, groundwater levels have remained within the dynamically stable range over the course of probably 20 years or so that we've been doing this. There is no doubt that we have problem areas in Oregon, but it is wrong to suggest that our groundwater resources are being used at unsustainable rates everywhere and these kinds of statements only serve to build here and drive irrational decisions. We really need to move towards a basin specific framework for managing Oregon's water resources. I'd also like to mention that in the information provided by the Department it has been stated that the proposed rules will result in fewer water right permits being issued at best. This is a gross understatement because the way the rules are written, if the Department determines there is a hydraulic connection between a proposed well and pretty much any stream in the state, that application will be denied, even if groundwater levels are just demonstrably stable. From our experience, in the great majority of applications the Department will make a finding of hydraulic connection. So probably something like 90% of the potential applicants seeking a new groundwater permit would be denied because of the finding of hydraulic connection with the stream. Without any in depth evaluation of whether the proposed new groundwater use will cause actual meaningful impacts to that stream. This results in what amounts to an unscientific rubber stamp denial process. I've always regarded the current rules as a blunt instrument, but I have come to appreciate that the authors of the current rules were at least making an attempt to consider minimal or insignificant impacts to surface water. In the end, the arbitrary, unscientific nature of the proposed rule just means we are replacing one blunt instrument with an even blunter instrument. The rules for establishing stable groundwater levels are a step in the right direction, but this rule making process needs to be paused to allow more time to come up with better ways to evaluate interference with surface water according to the actual conditions on the local or basin level.

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Greg Kupillas (RAC Member; Pacific Hydro-Geology, Inc.; Oregon Groundwater Association)

My name is Greg Kupillas. I'm a Hydrogeologist certified water rights examiner with Pacific Hydro-Geology in Molalla, Oregon. My background encompasses over 35 years of experience in groundwater protection and management and water right consulting. I'm here today representing the Oregon Groundwater Association as the chair of that organization's Government Affairs Committee. But I'm also here personally representing my clients, for whom water rights are so vitally important. I've spoken to you before, during previous Commission meetings, and have discussed many of my technical concerns with these proposed rules. If you're interested in reading my technical arguments, I invite you to review the written comments that I'll be submitting, this afternoon before the deadline on behalf of the Oregon Groundwater Association. I understand the challenges that we're facing here in Oregon with the allocation of groundwater. And I believe that it's time for us to make some significant changes on how we allocate groundwater. But let's make no mistake, these rules as proposed will pretty much shut down development of new groundwater rights across the state. And I think we have to ask ourselves, is that really what we want to do? You know, this will leave water users with limited options for meeting future needs. You know, one option promoted by the Department is water right transfer. We've also heard from some of our clients that the water masters are encouraging development of off stream storage projects. but I think you need to understand that these options offer no panaceas. There are many limitations on transferring water rights. For example, if a proposed new well location affects the surface water system differently from the original well, then the transfer may not be allowed. As a result, in areas with a dense network of streams, such as the Willamette Valley, groundwater right transfers are usually limited to distances of less than a mile. And while the Department is promoting development of new off stream storage projects, the [Department of Environmental Quality, DEQ] is busy placing restrictions on these new reservoir applications that are that are impossible to meet. I haven't yet seen a Division 33 DEQ review that did not require mitigation by providing replacement water back into the stream on a gallon for gallon basis. Of course, this is a ridiculous requirement when you consider that if the applicant had the source of water to use for mitigation, they wouldn't need to apply for the water right in the first place, and none of the potential new or future opportunities mentioned by the Department, such as mitigation programs, market based approaches, or outcomes from basin and regional planning have been developed and will likely be available for many years to come. All of this is to illustrate that the realities of the near term situation for anyone hoping to get groundwater rights on previously irrigated land stand in stark contrast with the rosy outlook that has been promoted. Oregon needs to move towards active, integrated management of our water resources and can only do so if we use all of the tools we have available to us. The proposed rules rely on the presumption that any theoretical impact to a stream, no matter how small, is unacceptable. It should be clear that reliance on such a presumption is pretty much the opposite of an active management strategy. It will take time to develop the strategies we need to actively manage our water resources. In the meantime, we can meet the stated objective of these rules without shutting down all new groundwater development. To that end, we recommend a pause in

this rulemaking process to allow for more time to develop a more scientifically robust process for evaluating interference with surface water. This is the only reasonable course if the Commission and the Department are truly committed to developing sound science based rules that meet the Department's statutory obligation to allocate groundwater to all users.

Oral Comments – Central Point Public Hearing (May 16, 2024)

Holli Morton (Josephine County Republican Party)

Holli Morton. I happen to be the Chair of the Josephine County Republican Party. I just have to say right off the top, when the government comes and says we have a problem and we have developed an organization within the government to solve the problem and tell citizens what to do and how to solve the problem, it tends to terrify the community. And right off the top, I can see some conflicts of interest that I'm concerned about. I'm just going to bring up one and the rest of them all and address in writing later. But the one that I see, and I brought up earlier is the marijuana grow situation. It seems to be that it's going to be a conflict of interest because the state generates revenue from the marijuana industry. And yet the marijuana industry in my opinion, is part of the problem, a significant part of the problem. Certainly, in our own neighborhood, it's a part of the problem and I'm wondering how the state is going to handle that. Are they going to be willing to give up the revenue that comes in from the marijuana industry in order to control the adverse effects of the industry? So that's something that I think is kind of a Rubik's Cube, one of many terms in the Rubik's Cube where this is concerned. And I think we do need a lot more information on how, how the state is looking at that. And I got a chance to talk to Justin. Very nice guy, bright guy. We rambled it around a little bit and I have this card in my pocket and has that information sort of gels in my mind, I'm sure I'm gonna get back to him and ask more questions, but I'm identifying that right now as a potential conflict of interest that needs to be addressed in the rulemaking process. Who's actually gonna pick up the tab for the changes that are required, the citizens or the people who are improperly using the water?

Ilona & Henry Frost
14141 N. Bank Rd.
Roseburg, OR 97470

April 10, 2024

Laura Hart
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Subject: Farming and Growing our Own Food in Oregon

Dear Ms. Hart:

I have read that Oregon considers all water to belong to the state and because of this, are working to stop or restrict small Oregon farmers from using their well water to water their personal produce gardens and/or their livestock. This appears to be an attempt to restrict or in effect destroy homestead dairies as well as people who, growing a small amount of food for their own consumption have in your estimation the temerity to sell/share excess with their neighbors.

I have to ask, why are you trying to shut down Oregon's small dairy farms, stop rural farmers growing food which we all need for survival, and in effect shut down food and milk production. Oregon is a state filled with rural homes and farms. Many rely heavily on the land to provide for themselves and their families. This is something Oregon should celebrate and encourage but it would seem that through harsh regulations and restricting the use of God given water you are doing just the opposite. I read that Mike McCord, Northwest Region Manager with the Oregon Water Resources Department has actually stated that ***'water is a finite resource. And that although a commercial or industrial business is allowed to use up to 5,000 gallons of water without a water right; that exemption does not include watering a food crop.'*** This statement is not only unfair but insane. In effect you are saying Oregon values and supports industrial use of water, but people raising animals and produce to feed us is not welcome in Oregon.

A direct quote from the article "Engineering Famine: ***Oregon starts SHUTTING DOWN small farms 'to protect the people'***". You do realize we need food to live and that our farmers and ranchers are the backbone of our state, the ones who keep us all going by providing the food we need to live?

This oppressive insanity has to stop. Please rethink all these destructive restrictions and plans and **stop** them. Instead of ruining our state, our people and destroying our food sources, I ask that you start doing more to support 'the little guy' - our small farms, small dairy operations and in effect the majority of us who live in Oregon.

Very truly yours,



Ilona Frost
Roseburg, Oregon

Received
APR 12 2024
OWRD

HARTT Laura A * WRD

From: irene gilbert <ott.irene@frontier.com>
Sent: Monday, May 13, 2024 2:35 AM
To: WRD_DL_rule-coordinator
Subject: Water rights and rulemaking

Some people who received this message don't often get email from ott.irene@frontier.com. [Learn why this is important](#)

I have been following the issues with the limited resources available. I am very concerned about the issue of water access for agricultural operations and ranching.

I would like to provide the following comment:

Noone seems to be looking at the water allocations for cities. Cities have access to water that far exceeds the needs of the citizens living in the communities. Cities have been selling water to industrial developments such as wind and solar developments. It appears that there is no oversight regarding the use of water allocated to cities for their citizens. Water is a limited resource which is impacting agriculture as well as fish and ground water reserves. If the Water Resources Department is serious about addressing the depleting of this resource, you need to look at the amount of water being allocated to cities and what it is being used for. Cities should not be allowed to unilaterally decide that a developer should be given priority status for access to water with no oversight regarding who is getting access to amounts that on paper appear to be going to citizens of a city

Irene Gilbert
2310 Adams Ave.
La Grande, Oregon 97850
email: ott.irene@frontier.com
Phone: 541-963-8160

Dear OWRD,

As a Wallowa County irrigator and a supporter of agriculture I am so glad that OWRD is moving to update rules for new groundwater applications. OWRD needs to protect existing irrigation rights and all of Oregon from interests that don't care about our future.

I spent more than a decade working with farmers and ranchers in Wallowa, Lake, Morrow, Tillamook, and Deschutes Counties helping them with improving their operations. Many of those operators have spent significant time and money to make their irrigation systems more efficient and ensure that they will still be able to irrigate in a future with tighter water budgets. Allowing groundwater applications to undercut the work they have put in is unjust and panders to those who do not care about the future of Oregon.

Please adopt these rule changes to protect those who have worked hard and protect their existing water rights.

Sincerely,

J. Johansen

Oral Comments – Central Point Public Hearing (May 16, 2024)

Jack Fay (Ashland)

I'm Jack Fay from Ashland. Thank you for allowing me to make public comments on the proposed groundwater rule changes. I'm here in support of the proposed rule changes. I've also electronically submitted a letter through the Center for Biological Diversity, which provides much more detail. So, I will have very brief comments that would also be in support. As I understand it, groundwater levels continue to fall at an alarming rate in many areas of the state. For that reason, I would ask that the Department also implement additional provisions to the rules that address sustainability now as opposed to just in the future. That would be for the protection of this valuable resource, people of Oregon, this wildlife in the environment. Accordingly, I would ask that the proposed rule changes be adopted along with additional restorative provisions to address the current conditions adversely affecting sustainability for groundwater. Thank you for your time and consideration.



May 31, 2024

Laura Hartt
Groundwater Allocation Rules Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

By email to: WRD_DL_rule-coordinator@water.oregon.gov

Re: Comments on Groundwater Allocation Rulemaking

Dear Ms. Hartt:

Thank you for the opportunity to submit public comments on OWRD's groundwater allocation rulemaking. The Oregon Winegrowers Association (OWA) represents hundreds of winery and grape growing members from every winegrowing region in Oregon, and our members represent two-thirds of Oregon's overall wine production. For more than 40 years, OWA has been the leading advocate for Oregon wineries and growers.

Wine grapes are an important value-added agricultural crop directly and indirectly contributing \$8 billion to the Oregon economy each year. Due to climate change, growing wine grapes in many parts of the state increasingly requires irrigating to establish new vines and sustain wine grape cultivation. The Oregon wine industry has long been a leader in sustainable farming practices and water conservation and has been committed to sustainable water use. Taking actions to manage resources for long-term reliable water supply is critical to not only the viability of vineyard farming in Oregon, but for meeting the needs of all water users who depend on healthy watersheds.

OWA is overall supportive of OWRD's efforts to amend Oregon's rules for groundwater allocation and consider water supply conditions around the state. Many groundwater basins have been over-appropriated in a way that does not allow sustainable recharge of aquifers. Combined with the effects of climate change, water resources around the state require better management to accommodate a multitude of water uses.

While OWA is overall supportive of the draft amended rules, OWA urges OWRD to consider the following comments when finalizing the groundwater allocation rules.

1. Impact of rulemaking on OWRD application review timelines

OWA supports a science-based approach to groundwater allocation to ensure that water is in fact available for appropriation before approving a proposed use. However, we are concerned the proposed regulations may impose an outsized burden on water right applicants. The proposed

rules provide significant discretion to OWRD in denying new water rights because of hydraulic connection and the potential of substantial interference based on “generally accepted hydrogeologic principles” and “best available information.” Prospective groundwater users may have to carry out multi-year groundwater studies to provide regional and site-specific hydrological data to satisfy OWRD’s new “general principles” which impose water right issuance standards that would function like a presumption in favor of denying new groundwater rights. OWRD would then have to review that data, which may very-well still result in a denial and a potential protest, considerably delaying the review and issuance of water rights. OWRD’s review of new water right applications or transfers already routinely takes two years or more. Some of OWA’s members have been waiting for months or years to receive decisions from OWRD regarding their water rights. In recent stakeholder communications from OWRD, staff acknowledged the need to identify opportunities for streamlining the water rights transaction process and is working on developing a legislative concept that would codify the modifications. OWA worries that adopting the proposed groundwater allocation rules without concrete plans to hire and train additional staff to review water right applications will be counterproductive to efforts to create efficiency in the water rights transaction process and make it impossible for water users to get a decision from OWRD within reasonable timeframes.

Accordingly, OWA urges OWRD to develop a plan to address existing problems and delays in the processing of water right transactions prior to or in concert with adopting new groundwater allocation rules.

2. Basin-specific rules

OWA is supportive of recent changes made to Division 8 and specifically OAR 690-008-001(9)(d), which provides an opportunity to seek basin-specific groundwater rules. As many commenters have observed, the characteristics and conditions of each groundwater basin greatly vary in the state, and while OWA understands OWRD’s desire to adopt new groundwater rules to address diminishing supplies and ensure sustainable water use for future generations, OWA worries that adopting a one-size-fits-all set of rules for the state without providing flexibility for basin-level standards is not workable. As such, it is important for basins with specific water supply, geological and hydrological conditions to have the ability to request basin-specific rules in the future.

OWA has members throughout the state that face very different water challenges: the Rogue Valley is different from the Willamette Valley, the Deschutes Basin, or the Walla Walla Basin. To ensure the sustainable use of water throughout the state and buy-in from water users in the various basins, it is fundamental to have tools that take into account the specific conditions of those basins. As such, the ability to adopt basin-specific rules is essential.

3. Exacerbating unlawful water uses

OWA’s third comment is somewhat related to the first comment. In light of water shortages around the state and of the considerable time OWRD needs to process water right transactions, some water users are turning to unlawful water use, diverting without a water right or in excess of their water right. This practice hurts water users who hold and comply with water

right limitations, but OWRD does not seem to have the resources to consistently enforce Oregon water laws and stop unlawful use. OWA worries that the proposed groundwater allocation rules, which will make obtaining new water rights harder and likely result in longer application processes, will make unlawful water use a bigger problem without giving OWRD the tools and resources to address this problem.

4. Focus on policy incentivizing efficiency and discouraging waste of water

OWRD's groundwater allocation rulemaking addresses the issue of diminishing water supplies around the state. As a follow-up to those efforts, OWA urges OWRD to consider additional options creating incentives for more efficient irrigation systems and upgrades to essential water infrastructure, providing more opportunities for water users to conserve water and increase access to the conserved water. Relatedly, the state should expand policy options that disincentivize wasting water while preserving existing water rights through water sharing and leasing, including expanding in-stream programs.

Sincerely,

A handwritten signature in cursive script that reads "Jana McKamey".

Jana McKamey
Executive Director
Oregon Winegrowers Association

HARTT Laura A * WRD

From: J D <oregonnative1967@yahoo.com>
Sent: Saturday, March 30, 2024 5:16 PM
To: WRD_DL_rule-coordinator
Subject: Shutting down small farms

Some people who received this message don't often get email from oregonnative1967@yahoo.com. [Learn why this is important](#)

Hello,

I heard about the recent decision to shut down small farms in southern Oregon and I'm really disappointed. Oregon is known for supporting our farmers, especially small farms. You can use 5,000 gallons for commercial use, but even if a small farm is using only 1000 gallons for irrigation they're shut down? How does that make sense? I know water is a finite resource, but small farms are not the major problem. Additionally, you can irrigate for non commercial uses including non edible lawns to your hearts content, but once you start feeding your local community you get shut down? I believe 100% that small farms (and the general community) need to learn how to irrigate less, but indiscriminately going after small farms is not the answer. Maybe there should be exemptions for using only drip irrigation or only irrigating between certain hours or not using overhead watering or grants to encourage dry farming or using under blank amount of gallons or the type of farm you have: animals vs produce vs marijuana vs grass seed etc. The list goes on and on with alternatives to just shutting down farms. It's incredibly challenging obtaining water rights and forces our community, including you, to be more reliant upon big agriculture. Please don't go down this road-think outside the box and allow small farms to thrive. Thank you

HARTT Laura A * WRD

From: Jean Quinsey <jaquinsey@gmail.com>
Sent: Thursday, April 18, 2024 7:08 PM
To: WRD_DL_rule-coordinator
Subject: Proposed rules OWRD

Some people who received this message don't often get email from jaquinsey@gmail.com. [Learn why this is important](#)

Water Resources Commission
% Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

Dear Water Resources Commission,

I am writing to express my support for the proposed rule changes that have been put forth by OWRD. As an Oregonian who believes in responsible use of natural resources and an active member of the Nature Conservancy, I believe these changes are not only necessary but also crucial for long term sustainability of Oregon's groundwater.

Over time, we have seen Oregon's groundwater levels drop due to excessive pumping. It has become increasingly evident that our current rules do not properly protect this valuable resource. These limitations have resulted in wells going dry across the state (limiting access to safe water and increased costs for digging deeper), water quality issues for fish and farmers, and impacts to surface waters.

The proposed rule changes offer a comprehensive solution to address these challenges and pave the way for positive outcomes and improvements. With responsible permitting for new pumping we can ensure current Oregonian communities are not impacted by future development.

Furthermore, I appreciate the thoroughness with which these rule changes have been crafted. It is evident that extensive research, consultation, public input and consideration have gone into their development. This inclusive and thoughtful approach has resulted in rules that are fair, practical, and aligned with the needs of farmers, fishermen, domestic well owners and even recreational water users.

In addition, I believe that implementing these rule changes will foster a culture of transparency, accountability, and fairness. This will also strengthen the overall integrity and effectiveness of the OWRD.

Thank you for considering my perspective on this matter. I am confident that the adoption of these rule changes will lead to a brighter future for the people's water of Oregon.

Sincerely,

Jean Quinsey, 13400 Fielding Rd, Lake Oswego, OR 97034

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Jean Quincy (Lake Oswego)

My name is Jean Quincy. I'm a member of the general public from Lake Oswego. I recently for the very first time read through the Water Rights in Oregon Aqua Book, which I have come to believe should be mandatory reading for all residents and I noted that under Oregon law all water belongs to the public and this seems equitable to me. I also read that OWRD's mission statement, and I quote, is to serve the public by practicing and promoting responsible water management through two key goals, to directly address Oregon's water supply needs and to restore and protect stream flows and watersheds in order to ensure the long term sustainability of Oregon's ecosystems, economy, and quality of life. Course, this is not news to those at OWRD. This is the mission statement you operate under. I just like to read an agency or organization's mission statement because I know that ultimately that is the mission that they answer to. Reading further, I noted that the 1955 Act that required making sure water is available before groundwater permits are issued is not being fully implemented or applied. Seems that this is often due to a lack of reasonable data and a more succinct definition as to how and when to apply the mandate. The proposed new rules provide that definition, and I'm here this evening to express my support for the updated rule changes that would bring us back in line with the 1955 Act. For starters, we probably have more work to do. As a former resident of Arizona, I have witnessed firsthand the consequences of inadequate groundwater regulation. One of the most troubling aspects of weak groundwater regulation in Arizona is the exploitation of water resources by out of state and even international entities, wildcat developers, and by large scale industrial agricultural interests that consolidate lands. These projects are often to the detriment of local communities and ecosystems. They prioritize short term profits over long term sustainability of water resources, leading to irreversible damage to aquifers, streams, creeks, and rivers. They cause a sinking of land and water quality issues for rural communities. We have seen a somewhat similar situation in our own Harney Basin, and it could have been avoided. Oregonians need our aquifers, streams, creeks and rivers. We are a state that relies on fresh, clean water. We are fisher people, boaters, hikers, farmers, foresters. We deserve better than what Arizona let happen. Oregon should look to the Douglas Basin in Arizona and the Harney Basin as cautionary tales and commit to ensuring that similar pitfalls are avoided. Going forward, we need to safeguard our groundwater resources for the benefit of all of our residents by putting these updated rules in place. I'd also add that I'm a bit troubled as a taxpayer by the cost to taxpayers if the rules are not adopted. You know what happens when we over allocate and need to deepen wells when supplies run dry with an estimate of a potential up to 40,000 wells that could go dry with a current estimate, and this is a current estimate. Costs go up of \$26,500 per well. The cost to taxpayers would incur is in the hundreds of millions of dollars and as a taxpayer I find that just irresponsible. With better regulations this amount could be considerably reduced. It is in the realm of OWRD to protect existing rights of residents so that the number of wells going dry is mitigated. I implore you to do so. The updated rules will save taxpayers a lot of money. As a proud, now 22 year resident of Oregon and member of the public, I urge OWRD to enact these new science and data based, RAC vetted, reasonable, modernized, sustainable groundwater regulations that help prevent exploitation and overuse. By doing so, OWRD can ensure that Oregon's precious groundwater resources managed in a manner that promotes equity, sustainability and environmental stewardship for current and future generations. I commend the

efforts of OWRD to address this critical issue and to go through the process that has been gone through to this point. And I support any measures that strengthen groundwater regulation and protect this resource. Oregon's groundwater belongs to the public and must be managed responsibly for the benefit of all. Our water future is uncertain. We have to be reasonably cautious with this.



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June 14, 2024

Oregon Water Resources Department
Laura Hartt, Water Policy Analyst/Rules Coordinator
725 Summer Street NE, Suite A
Salem, OR 97301
WRD_DL_rule-coordinator@water.oregon.gov

Re: Notice of Proposed Rulemaking for Evaluating and Issuing New Groundwater Rights in Oregon

Dear Oregon Water Resources Department,

Central Oregon LandWatch (“LandWatch”) appreciates the Oregon Water Resource Department’s (“OWRD”) rulemaking process to modernize and move toward a more sustainable groundwater allocation policy. As part of this process, LandWatch submitted general feedback on the rulemaking in October 2022 via OWRD’s online survey, as well as more detailed comments to the Rules Advisory Committee on November 6, 2023. We submit these comments on the Notice of Proposed Rulemaking in support of the proposed changes, and to specifically highlight considerations related to incorporated cities in the Upper Deschutes Basin, above Lake Billy Chinook.

LandWatch is an Oregon non-profit, public interest organization with over 900 members, located in Bend. LandWatch’s mission is to defend and plan for Central Oregon’s livable future, and we have advocated for the preservation of natural resources in Central Oregon for over 35 years. For the last 10 years, much of our advocacy has focused on water management concerns and collaboration throughout the Upper Deschutes River Basin.

LandWatch supports the draft rules’ approach of only allocating new beneficial uses when OWRD makes a finding that water is available. These rule changes will begin to address the realities of groundwater limitations across the state, and further incentivize groundwater users to pursue conservation measures that protect water resources. We commend this conservation-forward approach, and we support OWRD in adopting the draft rules.

LandWatch’s comments center on two themes related to the management of groundwater in the Deschutes Basin. First, the rulemaking offers an important opportunity for OWRD to emphasize the nexus between groundwater allocation and Oregon’s land use laws; planning for land and water use in Oregon must be a coordinated effort. This is especially true when it comes to managing for responsible and sustainable growth within incorporated cities. Second, the proposed rules largely do not address specific groundwater concerns in the Deschutes Basin, where our hydrology, aquifer, and management framework make this basin’s groundwater issues unique within the state. In keeping with these themes, our comments focus on clarifications to the proposed rules related to the nexus with land use laws, while also highlighting important upcoming opportunities for OWRD to further improve groundwater management in the Deschutes Basin.



We defend and plan for Central Oregon's livable future

I. Recommendations on Statewide Groundwater Allocation Rulemaking

A key strength of the draft rules in addressing the nexus between groundwater management and Oregon’s land use laws is the pathway to establish local processes for groundwater allocation. To that end, OWRD should clarify the pathway to locally supersede the statewide rules, including more specific direction on the process for establishing basin-specific definitions of “reasonably stable” groundwater and “substantial interference” with surface water. Thoughtful development of this pathway will be critical to protecting the groundwater resource and ensuring that incorporated cities can continue meeting statewide land use planning goals where new groundwater uses might otherwise be denied under the proposed rules.

a. Emphasize the Nexus Between Groundwater Allocation and Oregon’s Land Use Laws

Oregon’s land use laws require that state agency actions that affect land use comply with the 19 statewide land use planning goals (“Goals”; ORS 197.180(1)(a)). Per its own administrative rules as required by ORS 197.180, OWRD must comply with the Goals (OAR 690-005-0030) and with local acknowledged comprehensive plans (OAR 690-005-0035).

For their part, cities are obligated under Goals 9, 10, 11, and 14 to accommodate urban population growth and, particularly under Goal 11, provide public services and infrastructure to serve that growth. The incorporated cities of the Upper Deschutes Basin (Bend, Redmond, La Pine, Sisters, Prineville, Madras, Culver, and Metolius) all have acknowledged comprehensive plans that accommodate present and future land uses and anticipate urban population growth over their respective planning horizons. For these cities to comply with statewide land use planning goals and their own comprehensive plans, and for OWRD to conform with ORS 197.180, cities must have a pathway for securing municipal water rights—whether through conservation efforts, transfers, or obtaining new water rights—to serve urban population growth.

Providing a pathway for incorporated cities to secure water rights is also critical to limiting perverse incentives for development outside of urban growth boundaries (UGBs). We appreciate that the draft rules have incorporated a pathway to this end; however, LandWatch would like to see OWRD engage directly with the intersection of land use and water rights more explicitly moving forward.

b. Clarify Pathways for Basin-Level Groundwater Allocation Rules

Our state land use system promotes certain land uses in certain places, and discourages certain land uses in others. For example, agricultural and forest lands outside UGBs are protected by Goals 3 and 4 for farm use and forestry use. Non-farm and non-forest uses, like purely residential and commercial land uses, are generally disallowed. In contrast, residential and commercial land uses are promoted inside UGBs, and as described above, cities are responsible under Goal 11 for providing public services, including water, to those uses. OWRD’s groundwater allocation policy should operate in tandem with the land use system by ensuring that water use serves the land uses promoted in a given area. If the result of the proposed rules is to make it more difficult to serve residential, commercial, and other urban land uses, while exempt wells to serve rural residential uses are still allowed by statute, then the proposed rules will have created significant conflict

between regulation of water use and regulation of land use. The State of Oregon should strive for harmony amongst its various regulatory efforts, not conflict.

Water use projections show that cities in the Upper Deschutes Basin should have ample water to meet their anticipated needs in the coming decades. This includes cities like Redmond, where some of the larger groundwater declines have been observed (GSI Water Solutions, Inc., 2023). However, with additional clarity, the pathway to locally supersede these rules can provide greater assurance to cities that they may continue meeting Goal 11 obligations well into the future, should all additional conservation measures prove insufficient to meet water demand.

LandWatch recommends that the proposed rules move forward with some additional clarification of both the process for establishing basin-specific rules, and which entities are eligible to pursue this type of alternative pathway. To ensure that the statewide rules align with the intentions of the Groundwater Act of 1955 and remain compatible with statewide land use planning goals, the pathway for local rules should only apply to incorporated cities in the Deschutes Basin, not to the issuance of new groundwater rights for non-municipal uses. In addition, the pathway must provide for sufficient environmental review at both the site level and throughout the applicable aquifer to protect the long-term integrity of ecological resources.

II. Future Opportunities for Improving Groundwater Management in the Deschutes Basin

The Upper Deschutes Basin's porous geology means that groundwater and surface water are inextricably and uniquely linked. The vast majority of streamflow in the Deschutes Basin comes from groundwater (Gannett et al., 2017), so groundwater depletion amounts to surface water depletion, and vice versa.

To address the direct effects of additional groundwater pumping on surface water availability and rights, and State Scenic Waterway flows, the Deschutes Basin Groundwater Mitigation Program ("Mitigation Program") was implemented in 2002. Since then, the Mitigation Program has required mitigation credits as a precondition for any new groundwater permits in the Deschutes Basin, which have been generated via instream transfers or leases of surface water rights. While this program—which already supersedes portions of the existing administrative rules under Chapter 690, Division 9—has served the Deschutes Basin's particular needs in some ways, it has by no means solved basin-level groundwater allocation and depletion issues.

On its own, this rulemaking will not solve these issues either. Comprehensively improving groundwater stability, availability, and rate of decline in the Deschutes Basin also requires addressing site-specific pumping impacts, regulating exempt wells, and advancing conservation efforts for both surface water and groundwater. To meaningfully improve groundwater management and fully adhere to the spirit of the Groundwater Act of 1955, OWRD should focus upcoming efforts on:

- Updating the Deschutes Basin Groundwater Mitigation Program;
- Establishing and promoting further water conservation measures, such as volumetric pricing and other market-based conservation incentives; and
- Regulating Oregon's exempt wells.

While we acknowledge that these will be new, separate processes, the current rulemaking sets the stage for addressing these critical, interconnected issues moving forward.

III. CONCLUSION

We applaud OWRD for taking on this rulemaking to modernize how we allocate groundwater in the state, and we appreciate the shift toward a thoughtful, data-backed approach to approving new groundwater permits. Given the important connections between Oregon's land use and water laws, we encourage OWRD to more clearly articulate the compatibility of this rulemaking with statewide land use planning goals. Building from the strength of this groundwater allocation modernization effort, we look forward to OWRD's continued leadership on key water issues across Oregon, including those highlighted in this comment.

Sincerely,



Jeremy Austin
Wild Lands & Water Program Director
Central Oregon LandWatch
2843 NW Lolo Dr St. 200
Bend, OR 97703
Jeremy@colw.org

CC: Ben Gordon
Executive Director
Central Oregon LandWatch
Ben@colw.org

Dr. Brenda Bateman
Director
Oregon Department of Land Conservation and Development
dlcd.director@dlcd.oregon.gov

REFERENCES

Bureau of Reclamation. 2019. *Upper Deschutes River Basin Study*. Prepared in partnership with Oregon Water Resource Department and Basin Study Work Group.

Gannett, M.W., Lite Jr, K.E., Risley, J.C., Pischel, E.M. and La Marche, J.L. 2017. *Simulation of groundwater and surface-water flow in the upper Deschutes Basin, Oregon* (No. 2017-5097). US Geological Survey.

GSI Water Solutions, Inc. 2018. *Technical Memorandum, Task 1A – Water Right Assessment: Historical Diversions and Instream Water Rights in the Deschutes Basin*. Prepared for Basin Study Work Group and Deschutes Basin Board of Control. December 2018.

GSI Water Solutions, Inc. 2023. *Water Management and Conservation Plan: City of Redmond*. Prepared for the City of Redmond, Oregon. 2022.

HARTT Laura A * WRD

From: Jesse Edwards <edwards.jesse.r@gmail.com>
Sent: Tuesday, June 4, 2024 10:17 PM
To: WRD_DL_rule-coordinator
Subject: Concerning new ground water allocation rules

Some people who received this message don't often get email from edwards.jesse.r@gmail.com. [Learn why this is important](#)

OWRD

As a member of the community and of Oregon, my family and I are requesting that the new rules not be ratified and put into practice. My family and I are pursuing a course of life to invest in the local community and provide food as for those around us as well as ourselves and the new rules would make it dreams and ability to serve out community near impossible. These new rules hamstring anyone who desires to market garden and to homestead. We need the ability to access the water and utilize it. Kindly reconsider the course which you are moving toward and with with local farmers and gardens who provide our communities with so many amazing resources.

Thank you

Jesse Edwards

HARTT Laura A * WRD

From: Jesse L. Robbins <jesselancerobbins@gmail.com>
Sent: Wednesday, June 12, 2024 4:12 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rulemaking Comments

Some people who received this message don't often get email from jesselancerobbins@gmail.com. [Learn why this is important](#)

Good Afternoon,

My name is Jesse Robbins and I'm a resident of Springfield, in Lane County. I'm an avid angler, boater, and outdoorsman and I'm writing to express my support for the adoption of updated groundwater allocation rules that would ensure the long-term health of our state's rivers, streams, lakes, wetlands, and aquifers.

As our state's rivers, streams, lakes, wetlands, and aquifers are all connected, I believe it's imperative to place utmost concern over the preservation of these natural resources. Thoughtful allocation of groundwater is essential to this preservation.

I applaud the Department for its work on this matter and ask that the appropriate updates to Oregon's groundwater management system are made to ensure sustainability in perpetuity.

Thank you,
Jesse L. Robbins

HARTT Laura A * WRD

From: jillsemail@bendbroadband.com
Sent: Wednesday, May 15, 2024 7:12 PM
To: WRD_DL_rule-coordinator
Subject: Oregon's Groundwater Allocation Rulemaking comment

[Some people who received this message don't often get email from jillsemail@bendbroadband.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

My comments about the proposed water use rule changes

I am so pleased to see Oregon take action towards managing our water resources. While it is good to see the proposed changes in the NEW ground water usage applications, it seems likely that the CURRENT users are already over-appropriating the ground water, as evidenced by so many wells going dry.

I am encouraged that the trend is towards more assessment and management, but I think the management needs to include the existing users. I realize this would be controversial. The bigger users will talk about economic viability, while the smaller users, who can't afford new wells or lawyers, will suffer.

If I could wave a magic wand, I would fund lots more studies and testing of the current situation, and then keep up that data gathering over many decades, so that we can have a much better handle on how to allocate our water resources.

Thank you
Jill Jolly

HARTT Laura A * WRD

From: Jim Buck <buckjim55@yahoo.com>
Sent: Tuesday, May 21, 2024 6:43 PM
To: WRD_DL_rule-coordinator
Subject: Comments - Groundwater Availability For Allocation Rulemaking

Some people who received this message don't often get email from buckjim55@yahoo.com. [Learn why this is important](#)

I support your efforts to implement these new rulemaking efforts with the following comments:

1. Stop issuing new well permits, however, allow landowners whose wells go dry to drill a new well : We live in Jackson and moved on our property in 2002 and a well provides our domestic water needs. In 2002, the static water level was 52' and the pump depth 125'. In 2009, our pump burned up due to lack of water and after replacing the pump, the pump was lowered to 158'. In 2023, we ran out of water again and the pump was lowered to 186'. Our well is 196'. During your presentation, I discovered that drilling a well costs about \$26,000. This is a huge cost. Instead of each landowner digging deeper chasing the water, stop issuing new permits and consider putting limits of groundwater withdrawal from wells.

2. Factor Climate Change Projections into your rulemaking: I was disappointed that your presentation only looked at past climate data and did not factor in future climate projections. These climate change projections must be available and while they are projections, this future climate data is much more realistic.

Thanks for your efforts.

Jim & Jean Buck
14646 Highway 62
Eagle Point, OR

From: Jim Powell jhp@bendbroadband.com
Subject: Testimony for the record, OWRC, June 14th, 2024
Date: June 12, 2024 at 16:57
To: mindy.j.lane@water.oregon.gov
Bcc: Emelie McKain Emelie.L.MCKAIN@water.oregon.gov

JP

Ms. Lane

I am sorry this is late but I thought it better to send it now than apply to present on Friday. Thank you for your efforts in administering the meeting in Bend. The time and effort that the Commission and Staff commit to reaching out to us all is greatly appreciated.

Kind Regards

Jim Powell
Bend, OR
541-389-5693



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Commissioners

Appreciation: Thank you for all the time and efforts you put into serving all of us by trying to find the best solutions to managing our essential water resource. The changes in scope and tenor of your commission and RAC discussions have been encouraging and welcomed:

- the inclusion of considerations posed by environmental, climate and use demands,
- the importance of ecological awareness and water actions – impact and consequences,
- the pursuit of more data driven administrative assessments,
- the realization that old practices may not serve us as previously and
- that collaboration and sharing water resources is more important than we might imagine

Thank you also for making the trips to various regions of the state, such as our Deschutes Basin, to experience and sample the different perspectives and perceived critical issues of the different geographical and ecological locations.

Groundwater Reallocation Rulemaking: This process has been a good example of prudent attempts to use location based data to make determinations of additional extraction permits rather than defaulting to a more convenient preordained conclusion which may or may not represent wise stewardship of a local water resource. The current database may be limited – but you already recognize the critical need for additional data collection across the water spectrum. The conservative methodology in application of the major metrics in the decision making process, especially for a non-mechanical ecological system undergoing stressful change, is a good first step in developing this new protocol. This additional tool will be very helpful as the recharge of groundwater is not linear across the basin. R Caldwell: *Chemical Study of Regional Ground-Water Flow and Ground-Water/Surface-Water Interaction in the Upper Deschutes Basin, Oregon, 1998*, though dated, supports the variability that the rulemaking seeks to address. COCO, despite its conservation efforts and concerns, cannot generate new water where it does not, or is not projected to, exist – and we have ample examples in Oregon and elsewhere that reveal the consequences of blindly continuing groundwater extraction when consistent signs of a diminishing resource appear.

Coordination and collaboration: In our basin with the emphasis on economic growth and tourism, better interactions and collaborations for land-use decision making would be extremely helpful. For decades, many of us who have served on planning commissions have wanted the Goal 5 elements to be better integrated in analysis and mitigation for certain types of land use decisions. For example with water, uses like data farms, resorts relying on groundwater for amenities and water utilities, mega-agriculture and development relying on new water extraction or marked increases in municipal or quasi-municipal water consumption should have collaboration to ensure that the resources are available and the new request does not compromise the existing or projected future resource need. The expertise in agencies like OWRD and ODFW are crucial for wise DLCD related decisions. And those agency evaluations and recommendations need to be supported by local governing bodies rather than be fodder for legal maneuvering or workarounds.

Mitigation and Recharge: We have been fortunate to have active mitigation requirements in this basin. Despite its limitations and nearing the end of its initial authorization, the program has been successful in supplying needs that might not have been possible otherwise while trying to preserve both surface and groundwater resources. COCO has used the program extensively but has hit the current limitations. Many of us would like to see the program continue with tweaks to protect mitigation water beyond the magic Madras gauge and to increase and incorporate groundwater monitoring from the proposed Groundwater Allocation Rule. The “zone of influence” has been an important component that perhaps can be refined, but like artificial recharge, we do not seem to have enough understanding of our aquifer to be certain our attempts are productive. We know our water tables are dropping in the basin and assume it is a primary function of climate

modulations – but is it ? The proposed increased groundwater monitoring may provide better answers to use and recharge effects. Prineville is experiencing groundwater contamination; allegedly, artificial recharge may be involved. Bend has not had any problems with its efforts to date of recycling its treated water.

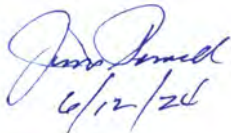
Monetization of Water: One of the downsides that is appearing on our basin has been the introduction of “market-based” thinking into promoting mitigation credits and water transfers. While this practice fosters some positive results, the dangers are well illustrated in other states with control of water resources shifting to those with the assets to purchase rights. In Oregon, OWRD has not considered economics into its equations. Forgotten by many newcomers here is that the water belongs to the public. Additionally, land and water was “given” at minimal cost to entities that would promote agriculture and settlement in the late 19th century. Now we are using governmental (public) funding to undertake a massive piping conservation effort in our basin. And we remain a naïve and ill-equipped to resist the economic allure that has helped create distribution and affordability problems in other states. We desperately need to be ahead of this curve of water going to highest bidder irrespective of the larger public beneficial needs or anticipated availability elsewhere. This not just socio-economic disparity issue but relates to the essential nature of water to all species and processes that co-inhabit this planet.

Regional Planning: The Deschutes Basin has some unique appropriation, judicial, biological, geologic and hydrologic characteristics that make regional planning an even more important tool than other basins in the state. Those of us who have volunteered in water related planning appreciate the opportunities made available by OWRD’s adopting this approach and for having the fortune to work with Ms. Emelie McKain, the OWRD Senior Water Advisor/Central Oregon – an invaluable asset for this basin. The basin is no stranger to attempts at collaborative processes. The first in my history here was in 1986 by Deschutes County/City of Bend, resulting in requests and then legislation making instream use beneficial, allowing water transfers between land parcels and streams, and incentivizing water conservation. Collaborative efforts followed with the Deschutes Water Alliance – transformed into the now Deschutes River Conservancy – the Basin Work Group Study and the current Deschutes Basin Work Group. You are already familiar with the participants collaborating to find solutions that might improve water resources themselves and ways to equitably and sustainably share those resources. There are potential opportunities to solve issues for municipalities, districts, ecology and land use. Some ideas and proposed solutions may fall outside of existing statutes and rulemaking or may be unique to our basin. I hope the regional planning approach will incorporate enough latitude to allow trial or pilot projects, even those which may require moving beyond existing practice, on solutions that might gain consensus among collaborators and governing agencies.

Thank you for this opportunity to comment – and for your continued efforts to serve us all.

Respectfully,

Jim Powell
Bend, OR



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Subject: Testimony for the record, OWRC, June 14th, 2024
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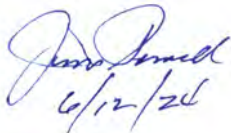
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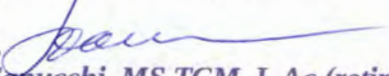
5/10/2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

As is becoming the usual, your link to email comments doesn't work. Here's my comment on Notice of Proposed Rulemaking.

Lane County is working hard to get enough signatures on an initiative to get it on the ballot next go around. The Rights of Water, which is not something we can ever "own", is not a resource only for the end result of human profit, but a living system of its own. We have to protect this system and give it the respect it deserves. Without clean water, or enough water, we cannot live. Our children and grandchildren are depending on us. We cannot fail them this time.

We have enough wineries, enough mega dairies and chicken farms, enough other farmers who need to change their crops, enough forest destruction, enough tilling, enough wastewater dumping, enough of every other kind of damaging behaviors that are old and out of date. We are not controlling polluters at all. This nonaction cannot be tolerated any longer. We don't have decades to solve the problems that have been looming for decades. It will only get worse unless you all take a good hard look at the state's unevolved behavior. You work for the Water, the Water doesn't work for you.

Sincerely, 
Joanne Fanucchi, MS TCM. L.Ac (retired)
26916 Hwy 36, space 17
Cheshire, Oregon 97419

Received
MAY 13 2024
OWRD

The Butlers
5353 SW Loma Linda Dr.
Redmond, OR

Laura Hartt,
Oregon Water Resources Department
725 Summer Street NE, Suite A, Salem, OR 97301

Dear Ms. Hartt,

We would like to comment on the proposed new OWRD rule concerning groundwater in the state of Oregon. Since we live east of the Cascade Mountains, groundwater is a critical concern to us. We have friends whose well has gone dry. They share the well with a neighbor who can't afford the cost of a new well. Now both property owners pay to have water trucked to their properties in order to continue to live in their homes. This is not an uncommon occurrence in Central Oregon because older wells are shallower and newer wells are deeper. Shallow wells run dry.

Groundwater in Central Oregon is derived from snow pack in the Cascades. Most groundwater pumped in Central Oregon is at least 15 to 20 yrs old. The impact of declining snowpacks will not be felt for at least 15 yrs. Meanwhile, more wells are drilled to support development. We are essentially burning the candle at both ends.

It is long overdue for OWRD to comply with the mandate to permit new wells only in areas of stable water tables. Starting today will be a significant change, but it is the only way to have a sustainable future.

John and Diane Butler

Received
MAY 28 2024
OWRD

HARTT Laura A * WRD

From: john <jhamburg97477@hotmail.com>
Sent: Monday, June 3, 2024 10:17 AM
To: WRD_DL_rule-coordinator
Subject: Groundwater Management rules

Some people who received this message don't often get email from jhamburg97477@hotmail.com. [Learn why this is important](#)

I support proposed changes of the Oregon Groundwater Management rules by the OWRD as they will at least provide for further evaluation of any new permit approvals. The current rules have resulted in minimal scrutiny of the impact of new permits on groundwater levels. Levels must be reasonably stable for a new permit to be approved. The impact of new permits or increased pumping on streams, wetlands, and springs should be fully taken into account, and those resources protected.

The OWRD should also propose rules which allow review of current pumping permits to insure that the pumping does not negatively impact natural surface water sources such as streams, wetlands, and springs.

Thank you,
John Hamburg
Eugene, OR 97404

May 15, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
Email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Groundwater Allocation Rules

Dear Ms. Hartt,

Please accept these comments on behalf of Wallowa County in response to the Oregon Water Resources Department's ("OWRD's") proposed groundwater allocation rules. For the reasons explained below, Wallowa County believes the proposed rules will be harmful to the County and the State of Oregon, and asks the Oregon Water Resources Commission to reject the proposed rules.

Wallowa County is located in the northeast corner of Oregon. It is a frontier county whose water is fed by pristine high mountain lakes and streams flowing from the southeast to the northwest. Our county is home to approximately 7000 people.

Wallowa County is uniquely situated, in that very little groundwater has been developed in the County to date. As a consequence, Wallowa County is not experiencing groundwater declines. According to OWRD's presented data, wells in Wallowa County are among the sparsest in the State, amounting to 1-16 wells per 40 acres in most areas of the County. See Figures 1 and 2 below, which were prepared by OWRD. These figures show the low occurrence of groundwater development, and lack of groundwater over-allocation in Wallowa County.

Figure 1:

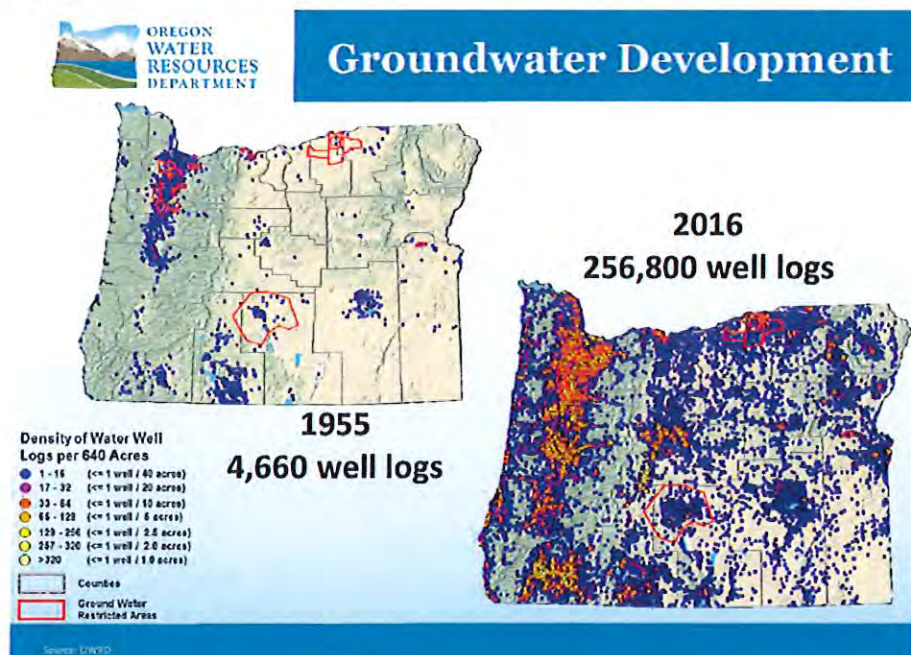
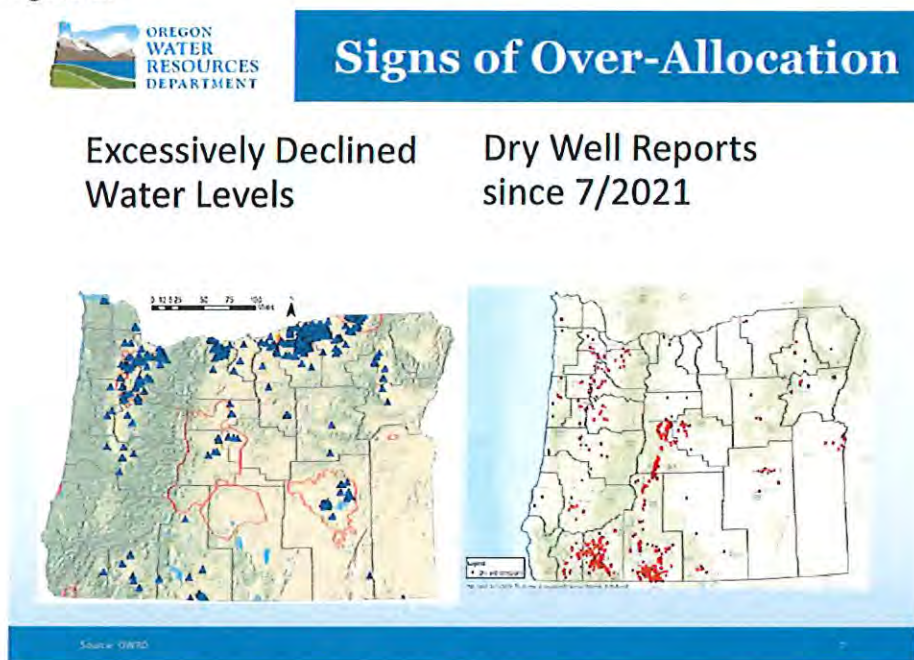


Figure 2:

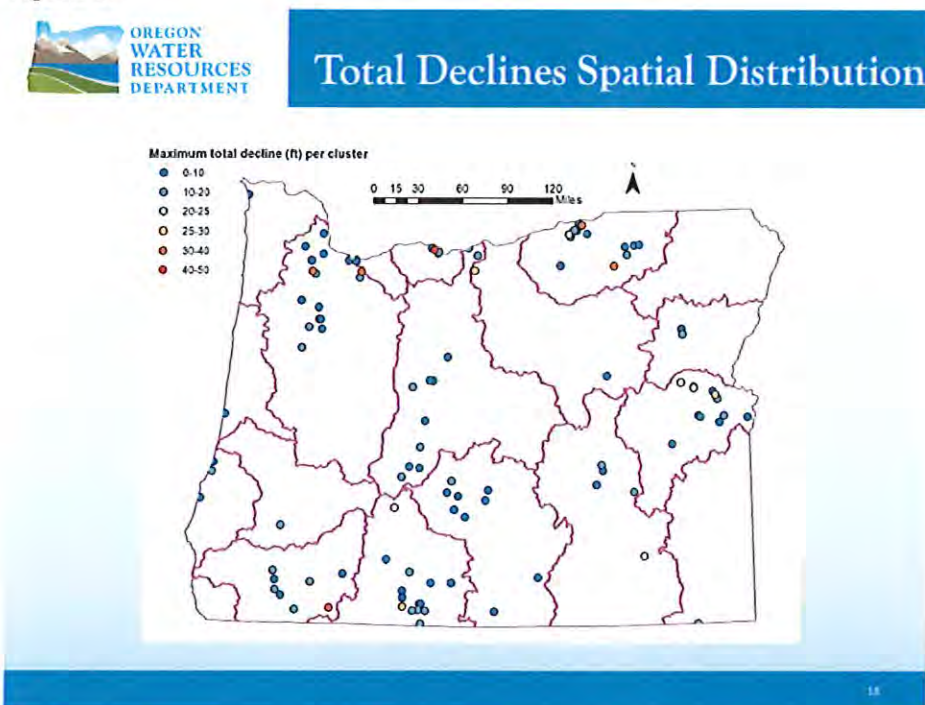


The proposed groundwater allocation rules will have negative impacts on Wallowa County and the entire State. First, the test for "reasonably stable" water levels will inappropriately shift an insurmountable burden to property owners to conduct many years of expensive groundwater studies. Second, the revised definition of "potential for substantial interference" will result in application denial in nearly all areas of the State. As explained further below, these proposals will together establish a *de facto* moratorium on all new groundwater development in the State, without the need or justification to do so.

Under the proposed rules, OWRD is not authorized to approve an application for new groundwater use unless the groundwater levels are "reasonably stable." This sounds like a sensible and worthwhile criterion, but application is anything but reasonable. The rate of allowable decline chosen by OWRD is arbitrary when applied to all aquifers in the State, which are each unique with their own numerous characteristics. Additionally, to determine the rate of decline at a specific location of proposed water use, OWRD must have at least five years of data from "representative wells." If such data does not exist, the full burden is on the applicant to conduct five years of expensive aquifer studies to then provide data to OWRD, in the hopes (with no guarantee) that OWRD will then accept the private study results in support of permit issuance.

Wallowa County residents will suffer from OWRD's lack of information regarding any groundwater declines in the County, as will be the case in many areas of the State where OWRD has not studied the groundwater resources in sufficient detail. During OWRD's rule advisory committee meetings, OWRD staff presented a small-scale review it conducted to estimate how restrictive the "reasonably stable" test of the proposed rules may be in practice. In order to estimate the impacts, OWRD reviewed "representative wells" in various areas of the State. It is notable that OWRD has no "representative wells" to use in Wallowa County. See Figure 3 below, which was prepared by OWRD to show the results of its review. This means, according to OWRD's explanations, that no Wallowa County groundwater applications will be approved absent many years of very expensive private groundwater studies, even though there is very little groundwater use and no over-allocation identifiable within the County.

Figure 3:



In 2021, the Oregon Legislature passed House Bill ("HB") 2018, under which the Legislature directed OWRD to work with the United States Geological Survey to study groundwater resources and establish groundwater budgets in all areas of the State – a task long overdue in Oregon. OWRD has not completed that process, and, as such, lacks the requisite information to determine "reasonably stable" water levels in all areas of the State. The results of the HB 2018 studies will undoubtedly be extremely informative for any rulemaking undertaken with regard to groundwater stability and allocation of groundwater resources, making the proposed rules premature. Wallowa County is situated to suffer increased harm from the untimely proposed rules, in that there is very little data in the County from which application decisions can be made. This will shift a time-intensive, extremely expensive burden to Wallowa County residents, which is poor State policy, and unfair given the State's extreme delay of studying these groundwater resources itself, especially when such studies are now on the horizon.

Finally, the most severe change under the proposed rules is the change to the "potential for substantial interference" test, which will result in denial of nearly all groundwater applications regardless of "reasonably stable" groundwater levels. "Substantial for potential interference" relates to the potential of a new groundwater use to impact existing water rights, most notably, in practice, surface water rights. The enacting statute specifically refers to "interference with existing rights to appropriate surface water." ORS 537.525(9). As such, the current substantial interference test is aimed at avoiding noticeable and measurable estimated interference with known, existing water rights.

The proposed rules broaden the "potential for substantial interference" criteria to such an extent that interference with existing water rights is no longer the test. Rather, under the proposed rules, the test is whether there is a capability for the new groundwater use to cause any theoretical impact on any surface water or groundwater source, at any time in the future (even a millennia), regardless of any actual impact on any existing water rights. The proposed rules give no regard to the actual or estimated impacts of different proposed uses in the various aquifer systems, contrary to the authorizing legislation. OWRD staff advised participants in the rules advisory committee that this provision will result in denial of nearly all groundwater applications in the State, other than a

narrow subset in the Willamette Valley, which is the only place OWRD has found no hydraulic connection between groundwater and surface water. As such, Wallowa County residents, and others who are outside a small pocket in the Willamette Valley, will suffer from this harsh proposed rule that is disproportionate to the needs and realities of the various groundwater resources throughout the State.

Wallowa County agrees with the Oregon Water Resources Commission's direction to OWRD: to modernize the water allocation system and protect senior water users from declining water levels. However, OWRD's proposed rules are not a practical way to accomplish these goals. This State needs measured and reasonable groundwater allocation, informed by scientific study of the various groundwater systems. OWRD's one-size-fits-all, and automatic-denial approach is grossly unbalanced, and will result in immense harm to this State and its residents. OWRD's proposal is a no-growth, no-flexibility mandate, regardless of whether the resources in certain areas can support further wise development and beneficial use.

The flaws of the proposed rules are even more obvious when compared to the various existing alternatives to meet the Commission's goal without causing the vast harm that will result from the proposed rules. There are many ways to "do this right." Where there are existing areas of concern, OWRD has already designated areas where water allocations are halted pending further groundwater studies. Most recently, we have seen OWRD exercise this control in the Harney and Walla Walla basins. Additionally, OWRD has existing authority to deny specific applications when groundwater supplies cannot support the new use, or the proposed use will interfere with existing water rights. OWRD may continue to exercise its current authority while the HB 2018 studies and any other necessary studies are completed. Thereafter, once scientific information regarding each basin and sub-basin is developed, OWRD can establish basin plan rules that are specific to the demands and opportunities in each basin. The amount of resources OWRD has put towards enacting rules in short order is commendable, but the rules themselves are faulty because they put the cart before the horse. It is very unwise state policy to enact one-size-fits-all rules in a scientific vacuum. It is even more troubling that OWRD's proposed solution is a *de facto* moratorium on essentially all groundwater appropriations when groundwater is undoubtedly still available for beneficial use in many areas of the State.

For the reasons stated above, Wallowa County asks the Commission to reject the proposed groundwater allocation rules. Wallowa County further asks the Commission to direct OWRD to complete the HB 2018 studies, and any further groundwater studies needed, to enact rules in each groundwater basin that address the realities therein. The current proposed rules will be extremely harmful to Wallowa County residents and those throughout the entire State. It is imperative that these rules not be enacted.

Sincerely,



John Hillock
Wallowa County Commissioner



Susan Roberts
Wallowa County Commissioner



Todd Nash
Wallowa County Commissioner

CC: Governor Tina Kotek
Senator Rob Wagner, Oregon Senate President

HARTT Laura A * WRD

From: John Oconnor <johnoc49@gmail.com>
Sent: Tuesday, June 11, 2024 5:58 PM
To: WRD_DL_rule-coordinator

Some people who received this message don't often get email from johnoc49@gmail.com. [Learn why this is important](#)

We need to closely monitor the extraction o all ground water. We must discourage all ground water development & preserve what water is left!

HARTT Laura A * WRD

From: John Thelen <romathelen@gmail.com>
Sent: Thursday, May 16, 2024 11:57 AM
To: WRD_DL_rule-coordinator
Subject: over pumping...past time to Stop...when will you act?? Robert Thelen

[Some people who received this message don't often get email from romathelen@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]



Josephine County, Oregon

John West, Herman E. Baertschiger Jr. and Daniel E. DeYoung

Board of Commissioners' Office
500 NW 6th Street, Dept 6
Grants Pass, OR 97526
(541) 474-5221 #2

April 4, 2024

Received

APR 05 2024

OWRD

Ms. Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Comments Regarding Proposed Groundwater Allocation Rulemaking

Dear Ms. Hartt and the Rules Advisory Committee:

We would like to provide comments to the Oregon Water Resources Department (OWRD) and its Rules Advisory Committee (RAC) in response to the ongoing process to develop proposed rules on groundwater allocation. Because groundwater is a vital resource in Josephine County, the proposed rules have the potential to impact the use of groundwater for the existing development of citizens in our County, as well as our future development and growth. Thus, we have a vested interest in these proposed rules and the process being used to develop those rules.

The one-size-fits-all rule does not consider the significant difference between the various basins within the State. Additionally, the proposed rules will likely result in a de facto moratorium on new groundwater use in areas where there is not a strain on groundwater. Our concerns include those sections of the rules that are aimed at determining when a new proposed groundwater use will "substantially interfere" with surface water sources. The proposed rules will result in the denial of a large majority of new permit applications, even when groundwater may be available for development, which will impact the citizens of our County.

We, the Josephine County Board of Commissioners, request that you pause the rulemaking process to allow for additional time to develop more scientifically based methods for evaluating interference with surface water sources. Water is a huge issue for all Oregonians and rushing without considering all concerns does a disservice to all citizens of this great State.

Sincerely,

Board of County Commissioners

John West, Chair

Herman E. Baertschiger, Jr., Vice Chair

Daniel E. DeYoung, Commissioner

HARTT Laura A * WRD

From: Judy L Todd <1judytodd@gmail.com>
Sent: Tuesday, May 21, 2024 12:21 PM
To: WRD_DL_rule-coordinator
Cc: Judy L Todd
Subject: Oregon's Groundwater-In support of OWRD Rule Revisions.

Some people who received this message don't often get email from 1judytodd@gmail.com. [Learn why this is important](#)

I support the groundwater allocation rule revisions because we need ever-increasing, more sustainable management of our groundwaters. I am hopeful these new rules will help protect streamflows and cold water delivery to rivers and streams from the stressing and warming impacts of over-pumping hydrologically connected groundwater. In the current and clear imminent challenges and impacts of climate change, it's even more important for the state to end over-issuing groundwater permits. That's the old days ignorantly robbing the future. These new rules for Oregon waters and groundwater permits is long overdue, and I look forward to the adoption of the proposed rules. Thank you.

Judy Todd, Portland OR

503-260-4995
1judytodd@gmail.com

Oral Comments – Bend Public Hearing (April 4, 2024)

Judy Trego (Sisters Area Chamber of Commerce)

My name is Judy Trego and I'm the Executive Director for the Sisters Area Chamber of Commerce and the President of the Sisters Community Foundation. I'd like the Commission to consider the impacts on rural communities as it relates to growth and the much-needed housing that needs to be added to accommodate future growth for affordable and workforce housing. Sisters is a tourism economy, and tourism is historically known for low-wage jobs. We need to recruit and retain our current and future workforce, and these proposed rule changes will hurt our most vulnerable citizens, low-income, seniors, our workforce, and others who need and are relying on new workforce and affordable housing and Sisters country. Thank you for coming this evening. We appreciate it.

HARTT Laura A * WRD

From: Julie Carte <ruckusmom@gmail.com>
Sent: Saturday, March 23, 2024 3:08 PM
To: HARTT Laura A * WRD
Subject: Groundwater rule making

[You don't often get email from ruckusmom@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

MS. Hartt, I am very opposed to any policies which impact farmers or reduce their access to water. This cannot be justified. For example, I live in Jackson County and am dependent on small farmers to provide the bulk of my food, both livestock and produce. Will my family's food sources be cut off? Many fellow citizen's utilize these food sources as well as the primary choice to provide healthy diets for our families. Supporting local agriculture is the best possible choice we Oregonians can make! Why is the state contemplating eliminating our food choices and ruining farmer's livelihoods? I expect the state to act responsibly and protect our food sources. Julie Carte 541.944.3114 Sent from my iPad

Oral Comments – Central Point Public Hearing (May 16, 2024)

Julie Carte (Jackson County)

Hi, my name is Julie Carte, and we live about on a small acreage about 3 miles from here. And I'm going to echo a lot of the concerns that many people have brought up tonight. To target farms makes absolutely no sense. The state of Oregon, I feel like as part of its mission is to make sure its people are fed and yet again, like Nigel was saying, to target small farmers and even family farms, these are not the people that are wasting water. So, these are these are people who are good stewards of the water and make every effort to make sure that that resource is available year after year. The cost involved for a small farmer or even a medium sized farmer who basically doesn't have hardly any margin and to tell them I'm not sure what the fee is, I think it's well over \$1000 to apply, and also the time frame up to 18 months to be granted water rights, people cannot live 18 months without income. I also think the state needs to look at other, and I know we're not supposed to ask questions, but I'm just wondering about state of Oregon, the government water use, and is it surface water, is it groundwater, or is our state capital landscaping their grounds at the expense of Klamath farmers. And again, I have the concern about the marijuana growers as well that are very plentiful in our area, and it seems like, and I don't want to generalize, but this industry has, I think, decimated our population and especially our young people. And to look at a lot of the properties, these are not well-kept places. These are not people that are stewards of our land and our water. And again, as the young lady said from Josephine County, there is a clear conflict of interest with the state who is deriving a huge amount of income off of that industry. So anyway, thank you very much that I was allowed to speak and thank you for holding this meeting.

14 June 2024

Laura Hartt
Groundwater Allocation Rules Coordinator
OWRD
By email: Laura.A.HARTT@water.oregon.gov

Re: Final written comments on proposed Groundwater Allocation Rules

Oregon Environmental Council has appreciated the opportunity to participate in OWRD's Groundwater Allocation RAC. We also appreciate the extensive, inclusive rulemaking process the Department has managed over the past two years.

Things we really like about the proposed rules:

- These rules do not establish a moratorium per se, but rely on science and data to determine whether new groundwater pumping permits should be issued.
- Contrary to what many critics are saying, these rules are not one-size-fits-all, and the sideboards proposed to ensure basin planning efforts comply with statewide priorities and goals while customizing groundwater use to their specific basin.
- Again, contrary to what some cities and counties are maintaining, these rules will not leave most communities unable to meet municipal water needs. No data has been provided by the cities to indicate any deficits in water rights. While some cities, like Bend, have prioritized conservation efforts, most have not. Conservation efforts (including water reuse) must be the first choice in meeting municipal, industrial and agricultural needs.
- These rules squarely address IWRS recommended action 11.E.
- These rules take into account groundwater/surface water relationships, including those supporting groundwater dependent ecosystems.
- These rules have been vetted to ensure that there is no conflict with other state-level **priorities as established by the Governor's office or by other state agencies.**

Two points the rules do not address but that we feel are very important are:

1. OAR 690-009-0040(5) needs to be modified to clearly state (consistent with the **agency's** intent) that when certain conditions are met, there will be a finding that water is not available for the proposed use, rather than there may be a finding that water is not available for the proposed use.
2. Where a permit is issued in an area lacking data and lacking other groundwater appropriations, an appropriation ceiling (size limit) should be established in the rules (150 acre-feet has been suggested). Setting an appropriation ceiling in such circumstances allows the first permit to be issued while offering the opportunity to

collect groundwater level data and protecting the resource from inadvertent overallocation in areas where there is no data at the time the permit is issued.

We look forward to seeing these rules put in place and on their way to implementation in the near future.

Sincerely,

A handwritten signature in black ink, reading "Karen Lewotsky". The signature is stylized, with the first name "Karen" written in a cursive script and the last name "Lewotsky" in a more blocky, cursive style. The signature is positioned on a light gray background.

Karen Lewotsky, PhD, JD
Water Program Director
Rural Partnerships Lead

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Karen Lewotsky (RAC Member; Oregon Environmental Council)

Well, good evening and thank you for the opportunity to comment on these proposed changes to the state's current groundwater allocation rules. For the record, my name is Karen Lewotsky. I'm the Water Program Director and Rural Partnership Lead for the Oregon Environmental Council. OEC served on the groundwater allocation RAC that helped develop these proposed rules and is also a member of the Oregon Water Partnership. Although there are ways that these rules could be more protective of our groundwater resources, they are a significant improvement over the current rules, and we wholeheartedly support them. We will be submitting detailed written comment on these proposed rules, but I want to take this opportunity to comment on the larger context we face. Climate uncertainties here in Oregon, drought, record high temperature, wildfires, changes to precipitation patterns all mean that we can't depend on the past to predict the future. Managing water, arguably our most essential and finite resource in the face of all this uncertainty really obliges us to be prudent. We need to act with thoughtful caution if we're going to ensure adequate, clean, clear, cold water for humans and for the ecosystems that we depend on now and into the future. Some states, like Kansas, are choosing to keep pumping their aquifers until they're empty. Some cities, like Las Vegas, Seattle and others, have embraced the conservation approach, reducing per capita use and in some cases even decreasing overall use in the face of growing populations. People like to say you can't make more water, and that's true enough. However, conservation is the next best thing to being able to create more water. Conservation at home, on farms, in factories and data centers is the true answer to our water challenges. Change is never easy, and changing from our current system, which essentially defaults to yes, to a science based sustainable approach might be one of the biggest changes we've made to our natural resource policy in decades. Just because it isn't easy doesn't mean it's not needed. In fact, it is essential. At the end of the day, we must learn to operate within the constraints of the resource. To think otherwise, to act otherwise, is just wistful thinking. OEC urges you to adopt these proposed rules.

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Karen Lewotsky (RAC Member; Oregon Environmental Council)

Good morning and thank you for the opportunity to comment on these proposed changes to the state's current groundwater allocation rules. Out of respect for keeping to the agenda timeline, I'm going to try to keep my remarks short, and we'll submit some detailed written comments later in the day. For the record, my name is Karen Lewotsky. I'm the Water Program Director and Rural Partnership Lead for Oregon Environmental Council. OEC served on the groundwater allocation RAC that helped develop these proposed rules. Although there are some ways in which they could be more protective of our groundwater resources, these proposed rules are a significant improvement over the current rules. This has been widely acknowledged as public comments from across the state have shown support for these proposed rules. We wholeheartedly support them, and we urge you to adopt them without further delay. As the previous agenda items from this morning, various statewide studies and place-based planning efforts make clear, groundwater management is a significant challenge in many parts of the state. Updating Oregon's groundwater allocation rules to align with the best available science will protect existing users and ensure that the resource itself is sustainably managed, as directed by the 1955 Groundwater Act. You've already heard the proposed rules are science-based and data-driven. That protective of senior rights and domestic well users. They allow the Department to deny a permit if groundwater levels cannot be shown to be reasonable, stable or if there isn't enough data to make that determination. They're also flexible. They're flexible enough to allow basin planning efforts to address local problems poorly, requiring those efforts to take into account impacts on existing wells, impacts on our connected groundwater surface water ecosystems, and impacts on the long term sustainability of the water resource. Each basin is unique, and yes, there is room for unique characteristics to be addressed under these rules. Finally, as you've heard, these rules are also in alignment with the IWRS recommended action 11 E managing groundwater, which is arguably our most essential and finite resource, obliges us to be prudent. People like to say you can't make more water. And that's true enough. However, conservation, including reuse, is the next best thing to being able to create more water. Conservation at home, on farms and factories and data centers is the true answer to our water challenges. Ensuring adequate cold, clean water for humans and for ecosystems now and into the future requires us to act with thoughtful caution. While these rules do not address passed over allocation decisions, adopting and implementing them will avoid overallocation in the future and will protect those groundwater supplies for future generation. I presented public comments on these proposed rules a number of times. Each time I've ended with these words, because to me, they are at the heart of this issue. Change is never easy and changing from our current system to a science based, sustainable approach may seem huge. However, just because it isn't easy doesn't mean it's not needed. In fact, it is essential. At the end of the day, we have to learn to operate within the constraints of this resource. To think otherwise, to act otherwise is just wishful thinking. We strongly urge you to adopt these rules at your September meeting and thank you again for the opportunity to comment.



Subject: Comments Regarding Groundwater Allocation Rules Impact on Public Drinking Water Supply in Oregon

May 30, 2024

Dear Chair Quaempts and Members of the Oregon Water Resources Commission,

We write on behalf of the Oregon Water Utility Council (OWUC), Special District Association of Oregon (SDAO), League of Oregon Cities (LOC) and the Oregon Association of Water Agencies (OAWU), to provide comments about the proposed Ground Water Allocation rules amendments. The Oregon Water Utility Council (OWUC) is a member committee of the Pacific Northwest Section of the American WaterWorks Association representing 75% of water providers in the State of Oregon. The League of Oregon Cities represents all 241 incorporated cities in Oregon on legislative and regulatory issues related to the broad spectrum of public services provided by cities. The Special Districts Association of Oregon represents approximately 950 districts across the state providing nearly 32 types of different services statewide. SDAO membership consists of 97 domestic water and 45 water improvement districts, many of whom would be impacted by these proposed rules. Delivering safe, clean and reliable drinking water to communities in Oregon is our top priority.

Water providers agree that protection of our critical water resources and existing water rights is important, and we support efforts preventing the overallocation of Oregon's groundwater resources. We share the States' interests in sustainable long-term planning, protection of water resources and existing water supply infrastructure. We also acknowledge the interconnectivity between surface and groundwater resources and understand the need to have rules to address the connections. However, it is critical that water rights allocation is based on the characteristics of each individual basin or water source and existing water rights, and that appropriate data and a science-based approach is applied when allocating new water rights. This approach is consistent with Oregon's Integrated Water Resources Strategy (IWRS) specifically place based planning. The guiding principles of the IWRS and recommended actions should be a lens for updating rules impacting Oregon's groundwater use. To this end, Oregon drinking water providers have the following concerns about the proposed Groundwater Rule Amendments.

1. The proposed rule amendments are a one size fits all approach that does not consider the unique characteristics of the various groundwater basins in the State of Oregon, their unique hydrogeology and hydrology, water demands and risks. Although some concession for basin specific approaches were included in the language after feedback, the rule amendments place significant constraints on the implementation of basin specific planning that will make it incredibly difficult to implement and is contrary to place based planning principles. Water providers are concerned that pursuing this approach will take an extraordinary amount of time and

resources. Oregon water utilities request language in the rule that will require basin specific studies and allocation based on this information.

2. Water providers are concerned the proposed rule amendments are not sufficiently science and data based. Examples of specific deficiencies in the rule amendments include:
 - a. Definitions like “potential for substantial interference,” “effective and timely,” and “hydraulic connection” are inadequate, insufficient and too broad. They should be more specifically defined relative to each groundwater basin.
 - b. Division 9 rules should go beyond “generally accepted hydrogeological principles...” based on literature from the 1940s to 1970s. The rules need to reflect the state of the practice for studying, analyzing, and managing groundwater systems with use of site-specific data and conceptual models of the groundwater aquifer system, and then using data analyses, numerical models and other tools to test these conceptual models before using this tool box of information to analyze groundwater-surface interactions for regulatory purposes.
 - c. The current set of rules allows for oversimplification of real-world groundwater-surface interactions. Basin specific data collection or testing out conceptual models of how the real-world system functions should be the foundation for groundwater management.
 - d. The groundwater allocation rules put the burden of proof on the water rights applicants when the assumptions are not representative of the basin characteristics. This requires extensive data gathering and modeling and water providers are concerned that OWRD has a history of not accepting new data.
 - e. No methodology is provided on how OWRD will determine if there is “*the potential for substantial interference with a surface water source*” in a real-world situation (not a simplified system in the literature). The literature cited from 1940 and 2012 do not provide a methodology.
 - f. The rules provide no guidance or guarantee OWRD will go beyond simple assumptions and simple conceptual models to analyze site specific conditions and regulate water rights.
 - g. There is a striking difference between the level of specificity between how DEQ regulates water quality in surface water bodies vs. how OWRD regulates groundwater. The former being specific on time and space for temperature standards and regulation (for example) and the latter picking a broad brush approach for the whole state.
 - h. The Division 9 and 410 rules need to approach groundwater management in a similar approach to what DEQ does for the temperature standard, where specific definitions for hydraulic connection, substantial interference, and effective and timely are developed on a basin specific-basis, specific groundwater goals need to be developed for each basin, and a published Internal Management Directive (IMD) should be developed by OWRD on how groundwater-surface water systems will be analyzed and where simplified assumptions may be appropriate and where site-specific data and models are more appropriate. There should be a published IMD by OWRD on data quality objectives for groundwater data and a regular call (as DEQ does for surface water quality data) for groundwater data from the community and users before a science-based basin study is undertaken or groundwater wells are regulated. These science-based processes and objectives are missing from Division 9 and 410 rules, and inconsistent with Oregon’s IWRs to develop basin specific planning for water resources management.

3. Water providers are concerned the OWRD has not been collaborating with other state agencies, such as DEQ, OHA and DLCD related to state priorities and requirements from these agencies that are incompatible with the proposed Groundwater Allocation Rules Amendments.
4. Water providers are concerned the proposed Groundwater Allocation Rules Amendments will hinder economic development in many communities across the state such as efforts to attract and retain manufacturers that might be prematurely “shut-down” due to generalized rules that don’t reflect basin specific conditions.
5. Municipal water providers in Oregon are under increasing pressure to support the Governor’s housing goals, and this means rapidly making affordable, increased water supplies and water infrastructure available for new housing. In many cases, these goals for growth may exceed the 20-year Master Water planning that water providers currently have in place and may entail development of new supplies. It was stated during meetings of the Rules Advisory Council that future community water needs can be met by higher density construction, water conservation and transfers, however studies and experience from Oregon communities have indicated that while density can support reductions in per capita water use, the additional density, particularly with new housing goals will increase the per acre water use. The increased population density above the population projections currently used by municipalities that will result from the housing mandates can be expected to increase overall water demand, even with density and water conservation measures. In order for many communities to meet the housing goals, they will need to access new water supplies above and beyond what can be achieved by water conservation. Water conservation and higher density will only provide so much benefit and in some smaller communities, it’s not even feasible.
6. Water affordability is also a concern for municipal water providers and contributes to the overall cost of living in communities in Oregon. Groundwater is often the most affordable water supply available, in particular to small, rural and distressed communities. Driving communities to depend on more costly options that may include navigation of a water rights transfer, contaminated surface water that requires substantial treatment infrastructure, construction of additional storage, or building infrastructure and pipelines to bring in a source of supply from another community is costly and will make living in many areas in Oregon unaffordable. If a community is driven to a more costly and lower quality water resource when a groundwater resource is available but has been eliminated unduly due to the lack of science based and basin specific considerations, then Oregon residents do not benefit from these new rules. The costs for going to more expensive water sources will be borne by ratepayers and will directly impact these communities. Did OWRD study the fiscal impacts of these proposed rule changes? Did OWRD investigate and interview communities on how these rule changes would have a fiscal impact? The League of Oregon Cities conducted a survey related to infrastructure needs to meet the Governor’s housing goals. The survey responses revealed that water infrastructure is a driving need to meet these housing goals, which adds further burden on local communities:

According to a 2021 Infrastructure Study from Portland State University, water and wastewater needs from 120 responding cities are estimated at \$7.6 billion over the next 20 years. More recently, a survey response from 93 cities in Oregon confirmed that infrastructure investments remain a significant barrier to housing development, with over 234 projects valued at \$950 million of water-related infrastructure identified.

7. The rule amendments do not appropriately address the challenge of inter-state groundwater basins that are shared between Washington, Idaho, and California. The result may be continued issuance of groundwater permits in neighboring States, while water providers in Oregon are unable to access those same aquifers.
8. Lastly, water providers strongly advocate for better state agency coordination around water management. Implementing actions from the IWRS should be considered before embarking on rulemaking of this magnitude. The IWRS is the venue to thoughtfully bring agencies together to solve issues related to groundwater and instream needs versus a single agency approach. For example, as the draft rules for groundwater have been developed, ODFW is moving forward with applying for instream water rights across the state. This raises concerns for drinking water providers who are now being asked to seek alternative supplies to groundwater. Water providers want to be part of the solution to bring forward a cohesive strategy for providing drinking water to a growing population. The IWRS Guiding Principles include balance, collaboration, science-based, flexible approaches and actions that “empower Oregonians to implement local solutions; recognize regional differences, while supporting the statewide strategy and resources and take into account the success of existing plans, tools, data, and programs; do not lose commonsense approach; develop actions that are measurable, attainable, and effective.”

The Oregon Water Utility Council, Special District Association of Oregon and League of Oregon Cities are concerned that the proposed amendments will halt the issuance of all future permits on groundwater basins due to the lack of specificity in the rule language. We encourage the Oregon Water Resources Commission to seek a more specific, more defined, and more scientifically defensible approach to these amendments. Thank you for your attention to these concerns.

Sincerely,

Kari Duncan and Rebecca Geisen, OWUC

Jim McCauley and Michael Martin, LOC

Mark Landauer, SDAO

Jason Green, OAWU



June 12, 2024

Oregon Water Resources Department
Laura Hartt - Water Policy Analyst / Rules Coordinator
725 Summer St. NE, Suite A
Salem, OR 97301

via email to: Laura.A.Hartt@water.oregon.gov

RE: Groundwater Allocation Rules

Ms. Hartt:

The Deschutes River Conservancy (DRC) is a 501(c)3 non-profit based in Bend, Oregon with a mission to restore streamflow and improve water quality in the Deschutes Basin. The DRC was formed by the Confederated Tribes of the Warm Springs, irrigation, and environmental interests in 1996. Using a coordinated, collaborative, and voluntary approach, together with our partners we have restored over 300 cubic feet per second (cfs) to basin rivers while increasing the reliability of agriculture water rights and operations, and water supply for cities. We have accomplished this through conservation, market-based incentives, collaborative partnerships, and innovative programs. The DRC's Board of Directors includes diverse representation from tribal, environmental, irrigated agriculture, and hydropower interests as well as federal, state, and local government.

Thank you for the opportunity to participate in and provide comments on the Groundwater Allocation Revised Rules and for the DRC seat on the Rules Advisory Committee (RAC). The Deschutes Basin, like many throughout the state, faces unique challenges and barriers in its effort to balance water needs to support agriculture, rivers and communities while maintaining resiliency. The Deschutes Basin has a long history of collaborative success with the DRC, partners and stakeholders developing and implementing water conservation and water marketing projects that restore streamflow, support agriculture, and help meet the needs of growing cities. We recently completed the data-rich Upper Deschutes River Basin Study, which was succeeded by the Deschutes Basin Water Collaborative, a group of 46 stakeholders currently working to use Basin Study information to develop a comprehensive Deschutes Basin Water Plan that prioritizes integrated implementation strategies. We believe we are on track to be a model for how we can solve water issues for rivers, aquifers, and communities at the basin level through close collaboration and with OWRD participation. A changing climate, persistent drought, and growing populations and communities only increase the urgency of this work.

We would also like to recognize the hard work of the OWRD staff in taking on this difficult and complicated rulemaking to update groundwater allocation rules to be more protective. The additional technical sessions were helpful, as were the two additional RAC's, which allowed for more in-depth discussions and important additional changes to the proposed rules. The majority of the work we do at the DRC stems from a legacy of over-appropriating rivers over a century ago. We appreciate the state's proactive approach to addressing the very real prospect of over-appropriation. As you well understand, restoring balance to an over-appropriated system is challenging work. It's preferable to protect a resource on the front end. We appreciate rules that are protective of existing water right holders, both in and out of stream, and the forward-looking sustainability

approach to reviewing groundwater allocations and are committed to work in a collaborative space to find creative solutions to water supply issues in the Deschutes Basin to avoid additional over-appropriation. A holistic view of water resources that truly strives to manage water conjunctively and that helps us understand tradeoffs of various water management scenarios on both surface and groundwater will help us best adapt to the dynamic conditions we will be facing in the future.

The ability to look at individual basins and their unique attributes within the Groundwater Allocation Rules (690-008-0001(9)(d)) allows for more scientific data to be collected or supplied that may support a different outcome from review. The decades of efforts in the Deschutes Basin to find creative and collaborative solutions that have multiple benefits and involve stakeholder participation in rebalancing water uses could be further explored with respect to sustainable use of groundwater. We appreciate that this will allow the state to consider that basins can differ dramatically and that the state rule may not be one size fits all once additional scientific information is available. We also recognize that we are fortunate in the Deschutes Basin to have some level of this data already available. This may be more difficult for other basins, as well as for additional data for the Deschutes as it is costly to collect the data necessary to develop basin specific programs. This is something that is important across the state and for which funding assistance within the state budgets will be helpful in assuring equity. Funding (and OWRD staff) to support basin specific rules - additional studies, groundwater conservation efforts, and to capitalize water banks and water markets to meet new demands will be integral to sustainability in our water supplies.

DRC appreciates the addition to 690-008-001(9)(b)(B) relating to reference levels - which allows a consideration for review of anthropogenically-enhanced recharge when setting reference levels. This will be important in the Deschutes Basin as leaky canals are increasingly piped for surface water conservation, reducing artificial recharge veining through the basin.

We would like to make several high-level points that touch on the Groundwater Allocation Rulemaking and its interconnection with water management in the Deschutes Basin as a whole.

1. Surface and groundwater are well studied and intimately connected in the Deschutes, and we would be well-served to look at the entire system holistically. We are supportive of the state's efforts to protect groundwater, AND we are trying to make up for a legacy of streamflow over-appropriation. A holistic view of water resources that truly strives to manage water conjunctively and that helps us understand tradeoffs of various water management scenarios on both surface and groundwater will help us best adapt to the dynamic conditions we will be facing in the future.

The DRC works diligently to help move water from areas of excess to areas of need. Looking to the future, with rapidly growing cities and limited water supplies, we understand the cautious review of new groundwater allocations is necessary. We would also like to suggest that supporting growing communities with *established* population centers and economies (quasi-municipal or municipal) should be of priority over issuance of new groundwater rights to small irrigation uses or undeveloped or not-yet-developed quasi-municipal uses (such as for new centers of rural development).

2. Even specifically within the groundwater realm, extending the view to some topics outside the purview of the current rule-making would be helpful, namely the measurement and regulation of exempt wells. While these rules do not apply to exempt well uses, the increasing number and density of exempt wells warrants further attention from the state. Water uses that might best be served with a group domestic or small quasi-municipal water right can and have evaded the requirements of a permit by installing

clustered exempt domestic wells which are not subject to the same rules as permitted uses. Exempt wells are also impacted by over-appropriation and diminishing groundwater levels and do play a role in the water budget in the Deschutes basin.

3. Applying an even broader holistic filter, what are the connections between water policy and our land use goals in Oregon, land use goals that generally prioritize compact growth over sprawl, compact growth in cities being much more water-efficient per capita than non-agricultural development spread out into our rural areas? Where there are limited supplies for new allocations, shouldn't our water policies reflect these land use principles? This holistic view underlines the need to take an overall basin water management approach that is situated in a specific context and recognizes the implications and interconnections with other basin goals and policies. This holistic view may stretch the boundaries of the current rule-making and isn't meant to hold it up, but it underlines the need to take an overall basin water mgt approach that is situated in a specific context and recognizes the implications and interconnections with other basin goals and policies. Basin goals and land use policies should also recognize limitations related to water supplies. These should not be siloed.
4. Our final point is that you have good partners in the Deschutes Basin. In our efforts to restore streamflow while actively trying to ensure reliable agricultural water and future water supplies for cities, we have a long history of driving conservation and innovating solutions to meet multiple needs with limited water supplies. Along with our suite of streamflow restoration strategies, we are actively involved in the Deschutes Groundwater Mitigation Program, the only program of its kind in the state. DRC is the basin's active state-chartered temporary mitigation bank, generating temporary mitigation credits through instream leases while separately facilitating permanent instream transfers that generate credits and permanently protect streamflow. This program was designed to address the interference of new groundwater pumping on surface water flows, specifically lower Deschutes Scenic Waterway flows, while incentivizing restoration of upstream tributaries and allowing for some measured growth.

Basin partners have been able to develop tools to implement this program, and the program has had some success in achieving its goals, including restoring significant flows to the Middle Deschutes River (~40 cfs) and other tributaries. This demonstrates the basin's ability to adapt and innovate to meet water management challenges. We are committed to continuing to help Central Oregon cities secure water supplies whatever the new regulatory framework looks like- because in the Deschutes all the water supplies and demands are interconnected. While we are unsure of how the Deschutes Basin Mitigation Program will interface with the new Groundwater Allocation Rules it is important to recognize that the Deschutes Basin Mitigation Rules have an impending sunset in January 2029. While we are approaching the cap and may need additional time to update these basin specific rules, addressing the sunset is of utmost importance to allow breathing room to thoughtfully address the cap and collaboratively work on other updates and how they will interface with the new allocation rules.

This is all to say that we hope the state supports the basin and looks to us as a partner in continuing to meet multiple water demands with limited water supplies. We think you will find the basin partnerships to be well-suited to do this work.

We appreciate the long view toward sustainability. Over-allocation is costly in its impacts to existing water users, future water users who may make investments and then be regulated, to our surface waters – streams and lakes that we all love, to the wildlife fisheries and industries that rely on water in and out of streams, and in the costs to generations after us who may have to correct problems we create from lack of action. We are encouraged by

the state's efforts to update its groundwater allocation rules. In implementing these rules, we need to ensure we are managing for both groundwater and surface water sustainability and understanding the system holistically. Maintaining an awareness of the impact of these rules on current water uses and supplies and to future water needs and sustainable supplies is imperative. Finally, we know how to drive conservation and develop innovative solutions and we need to extend these tools fully to the groundwater resource. The DRC is committed to restoring and protecting our rivers and aquifers, and to helping ag and municipal partners meet future water supply needs in the context of scarcity.

We regularly hear cautionary stories of new areas, in the U.S. (AZ, CA, Ogallala) and other countries (Iran, Spain), that have had such significant groundwater declines that their ability to supply basic human needs is jeopardized. We also hear success stories of areas that have been recovering depleted groundwater and have even staved off the continuation of declines (AZ). We hope to be a success story in the Deschutes Basin and in Oregon.

Thank you for your consideration of these comments and for allowing the DRC the opportunity to participate and comment during this rulemaking process.

With sincere appreciation,

A handwritten signature in black ink that reads "Kate Fitzpatrick". The script is cursive and fluid, with the first letters of each word being capitalized and prominent.

Kate Fitzpatrick
Executive Director
Deschutes River Conservancy
kate@deschutesriver.org

HARTT Laura A * WRD

From: Kay Cusick <kcastrid50@gmail.com>
Sent: Monday, April 1, 2024 5:45 PM
To: WRD_DL_rule-coordinator
Subject: Water.

Some people who received this message don't often get email from kcastrid50@gmail.com. [Learn why this is important](#)

Hello! Water is precious. We need water. Every living thing in Oregon need water. Winters are getting warmer and Summers drier and hotter and we can't afford to waste water anymore. Let's do the right thing for Oregon and keep the groundwater. Thank you. Kay Cusick.



Kelley Minty, County Commissioner

May 6, 2024

Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
laura.a.hartt@water.oregon.gov

RE: Groundwater Allocation Rulemaking Public Comment

Dear Ms. Hartt,

The proposed rules are a one-size-fits-all approach that doesn't consider the significant differences between the various basins throughout the State.

One of the main factors for determining groundwater availability is whether a proposed new use will cause "the potential for substantial interference" with surface water sources. In spite of the fact that there has been much emphasis on developing rules based on sound science, the methods for establishing "the potential for substantial interference" with surface water sources are overly simplistic and unscientific.

The overly simplistic and unscientific methods for determining "the potential for substantial interference" with surface water sources will likely result in the denial of the vast majority of new applications, even if groundwater is actually available for development. The resulting rules will essentially be a moratorium on new groundwater permits.

The denial of new applications when groundwater is actually available for development will substantially impact the citizens of Oregon (this point can be elaborated and expanded considerably).

To resolve these problems, I request that the Department pause the rulemaking process to allow for additional time to develop more scientifically based methods for evaluating interference with surface water sources.

Sincerely,

A handwritten signature in blue ink that reads "Kelley Minty". The signature is written in a cursive, flowing style.

Kelley Minty
Vice-Chair, Klamath County

Oral Comments – La Grande Public Hearing (April 18, 2024)

Kelly Warren (Pilot Rock)

My name is Kelly Warren. I'm a certified water right examiner residing in Pilot Rock, Oregon. I do not represent the Confederated Tribes of the Umatilla Indian Reservation. I represented the CTUIR on the Rules Advisory Committee (RAC). My testimony this evening does not reflect the views of the CTUIR and are strictly my own. I do not represent the CTUIR today. The rulemaking was conducted with the following objective and intent: to manage Water Resources sustainably while protecting existing groundwater and surface water rights. I agree with that stated objective, but I do have issues with the draft rules. Specifically, the methods used to determine if groundwater is available and the method for determining if a proposed beneficial use of groundwater will cause substantial interference with an existing surface water use. OWRD began the RAC with a presentation where it was stated that all groundwater is connected to surface water. This statement was pushed back on by RAC members familiar with the deep Columbia basalt aquifer formation in eastern Oregon. The deep basalt formation the Grand Ronde has no hydraulic connection to surface water and should be exempt from the groundwater surface water hydraulic connection analysis required in proposed Division 9 rules and reflected in the Division 300 "water is available" flowchart, Figure 2. And potential for substantial interference analysis requirements in draft rule Division 9, 40 provided the proposed well is cased to seal out upper aquifers. I also want to express my concern that the best science is not being used to determine surface water availability as outlined in Division 400. Surplus water above that needed to satisfy existing rights and to meet minimum stream flow requirements, surplus water is that that is above that needed to satisfy existing water rights and meet minimum stream flow requirements. OWRD uses WARS, a program to determine surplus water available for appropriation. OWRD acknowledged during the RAC that the data used in the program is outdated, and I learned tonight that the period of record for that is 1958 to 1980 that's used. That's extremely outdated and needs to be updated before these rules are implemented, I believe. I understand that OWRD is working on that and has funding to update that system. Existing groundwater rights located within one mile of a stream and determined hydraulically connected are also evaluated for their percentage of surface water use. I believe the wells determined to be hydraulically connected will be evaluated based on their permitted quantity and season of use, not their reported or actual use. Paper water versus actual use. While I agree with using the potential quantity of a water right in the analysis, abandoned water rights should not be included in the surface water budget calculations. Paper water. Or debited against the available water in the stream. If the water right meets the criteria for cancellation under the five year, use it or lose it rule. The water right cancellation should begin in order to eliminate those who are banking water in favor of new beneficial uses that will benefit the local economy and allow people to use that water as they currently want to versus somebody that's just holding a debit on that surface water account. That concludes my comments. I appreciate the opportunity. Again, I want to repeat I'm not representing the CTUIR with this testimony. Thank you.

Oral Comments – Central Point Public Hearing (May 16, 2024)

Kevin Christman (Jackson County)

Kevin Christman. I'm a rancher in Jackson County. And I was in quite a few of the sessions where they were implementing fire maps that were happening. And it says a lot of similar overtones to it, where it's an appointed agency body that is in charge of regulating sovereign property rights. And it feels like it's too complicated of an issue to be solved as one size fits all like the gentleman before was mentioning. And that when they were confronted on the university studies and these graphics, and these impressive maps and they were asked the question of have you actually visited any of the properties that you're pertaining to it. And they haven't. And so, boots on the ground of understanding properties. I have my own best interest in mind when it comes to my property. I want to take care of it. I want to make sure that I have water. I want to make sure that my grounds are secured against fire, that my house is protected, and that for a government agency to be dictating what I can and cannot do with my property, it's a slippery slope of a very complicated system that creates a complicated bureaucracy that I just feel like this needs to be rethought. It's being put forward in a way that doesn't feel like it takes everything into account. Just like we're talking about different water rights that are being used or being stolen or it's just too complicated of the issue that it needs to be to have a one size fits all approach.

Oral Comments – Central Point Public Hearing (May 16, 2024)

Kevin Gill (Clouser Well Drilling)

My name is Kevin Gill with Clouser Well Drilling here in Southern Oregon and also the Oregon Groundwater Association. I appreciate the opportunity to give public comment. I do want to make a comment about the diagnosis of dry wells. What our finding is, up to 20% of the wells that are diagnosed as dry or not dry, there's obstructions in the wells from homeowners trying to install their own pump equipment or installing incorrect pump equipment and over pumping the wells causing a collapse. Also plug screens and liners. So not all wells that are labeled dry are dry. I just wanted to make that comment. Also, water levels are actually, according to some of the data that the state has in the hydrographs from observation wells, they are stabilizing this year, actually rising as we've had good recharge in the form of rain and snow in the mountains. Prior appropriation in Oregon does already protect senior water users, so existing law already in place will do exactly what some of these rules are intending to do. The state's mission of beneficial use without waste is a good statement, but in order to do that we need good policy, we need good stewardship, and we need to make good decisions and that that would take into account a variety of stakeholders. So, it's our recommendation that we do a more thorough study on what we're facing here and in particular in our area, a Rogue Basin study that hasn't been done, and that we pause the rule making so we get it right with the water allocation project. So, it's our Oregon Groundwater Association and my recommendation that this group pauses rulemaking to make a better decision. Thank you.

HARTT Laura A * WRD

From: Rep Mannix <Rep.KevinMannix@oregonlegislature.gov>
Sent: Monday, May 20, 2024 2:18 PM
To: HARTT Laura A * WRD
Cc: Rep Yunker
Subject: Groundwater Allocation Rulemaking
Attachments: 2024.03.13_Groundwater Rules Public Comment_Representative Yunker (003).pdf

You don't often get email from rep.kevinmannix@oregonlegislature.gov. [Learn why this is important](#)

Dear Ms. Hartt –

I have reviewed Representative Yunker's letter dated March 13, 2024, commenting on the Groundwater Allocation Rulemaking. The letter is attached. I share his same concerns.

Sincerely,

Kevin L. Mannix



Representative Kevin L. Mannix

Oregon House of Representatives
House District 21
(O) (503) 986-1421
900 Court Street, Office 384 | Salem OR, 97301
www.oregonlegislature.gov/mannix

Please note that all emails sent to and from this email address are shared among Representative Mannix and his staff and may be subject to disclosure under Oregon public records laws.

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Kyle Smith (The Nature Conservancy)

My name is Kyle Smith, and I'm the Director of Government Relations for The Nature Conservancy in Oregon. And today I'm speaking on behalf of the Oregon Water Partnership. It is comprised of seven statewide organizations, including The Nature Conservancy as well as Environmental Defense Fund, Oregon Environmental Council, Sustainable Northwest, Trout Unlimited, WaterWatch, and Wild Salmon Center. Organizations are working together, turn to abundant cold, clean water to sustain our communities, livelihoods and ecosystems. Oregon Water Partnership strongly supports the proposed changes to the groundwater allocation rules as an essential tool for managing our water resources responsibly. You'll hear from some of our member organizations with independent comments, but these comments represent the views of the water partnership as a whole. There are four key reasons we support the new rules. First, the proposed rules are grounded in robust scientific research and data analysis. They ensure that groundwater management decisions are based on the best available science and data. Moving on. Water rights will only be granted if there's clear evidence that our water supply can handle. Second, the proposed rules will help safeguard Oregon's groundwater from further overallocation the current. The current rules have led to significant groundwater declines in many areas, threatening drinking water access and reliability, agricultural production, groundwater dependent ecosystems, and recreational and cultural resources. The proposed rules will help manage groundwater more sustainably, which is identified as a priority in Oregon's Integrated Water Resource Strategy as recommended action 11. Third, the proposed rules improve how the state recognizes and manages the connection between surface and groundwater. Unsustainable groundwater use affects hydrological connected surface water, which can injure senior surface water rights. Protecting the natural flow of rivers and streams is crucial for fish, wildlife and the people of Oregon. Finally, the proposed rules will help protect water supplies for future generations. Oregon's changing climate is bringing more intense droughts, increased evapotranspiration from plants, and a shift in winter precipitation from snow terrain, all of which affect water supply and demand. Oregonians are already suffering the consequences of past allocation decisions, and allocations made today will affect groundwater sustainability in future decades. We'd like to thank Oregon Water Resources Department for involving the public and various stakeholders in this process. The four public rulemaking hearings over the past two months demonstrated substantial support for the proposed rules, including a well-attended hearing event. So, we encourage the Commission to consider those comments as well. Oregon Water Partnership urges the adoption of these proposed rules. They represent a careful and responsible approach that will better protect groundwater resources for all Oregonians.

HARTT Laura A * WRD

From: Kristina Bennett Cheney <kristina@helpnavigatingtransitions.com>
Sent: Friday, June 14, 2024 3:29 PM
To: WRD_DL_rule-coordinator
Subject: Support Revised Groundwater Allocation Rules

Some people who received this message don't often get email from kristina@helpnavigatingtransitions.com. [Learn why this is important](#)

Hello!

I'm sending a letter to support new Groundwater Allocation Rules. From what I've read and what I believe personally, I believe that the new rules will result in more sustainable management of Oregon's groundwater as well as better protect streamflows and cold water inputs to Oregon rivers and streams from the impacts of over-pumping hydraulically-connected groundwater. The impacts of climate change add to the risks over pumping. Thank you for hearing me and supporting these new rules,
Kristina Bennett Cheney, MA, CCC
Eugene, OR 97404

HARTT Laura A * WRD

From: dicklaura s <dicklaurasecord@yahoo.com>
Sent: Sunday, June 9, 2024 8:59 PM
To: WRD_DL_rule-coordinator
Subject: water rights

Some people who received this message don't often get email from dicklaurasecord@yahoo.com. [Learn why this is important](#)

Dear State of Oregon,

We get our water from Mother Nature + Oregon passed years ago to take over water rights.
This seems so wrong. Maybe redo the requirements./ rules.
This effects many small businesses and putting some out of business.
So wrong.

Sincerely,
Laura + Richard Secord
129 Quincy Ave.
Cottage Grove, Or 97424

PS: I hope you haven't made up your mind on this issue and are only posting
comment period because it is required.

June 14, 2024

To: Laura Hartt, Water Policy Analyst and Rules Coordinator, OWRD

Submitted by: Zach Freed, Sustainable Water Program Director, TNC

Laura,

Thank you for the opportunity to comment on the proposed rule changes to Division 8, 9, 300, and 410. **The Nature Conservancy strongly supports the proposed Groundwater Allocation Rules**, which will help prevent further over-allocation of Oregon's aquifers.

The Nature Conservancy (TNC) is a science-based, non-partisan organization committed to conserving the lands and waters on which all life depends. In Oregon, TNC has over 80,000 supporters and members in every county. Based in communities around the state, we manage lands and waters in varied ecosystems and partner with ranchers, farmers, fishers, forest and environmental interests on some of the most challenging conservation issues facing people and nature.

We support the proposed rules, but advocate for one adjustment in the proposed Division 9 rules to align them with intent. Specifically: proposed OAR 690-009-0040(5) should be edited to remove the word "may", which—as written—implies that a permit can be issued even if there is a finding of potential for substantial interference with a surface water source. TNC recommends the following correction, which will ensure the rules correctly match the intent:

OAR 690-009-0040(5): "For the purposes of issuing a permit or limited license for a proposed groundwater use, a finding of potential for substantial interference with a surface water source **shall** mean that water is not available for the proposed groundwater use if the use will substantially interfere with a surface water source as per the definition in OAR 690-008-0001 and OAR 690-300-0010."

If that change is made, we believe the proposed rules will meet the Oregon Water Resources Department's rulemaking objective to "be more sustainable and protective of existing water right holders." There is abundant evidence that the existing allocation rules lead to aquifer depletion, streamflow reduction in over-appropriated rivers, and reduced access to drinking water for rural communities that rely on domestic wells. Oregon is already experiencing the impacts of over-allocation on declining groundwater levels, demonstrated by multiple

statewide analyses^[1,2,3] and place-based studies in the Willamette⁴, Deschutes⁵, Klamath⁶, and Harney⁷ basins. A recent report by the Oregon Secretary of State⁸ noted the impact of dry wells and water scarcity on families, farmers, industry, and recreation.

The proposed approach to defining “reasonably stable” water levels as a key indicator of sustainability is consistent with the most modern science on groundwater sustainability^[9,10]. While groundwater levels may fluctuate for other reasons (e.g., reducing recharge due to canal lining), the proposed rules allow for discretion by the Department to account for those fluctuations using the best available data¹¹.

The proposed rules are well-aligned with Oregon’s Integrated Water Resources Strategy, which identifies sustainable groundwater management a statewide priority and suggests Recommended Action 11.E: Develop Additional Groundwater Protections¹². Although the existing and proposed rules governing groundwater allocations are statewide in scope, there are processes already in place to help address regionally-specific groundwater concerns. To address concerns from stakeholders, the proposed rules allow for basin-specific definitions to be developed, as long as the basin-specific definitions consider impacts to wells, ecosystems, and long-sustainability of the resources¹¹. These common-sense considerations will ensure that basin-specific definitions are consistent with priorities in Oregon’s Integrated Water Resources Strategy and aligned with the mission of Oregon Water Resources Department “to ensure the long-term sustainability of Oregon’s ecosystems, economy, and quality of life.” We strongly recommend keeping those considerations in place, as they will help guide future basin-specific conversations with stakeholders, OWRD, and the Oregon Water Resources Commission.

The Nature Conservancy supports the proposed rules because they meet the stated objective of the rulemaking: protecting existing water rights and sustainably managing Oregon’s finite water resources.

¹ Saito, L., Freed, Z., Byer, S., & Schindel, M. 2022. The vulnerability of springs and phreatophyte communities to groundwater level declines in Oregon and Nevada, 2002-2021. *Frontiers in Environmental Science* 10:1007114.

² Scandella, B., & Iverson, J. 2021. Oregon groundwater resource concerns assessment. Oregon Water Resources Department, Salem, OR.

³ New York Times. 2023. Uncharted Waters: America is Using Up Its Groundwater Like There is No Tomorrow. Available at: <https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html>

⁴ Conlon, T.D., et al. 2005. Ground-Water Hydrology of the Willamette Basin, Oregon. USGS SIR 2005-5168.

⁵ Gannett, M.W., et al. 2001. Ground-Water Hydrology of the Upper Deschutes Basin, Oregon. USGS SIR 2000-4162.

⁶ Gannett, M.W., et al. 2007. Ground-Water Hydrology of the Upper Klamath Basin, Oregon and California. USGS SIR 2007-5050.

⁷ Gingerich, S.B., et al. 2022. Groundwater resources of the Harney Basin, southeastern Oregon. USGS SIR 2021-5103.

⁸ Oregon Secretary of State. 2023. Advisory Report: State leadership must take action to protect water security for all Oregonians. Report 2023-04.

⁹ Gleeson, T., et al. 2020. Global groundwater sustainability, resources, and systems in the Anthropocene. *Ann. Rev. Earth Sci.* 48: 431-463.

¹⁰ Cuthbert, M.O., et al. 2023. Defining renewable groundwater use and its relevance to sustainable groundwater management. *Water Resources Research* 59(9).

¹¹ Proposed rule: 690-008-0010(9)(d)

¹² Mucken, A., and Bateman, B. 2017. Oregon’s 2017 Integrated Water Resources Strategy. Oregon Water Resources Department. Salem, OR.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Lauren Link (The Nature Conservancy)

For the record, I'm Lauren Link, Policy Associate for The Nature Conservancy here in Oregon. The Nature Conservancy has been participating in this rule making update since late 2021 when the Oregon Water Resources Department first began their extensive public engagement. And we were also a member of the rule making Advisory Committee convened by the agency. First, we want to thank the Department for their commitment to public outreach throughout this process. The Department has been providing engagement opportunities and meeting with communities for years, as we saw on Justin's slide earlier, and we really appreciate their intentionality when building out the RAC to be both diverse and representative of the many groundwater interests in Oregon. The Nature Conservancy strongly supports the proposed new rules because we believe they will help Oregon secure a sustainable water future for both people and nature. This is especially important due to projected future climate conditions when more frequent and severe droughts are predicted. We believe that these proposed rules do three things right. First, they propose an evidence based definition for reasonably stable groundwater levels, which could be also considered a method for sustainability. This definition came from an assessment of thousands of wells across the state. Second, the proposed rules correctly acknowledge that pumping too much groundwater will dry up. Our rivers, wetlands, and lakes studied by The Nature Conservancy estimates that more than 1/3 of all rivers, half of all wetlands, and 2/3 of all lakes rely on groundwater to persist. Finally, the proposed rules use the precautionary principle. We need to be making data informed decisions about water management. Simply put, we can't manage what we don't measure. These rules require the state to look at groundwater level trends and make sure that current water use is sustainable before allocating new water rights. This data-driven approach is important, and The Nature Conservancy appreciates that these rules represent the best available science. Based on a sensitivity analysis of the on the ground measurements for wells, we know that these rules will be applicable anywhere within the state, from the coast to the high desert. There's been a lot of comments concerning basin by basin approach. TNC believes that these rules do go further by allowing for basin rulemaking to make site specific adjustments to better reflect any unique aquifer characteristics. Regardless, the rules allow for future development of groundwater as long as evidence suggests water is still available. The Nature Conservancy supports the proposed rules because we believe that they will provide a more sustainable and secure water future for people and nature.

.



June 14, 2024

Oregon Water Resources Commission
c/o: Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

Re: Proposal to amend, repeal, and adopt rules pertaining to allocation of new groundwater rights

Chair Quaempts, Vice-Chair Smitherman and Members of the Commission:

Thank you for the opportunity to provide comments in response to the Water Resources Departments (OWRD) proposed changes to the Groundwater Allocation rules. The Oregon Farm Bureau Federation ("OFB") is the state's largest general agriculture association, representing nearly 6,600 families engaged in farming and ranching. Our mission is to promote educational improvement, economic opportunity, and social advancement for our members and the farming, ranching, and natural resources industry as a whole.

Water is the lifeblood for Oregon's farmers and ranchers; it is essential for the Oregon's agricultural economy. Agriculture contributes an estimated \$50 billion dollars to the state's economy, making it one of Oregon's largest economic drivers. Given the importance of water to all of Oregon's 220+ commodities, we have a strong interest in ensuring that the OWRD proposes administrative rules that will not only protect our water resource, but also make it available to the public through a fair, transparent equitably accessible permit process that is reflective of Oregon's diverse landscape.

We believe that the proposed rules fail to address the needs of all Oregonians and will effectively halt the issuance of new groundwater permits, even in areas where groundwater is available, unless applicants can afford to pay for the necessary data that the state lacks. The department already possesses numerous tools for protecting Oregon's groundwater, which should be utilized more effectively. Therefore, the Commission should not adopt these rules. Instead, it should instruct OWRD to enhance the use of existing groundwater management tools and collaborate with the legislature to secure additional funding for groundwater studies.

While OWRD's proposed new rules to update the criteria for determining water availability for new groundwater rights aim to "clarify and update key terminology used for decision-making when issuing new groundwater rights," OFB remains concerned that these new rules will significantly limit the ability of Oregonians to obtain new groundwater permits. This limitation would apply to all basins, including those not currently experiencing serious water level declines. The proposed rules redefine "reasonably stable groundwater levels" and introduce stricter regulations on the interconnections between surface and groundwater. They also restrict access to water in basins lacking adequate data, or they require applicants to fund their own data collection where state data is insufficient. This creates an unfair barrier to water access.

The proposed groundwater allocation rules will impact a variety of water users and applicants, including new farms and commercial operations. OFB urges the Commission to reconsider the proposed rules and to encourage the Department to adopt alternative approaches that:

1. Utilize existing OWRD authorities that are site-specific and recognize the unique attributes of each watershed and aquifer in Oregon.
2. Prioritize basins and sub-basins with the greatest need for groundwater study, such as areas with serious groundwater declines, frequent shortages, and significant connectivity to over-allocated surface waters. Request legislative funding to increase OWRD's groundwater data.
3. Require unperfected groundwater rights to demonstrate beneficial use under water-short conditions, thereby limiting the development of existing uses to known quantities.
4. Use existing OWRD authority to:
 - Reclassify groundwater uses.
 - Enforce authority to shut off groundwater rights under certain conditions.
 - Designate and focus on priority areas using "Serious Water Management Problem Area Authority."
 - Implement processes for limiting pending groundwater applications and setting conditions in over-allocated areas.

While OFB agrees that protecting Oregon's groundwater from over-allocation is necessary, the proposed rules will act as a de facto moratorium on groundwater and is a one-size-fits-all solution that does not account for the diverse needs of Oregon's landscapes and water basins. Thank you for your careful consideration of this important matter.

Sincerely,
Lauren Poor
Vice President of Government & Legal Affairs
Oregon Farm Bureau

Leslie Bach
4920 SE Long St
Portland, OR. 97206

May 30, 2024

To Whom it May Concern:

As an Oregon resident for over 30 years and a professional hydrologist for longer than that, I am pleased to express my support for the Draft Oregon Groundwater Allocation Rules. I urge you to finalize these rules as soon as possible to ensure sustainable management of this critical resource.

Oregon has always been a leader in groundwater management, with the passage of the 1955 Groundwater Act, and the recognition that surface and groundwater are hydraulically connected. These revised rules will continue and elevate Oregon's role as a forward-thinking leader in western water management.

As one of the authors of the original Oregon atlas of Groundwater Dependent Ecosystems^{1,2}, I have been, and continue to be, concerned with the impacts of groundwater withdrawal and declining water tables on Oregon's freshwater ecosystems. A relatively recent update to this Atlas³ demonstrates that more than 36,000 miles of streams, nearly half of all wetlands, and almost two-thirds of all lakes in Oregon rely on groundwater for all, or part of their water supply. These groundwater-dependent ecosystems (GDEs) are some of Oregon's most biodiverse and climate-resilient habitats, and they are threatened by the over-allocation of groundwater.

In addition to the potential impacts to GDEs, unsustainable groundwater management impacts all aspects of human uses. As water levels decline, domestic wells can go dry, often resulting in significant costs to landowners as they dig deeper wells or pay for alternative water supplies, where available. These impacts disproportionately affect rural communities. We have also seen how unsustainable groundwater pumping can cause injury to existing agricultural water users when they are no longer able to access their full senior water rights. These impacts will continue and potentially increase in the future if we do not address our current groundwater management issues.

The Oregon Water Resources Department has undertaken a comprehensive and inclusive process in developing these draft rules. The rules are science-based, and their adoption will promote sustainable groundwater management now and into the future. I believe they will result in benefits to all human sectors that rely on groundwater, including agriculture, municipal water suppliers and domestic well users. They will also go a long way to protecting Oregon's groundwater-dependent streams, wetlands and lakes, and the plants and animals that rely on them.

I applaud the Oregon Water Resources Department and the Oregon Water Resources Commission for their thoughtful, forward-looking approach to developing these draft rules. I urge you to keep this process on track and finalize these rules in a timely manner.

Sincerely,

Leslie B. Bach, Ph.D.

¹Brown JB, Wyers A, Bach LB, and Aldous AR. 2009. Groundwater-dependent biodiversity and associated threats: a statewide screening methodology and spatial assessment of Oregon. The Nature Conservancy. 175 p.

²Brown JB, Bach LB, Aldous AR, Wyers A, DeGagne J. 2011. Groundwater-dependent ecosystems in Oregon: an assessment of their distribution and associated threats. *Frontiers in Ecology and the Environment* 9(2):97-102. Doi: 10.1890/090108

³Freed, Z., Schindel, M., Ruffing, C., & Scott, S. 2022. Oregon Atlas of Groundwater-Dependent Ecosystems. The Nature Conservancy, Portland, OR



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission

725 Summer St. NE, STE A

Salem, OR 97301

Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

June 11, 2024

RE: WRC Agenda Item K - Groundwater Allocation Rulemaking (6-14-2024)

Dear Chair Quaempts and members of the Commission:

Thank you for the opportunity to comment on the critically important proposed Groundwater Allocation Rules (Proposed Rules). WaterWatch was a member of the Groundwater Allocation RAC. We have provided comment to the Commission a few times previously in support of the rulemaking. WaterWatch is very supportive of the Proposed Rules and appreciative of the OWRD's thoughtful, in-depth work and robust public engagement that went into developing the Proposed Rules.

WaterWatch will be submitting a detailed comment letter to the rules coordinator, including proposed language to add clarity to certain provisions and to advocate for strengthening certain resource protections, but writes here to express our support for the Proposed Rules, address a few specific issues, and urge your support.

Testimony from the public rulemaking process needs to be utilized and considered

As you are likely aware, there were four public rulemaking hearings held around the state in April and May, and a written comment period that closes June 14th. A great many people offered thoughtful and compelling oral testimony at the hearings in support of the Proposed Rules. This was the official public rulemaking process and we urge the Commission to watch the testimony, which is available on OWRD's Groundwater Allocation webpage. This includes testimony from an April 4th hearing in Bend, which included local people and organizations testifying in support of the rules and the central Oregon municipal interests sharing their perspectives. Comments in support of the rules outnumbered comments of concern at the April 4th Bend hearing. Many additional thoughtful comments in support were voiced at the May 21st hearing in Salem, which included an option to testify virtually and support for the rules was voiced at each of the four hearings. We flag this because it would be an unfair and unbalanced process if the added opportunity to comment directly to the Commission on June 14th erased, or undermined, all of the effort that went into testifying during the original, official rulemaking hearings. We similarly urge full consideration of the comments that will be submitted by the June 14th deadline.

Key reasons WaterWatch supports the Proposed Rules

- **Alignment with Oregon's 1955 Groundwater Act (ORS 537.505 *et seq.*)**

The Proposed Rules would align with statute. The existing rules, in contrast, do not align with statute as demonstrated, for example, by the plummeting groundwater levels in places like the Harney Basin caused

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by over-issuance of groundwater permits, and the fact that the existing permitting process fails to protect senior water rights from injury caused by pumping. Importantly, the Proposed Rules define and maintain (with regard to new allocations) reasonably stable groundwater levels, better protect groundwater use for human consumption, better protect senior water rights (including instream water rights), and would limit issuance of new permits to when water is available for the use.

- **Science-based and data-driven.**

The proposed Division 9 rules related to pumping affecting streamflow are consistent with the best available science in Oregon and beyond. Within Oregon, groundwater studies by the U.S. Geological Survey (USGS), in cooperation with OWRD, in major basins like the Klamath, Deschutes, Willamette, and Harney demonstrate the influence of groundwater pumping on streams. Recent nationwide studies across the United States also provide evidence for pervasive impacts to streamflow due to groundwater pumping. Further, the proposed Division 8 rules defining “reasonably stable” are based on an OWRD analysis of thousands of groundwater levels across the state that was peer reviewed by USGS. The ‘dynamically stable’ concept applied in the rules uses groundwater level trends to determine sustainability, which is a modern and up-to-date approach also supported by recent studies.

- **Implements a “Default to No” approach to avoid over-allocation where data is lacking.**

The Proposed Rules reverse OWRD’s decades-long damaging “Default to Yes” approach, whereby when reviewing a groundwater permit application, if data was lacking to determine whether groundwater was already over-allocated, the permit would be issued. This “Default to Yes” approach led directly, most recently, to the extremely challenging (and expensive) groundwater over-allocation problem in the Harney Basin. In contrast, the Proposed Rules establish the type and amount of data needed to determine whether groundwater levels are reasonably stable, and then change the default so that a lack of data will result in denial, or “Default to No.” This is a major and critically important change.

- **Implements a significantly more robust protection for senior rights on hydraulically connected surface water.**

For decades, the existing rules have resulted in issuance of groundwater permits that have reduced streamflows and injured senior surface water rights, in contravention of the Groundwater Act and the foundation of prior appropriation. This is because the existing Division 9 rules only require consideration of a fraction of the pumping impacts. The Proposed Rules remedy this by requiring full accounting of the impacts of proposed pumping on hydraulically connected surface water, combined with consideration of whether the surface water is over-appropriated, or withdrawn, in determining whether to issue a new groundwater right.

- **Important security for existing domestic well users.**

Many people in rural areas of Oregon rely on exempt domestic wells to provide drinking and household water. While exempt wells can pose their own problems in certain contexts, jeopardizing access to drinking water for existing domestic well owners by over-allocating groundwater to other junior uses is clearly problematic. It should be noted that simply drilling domestic wells deeper is not always workable due to water quality problems that can be encountered at increasing depths. Further, there is a significant expense associated with deepening domestic wells. The Proposed Rules’ implementation of the 1955

Groundwater Act's requirement to determine and maintain, with regard to new allocations, "reasonably stable" groundwater levels will provide important security for this drinking water source.

Specific Comments (again, WaterWatch will be submitting detailed comments on the rules but we wanted to highlight a few important things to the Commission in advance of the Bend Commission meeting):

1. The 'considerations' in the basin specific rule option should be retained and strengthened.

The Proposed Rules allows for a basin specific approach to defining and applying the statutory term "reasonably stable" groundwater levels. Specifically, the rules state:

"The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission's authority in ORS 536.300 and 536.310. Any proposed superseding basin program definition *must consider*, at a minimum, the anticipated impacts of the new definition on:

(A) the number of wells that may go dry; and

(B) the character and function of springs and groundwater dependent ecosystems; and

(C) the long term, efficient, and sustainable use of ground water for multiple beneficial purposes."

Proposed OAR 690-008-0001(9)(d) (emphasis added). These are common-sense considerations that are important to Oregonians *and* that are consistent with the 1955 Groundwater Act. Further, there is certainly nothing unworkable or burdensome about 'considering' the impacts of a basin rule definition on these factors. OWRD included the basin specific rules option to address concerns raised by certain water user groups in the RAC about basin specific hydrology, resulting in flexible Proposed Rules.

While the Proposed Rules rightly require that basin rules consider the impact of any new definition on these factors, we note that these factors closely link to requirements of the 1955 Groundwater Act that must be met. We therefore suggest that, not only is it critically important to retain these considerations, but that including stronger sideboard requirements for the basin specific option would help ensure transparency and alignment with the statute. This would also help support stronger basin rules that better meet the needs of all interests.

We also note that while the basin rule option offers local flexibility, the Proposed Rules already account for variations in hydrogeology and hydrology across the state, because those are part of what drives the groundwater levels, groundwater level trends, and hydraulic connection to surface water that are required to be considered in the permitting process contained in the Proposed Rules.

2. The Proposed Rules implement important pieces of the Integrated Water Resources Strategy.

The 2017 Integrated Water Resources Strategy (IWRS) calls on the state to "Develop Additional Groundwater Protections" (Recommended Action 11.D). This recommendation expands upon a number of needed actions identified in the 2012 IWRS, including a call for the protection of groundwater in the regulatory and permitting processes (2012 IWRS actions 10F,10G). The Proposed Rules bring agency practices into alignment not only with statutory directives, but also with the recommendations in the IWRS.

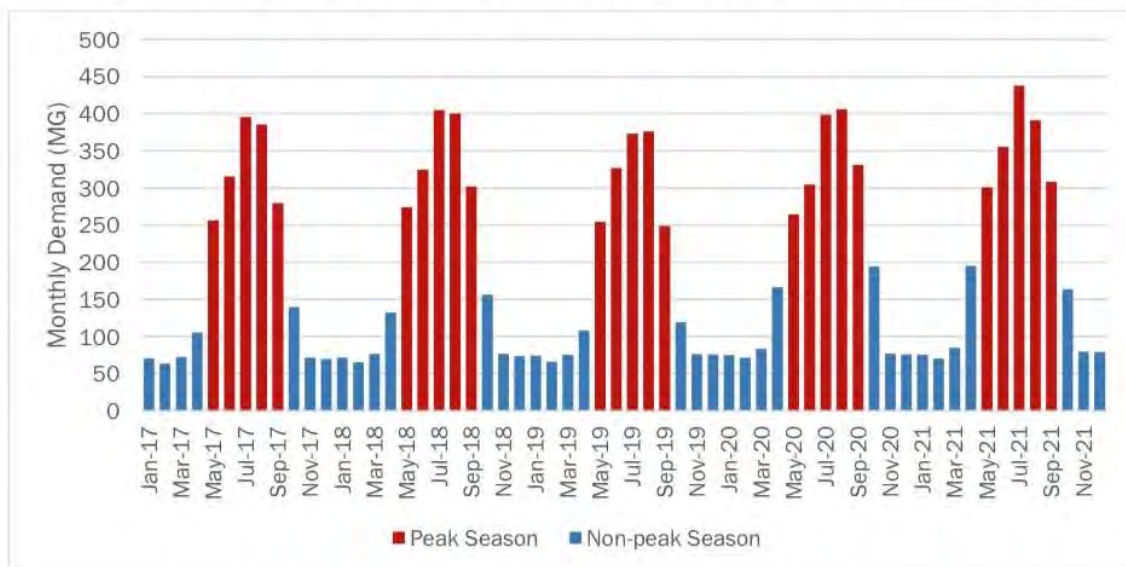
3. Cities have the water rights and tools to work within the Proposed Rules to meet reasonable water needs including providing additional housing.

A full discussion of cities' water data is beyond the scope here, but claims that the Proposed Rules' science-based, sustainable groundwater permitting approach would conflict with developing additional housing or meeting cities' water needs do not appear supported by data.

As an example, below is information from the 2022 City of Redmond Water Management and Conservation Plan (WMCP). It is important to note that **currently, the city’s average daily demand is only about 25% of its already permitted water rights, and by 2043 the city projects that average daily demand will still be well under 50% of its permitted water rights.** (City of Redmond WMCP, p. 5-5).

“Exhibit 2-6 shows total monthly demand, with the peak season of May through September in red and the non-peak season in blue. The average monthly demand was 337 MG during the peak season and 95 MG during the non-peak season. The MMD averaged 404 MG and these peaks occurred in July (2017, 2018, and 2021) and August (2019 and 2020).”

Exhibit 2-6. Monthly and Seasonal Demand, 2017 through 2021

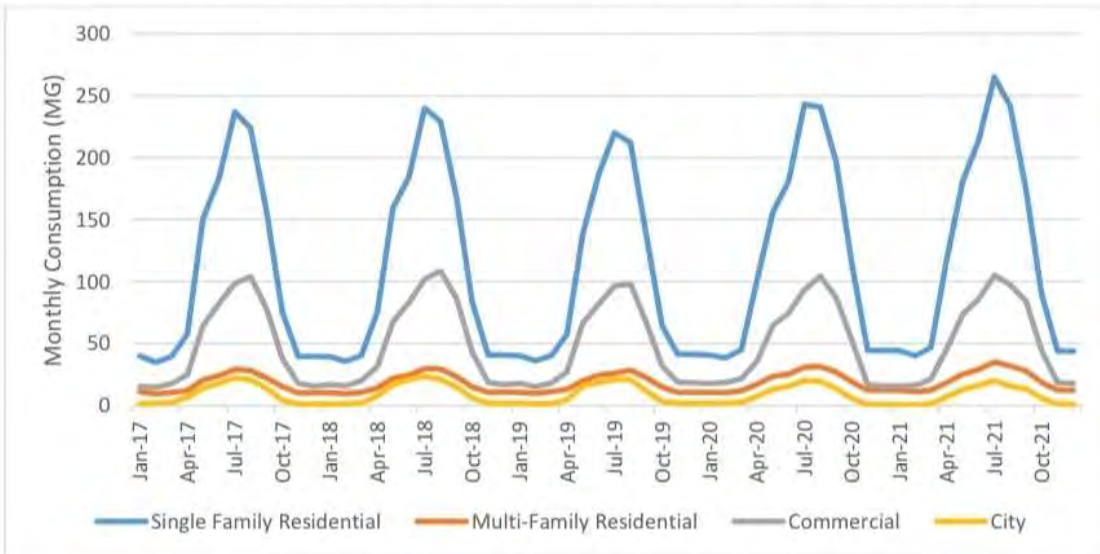


Source: City of Redmond WMCP, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-9).

On Figure 2-6, the red bars show the dramatic increase in water use due to outdoor summer water use (e.g. lawn watering and landscape watering). The graph shows that it is *not* household use driving water demand – it is strictly peak summer use driven by outdoor watering. The current water use could support water for far more households by addressing the high peak summer use, for example through better conservation practices including but not limited to landscaping that is more adapted for the amount of water naturally available during the summer months.

To examine this further, Exhibit 2-11 (also from the City of Redmond WMCP), shows how water use for multi-family residential use (shown in orange) is much more flat year round and does not contain the large outdoor water use peak currently associated with single family homes (shown in blue). There appears ample room for conservation practices to free up water needed for additional multi-family housing, or any housing not entailing extensive outdoor watering.

Exhibit 2-11. Monthly Consumption by Customer Category, 2017 through 2021



Source: City of Redmond Water Management and Conservation Plan, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-12).

The City of Redmond WMCP also provided this analysis:

“Average monthly peak season water use in 2021 was 3.5 times higher than non-peak season water use for single-family residential connections (due to outdoor landscape watering associated primarily with large residential lots), down from 4.1 times higher in 2017. In addition to the City’s water conservation outreach activities, this reduction is likely attributable to a reduction in average lot sizes for single family homes driven by changes in zoning and real estate market dynamics. Average monthly peak season water use for multi-family water service connections is consistently 2.2 times higher than nonpeak season water use. The 2021 multipliers for commercial and City water use were 3.5 and 6.3, respectively.

These ratios suggest that conservation efforts focused on reducing outdoor use by single-family homes and certain commercial customers with large landscape water use, may help to address peak-season demand (see Exhibit 2-10).”

(P. 2-11). This analysis highlights opportunities to provide additional water that could be directed to additional housing through bringing down “outdoor landscape watering associated primarily with large residential lots.”

The City of Redmond WMCP also provides other data that highlight water saving opportunities, including a “Maximum Operational Demand,” which adds a significant peak to the maximum day demand caused by people turning on their outdoor watering during the same hours each day. (P. 5-3 to 5-5). Addressing that peak, for example with scheduling or reducing outdoor use, or in-city water tanks, could instead provide water for housing.

Finally, the population of City of Redmond was 37,342 in 2022, which the city projects will increase to 56,810 by 2043. (City of Redmond WMCP, p. 5-1). The Mayor of Redmond recently stated: “We have

enough water rights that we acquired over the last 20 years to meet a population of 75,000 people." (Redmond Spokesman, *State signals it's likely to deny Redmond's application for future groundwater*, October 16, 2023.) This means City of Redmond is many decades away from needing additional water, if ever, providing ample time to apply modern techniques, programs and transactions, such as implementing lawn watering schedules or restrictions and prioritizing xeriscaping – in order to sustainably meet the city's needs without causing added groundwater declines.

Further, there are many additional tools, such as water right transfers, water reuse, infrastructure improvements to bring down peak use (e.g. in-city water tanks), and the Conserved Water Act, that can all contribute to ensuring robust water supplies for the cities in a sustainable manner.

In sum, any statements that cities must be allowed to acquire additional new groundwater permits need to be objectively evaluated with available data, including data provided in the cities' WMCPs. Reviewing City of Redmond's WMCP, for instance, shows that there is ample opportunity to provide water for a great deal of additional housing, including by addressing the pattern of water use; that it is not household use driving peak water demand; and that the city's existing water rights provide for a long horizon to develop sustainable strategies.

Conclusion

Thank you for the opportunity to comment and for your continued work on this critically important issue. As noted above, we will be filing additional detailed comments to the rule coordinator. While the Proposed Rules could be more protective in some areas, WaterWatch is very supportive of the Proposed Rules because of the significant benefit they will provide for Oregon's water future and we therefore urge your support. We commend Oregon for taking this long-overdue action to correct course, using science and data, to more sustainably allocate the critically important resource of groundwater. We look forward to seeing rules adopted at your September meeting.

Sincerely,

/S/Lisa A. Brown

Lisa A. Brown

Staff Attorney

lisa@waterwatch.org



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission

725 Summer St. NE, STE A

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Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

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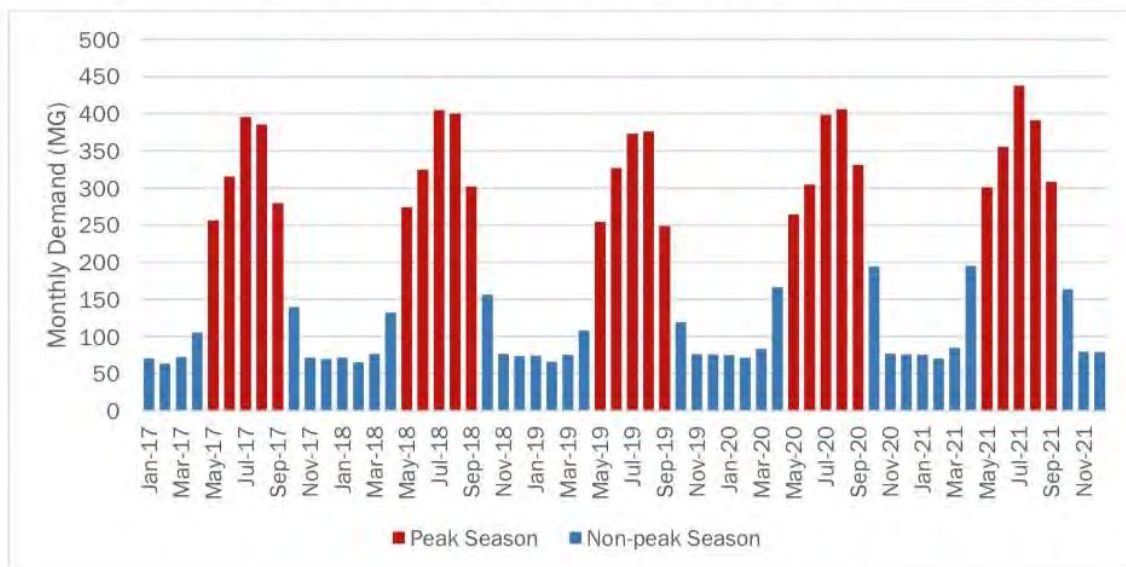
3. Cities have the water rights and tools to work within the Proposed Rules to meet reasonable water needs including providing additional housing.

A full discussion of cities' water data is beyond the scope here, but claims that the Proposed Rules' science-based, sustainable groundwater permitting approach would conflict with developing additional housing or meeting cities' water needs do not appear supported by data.

As an example, below is information from the 2022 City of Redmond Water Management and Conservation Plan (WMCP). It is important to note that **currently, the city’s average daily demand is only about 25% of its already permitted water rights, and by 2043 the city projects that average daily demand will still be well under 50% of its permitted water rights.** (City of Redmond WMCP, p. 5-5).

“Exhibit 2-6 shows total monthly demand, with the peak season of May through September in red and the non-peak season in blue. The average monthly demand was 337 MG during the peak season and 95 MG during the non-peak season. The MMD averaged 404 MG and these peaks occurred in July (2017, 2018, and 2021) and August (2019 and 2020).”

Exhibit 2-6. Monthly and Seasonal Demand, 2017 through 2021

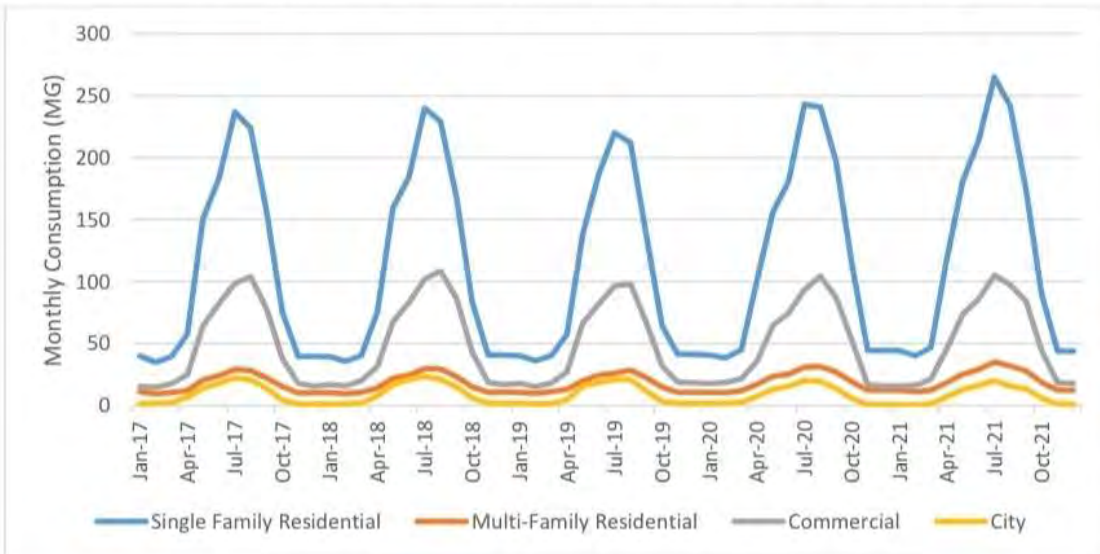


Source: City of Redmond WMCP, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-9).

On Figure 2-6, the red bars show the dramatic increase in water use due to outdoor summer water use (e.g. lawn watering and landscape watering). The graph shows that it is *not* household use driving water demand – it is strictly peak summer use driven by outdoor watering. The current water use could support water for far more households by addressing the high peak summer use, for example through better conservation practices including but not limited to landscaping that is more adapted for the amount of water naturally available during the summer months.

To examine this further, Exhibit 2-11 (also from the City of Redmond WMCP), shows how water use for multi-family residential use (shown in orange) is much more flat year round and does not contain the large outdoor water use peak currently associated with single family homes (shown in blue). There appears ample room for conservation practices to free up water needed for additional multi-family housing, or any housing not entailing extensive outdoor watering.

Exhibit 2-11. Monthly Consumption by Customer Category, 2017 through 2021



Source: City of Redmond Water Management and Conservation Plan, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-12).

The City of Redmond WMCP also provided this analysis:

“Average monthly peak season water use in 2021 was 3.5 times higher than non-peak season water use for single-family residential connections (due to outdoor landscape watering associated primarily with large residential lots), down from 4.1 times higher in 2017. In addition to the City’s water conservation outreach activities, this reduction is likely attributable to a reduction in average lot sizes for single family homes driven by changes in zoning and real estate market dynamics. Average monthly peak season water use for multi-family water service connections is consistently 2.2 times higher than nonpeak season water use. The 2021 multipliers for commercial and City water use were 3.5 and 6.3, respectively.

These ratios suggest that conservation efforts focused on reducing outdoor use by single-family homes and certain commercial customers with large landscape water use, may help to address peak-season demand (see Exhibit 2-10).”

(P. 2-11). This analysis highlights opportunities to provide additional water that could be directed to additional housing through bringing down “outdoor landscape watering associated primarily with large residential lots.”

The City of Redmond WMCP also provides other data that highlight water saving opportunities, including a “Maximum Operational Demand,” which adds a significant peak to the maximum day demand caused by people turning on their outdoor watering during the same hours each day. (P. 5-3 to 5-5). Addressing that peak, for example with scheduling or reducing outdoor use, or in-city water tanks, could instead provide water for housing.

Finally, the population of City of Redmond was 37,342 in 2022, which the city projects will increase to 56,810 by 2043. (City of Redmond WMCP, p. 5-1). The Mayor of Redmond recently stated: “We have

enough water rights that we acquired over the last 20 years to meet a population of 75,000 people." (Redmond Spokesman, *State signals it's likely to deny Redmond's application for future groundwater*, October 16, 2023.) This means City of Redmond is many decades away from needing additional water, if ever, providing ample time to apply modern techniques, programs and transactions, such as implementing lawn watering schedules or restrictions and prioritizing xeriscaping – in order to sustainably meet the city's needs without causing added groundwater declines.

Further, there are many additional tools, such as water right transfers, water reuse, infrastructure improvements to bring down peak use (e.g. in-city water tanks), and the Conserved Water Act, that can all contribute to ensuring robust water supplies for the cities in a sustainable manner.

In sum, any statements that cities must be allowed to acquire additional new groundwater permits need to be objectively evaluated with available data, including data provided in the cities' WMCPs. Reviewing City of Redmond's WMCP, for instance, shows that there is ample opportunity to provide water for a great deal of additional housing, including by addressing the pattern of water use; that it is not household use driving peak water demand; and that the city's existing water rights provide for a long horizon to develop sustainable strategies.

Conclusion

Thank you for the opportunity to comment and for your continued work on this critically important issue. As noted above, we will be filing additional detailed comments to the rule coordinator. While the Proposed Rules could be more protective in some areas, WaterWatch is very supportive of the Proposed Rules because of the significant benefit they will provide for Oregon's water future and we therefore urge your support. We commend Oregon for taking this long-overdue action to correct course, using science and data, to more sustainably allocate the critically important resource of groundwater. We look forward to seeing rules adopted at your September meeting.

Sincerely,

/S/Lisa A. Brown

Lisa A. Brown

Staff Attorney

lisa@waterwatch.org



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301
Sent by email to: WRD_DL_rule-coordinator@water.oregon.gov

June 14, 2024

RE: Groundwater Allocation Rulemaking Comments

Dear Ms. Hartt:

Thank you for the opportunity to comment on the Proposed Groundwater Allocation Rules (Proposed Rules). WaterWatch of Oregon (WaterWatch) is very supportive of the Proposed Rules. We thank the Oregon Water Resource Department (WRD) for its extensive work to draft rules that much better align with the protections in Oregon's 1955 Groundwater Act and ensure that groundwater is allocated more sustainably and in a manner that does not further injure senior water rights. The existing rules have injured senior surface water rights and allowed over-allocation of groundwater, contrary to statutory standards, resulting in extremely difficult problems across the state that require enormous expenditures of public funds to address. Adoption of the Proposed Rules is a critical step that will help prevent the creation of additional areas of over-allocation of groundwater across Oregon and better protect hydraulically connected surface water.

WaterWatch submitted a comment letter on June 11, 2024 to the Water Resources Commission that addresses several high level points and outlines the reasons for our support of the rules; that letter (Attachment A) together with this letter constitute our comments. This letter details suggestions for modest amendments to rule language to achieve the intended result, or where we urge additional safeguards to be added. These changes would create a more efficient process going forward as well as create more durable rules. The Proposed Rules are a major step forward, but making the corrections and additions below are critical to helping the state achieve success with the rule revision.

1. Amend *Proposed* OAR 690-300-0010(57)(e) to define “water is available” by including the relevant factors instead of the citations to definitions of substantial interference.

A critically important use of the standards now appearing in the definitions of “substantial interference,” “potential for substantial interference,” and interference with surface water, as those apply to new groundwater allocations, is their use in determining whether “Water is Available.” We suggest the following amendment to simplify the definition of water availability for groundwater:

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(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

(e) The requested groundwater use will not deplete a surface water source with which the groundwater use has the Potential for Substantial Interference (OAR 690-009-0020(6)) and that:
(A) is already over-appropriated during any period of the year and is the source for a surface water right having a priority date senior to the priority date(s) of the groundwater appropriation(s); or

(B) is administratively or statutorily withdrawn with an effective date senior to the priority date(s) of the groundwater appropriation(s); or

(C) is restrictively classified with an effective date senior to the priority date(s) of the groundwater appropriation(s); or

(D) is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior surface water rights and that have priority dates senior to the priority date(s) of the contributive groundwater appropriation(s) or is subject to a rotation agreement to address limited surface water supplies among surface water rights that have priority dates senior to the priority date(s) of the groundwater appropriation(s); or

(E) has a minimum perennial streamflow or instream water right that is unmet during any period of the year and has an effective date or priority date that is senior to the priority date(s) of the groundwater appropriation(s).; and

~~will not substantially interfere with existing rights to appropriate surface water, as per the definition of "substantial interference" in OAR 690-008-0001 and the rules governing groundwater interference with surface water in OAR 690-009-0010 through 0040; and ¶~~

Proposed OAR 690-300-0010(57)(e) with proposed additions shown in underline and proposed deletions shown in strikethrough. (Note: it does not seem necessary to cite OAR 690-009-0010 through 0040 here, but if so that citation could be added back.)

This amendment would retain the meaning already in the Proposed Rules, while simplifying the water availability analysis and avoiding unnecessary confusion and any problems arising from the cited definitions or the term "substantial interference," which seems extraneous and unnecessarily complicating in this definition. Simply putting the standards for when water will be found to be available into the definition also makes this comparable to how surface water availability is approached – if the surface water source is over-appropriated, a new proposed surface water application is not deemed "substantial interference" – it just results (no matter the size of the proposed use) in a finding of no water available.

2. *Proposed* OAR 690-009-0040(5) should be modified to clearly state (consistent with intent) that when certain conditions are met, there *will* be a finding that water is not available for the proposed use.

The Proposed Rules state:

“For the purposes of issuing a permit or limited license for a proposed groundwater use, a finding of potential for substantial interference with a surface water source *may* mean that water is not available for the proposed groundwater use if the use will substantially interfere with a surface water source as per the definition in OAR 690-008-0001 and OAR 690-300-0010.”

Proposed OAR 690-009-0040(5) (emphasis added).¹ The intent of this provision is to replace, for new groundwater allocations, the existing Division 9 language that failed to account for the full impacts of groundwater pumping on surface waters, in contravention of the prior appropriation doctrine, and to require denial where proposed groundwater pumping would substantially interfere with surface water. However, the use of the word “may” is inconsistent with WRD’s intent and with the prior appropriation doctrine, because it makes it appear that a

¹ For reference, *Proposed* OAR 690-008-0001 contains the following definition for substantial interference regarding connection to surface water:

(10) "Substantial interference", "substantially interfere", "undue interference", or "unduly interfere" means the spreading of the cone of depression of a well to intersect a surface water source or another well, or the reduction of the groundwater levels as a result of pumping or otherwise extracting groundwater from an aquifer, which contributes to:

(a) Depletion of a surface water source with which the groundwater use has the Potential for Substantial Interference (OAR 690-009-0020(6)) and that:

(A) is already over-appropriated during any period of the year and is the source for a surface water right having a priority date senior to the priority date(s) of the groundwater appropriation(s); or

(B) administratively or statutorily withdrawn with an effective date senior to the priority date(s) of the groundwater appropriation(s); or

(C) is restrictively classified with an effective date senior to the priority date(s) of the groundwater appropriation(s); or

(D) is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior surface water rights and that have priority dates senior to the priority date(s) of the contributive groundwater appropriation(s) or is subject to a rotation agreement to address limited surface water supplies among surface water rights that have priority dates senior to the priority date(s) of the groundwater appropriation(s); or

(E) has a minimum perennial streamflow or instream water right that is unmet during any period of the year and has an effective date or priority date that is senior to the priority date(s) of the ground water appropriation(s).

Proposed OAR 690-008-0001(10)(a).

In relevant part, *Proposed* OAR 690-300-0010 defines when water is available for groundwater as:

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:
* * *

(d) The requested groundwater source exhibits reasonably stable groundwater levels, as defined in OAR 690-008-0001; and

(e) The requested groundwater use will not substantially interfere with existing rights to appropriate surface water, as per the definition of "substantial interference" in OAR 690-008-0001 and the rules governing groundwater interference with surface water in OAR 690-009-0010 through 0040; and

(f) The total requested rate of groundwater allocation is obtainable by the expected yield of the well(s) proposed in the application given best available information.

permit could be issued despite substantial interference and no water available. If there is a finding of substantial interference or of no water available for a proposed groundwater use, then the application must be denied and that needs to be clearly stated in the rules. This clarity will make processing application much more efficient. We propose that this problem be fixed, and the language made more clear, as follows:

“For the purposes of issuing a permit or limited license for a proposed groundwater use, a finding of potential for substantial interference with a surface water source per the definition in OAR 690-008-0001 or a determination that water is not available per the definition in OAR 690-300-0010 ~~may will~~ mean that water is not available for the proposed groundwater use and the application will be denied. ~~if the use will substantially interfere with a surface water source as per the definition in OAR 690-008-0001 and OAR 690-300-0010.”~~

Proposed OAR 690-009-0040(5)) with proposed additions shown in underline and deletions shown in strikethrough.

3. The Proposed Rules should be amended to add an appropriation size limit when a permit is issued in an area lacking data and lacking other groundwater appropriations.

Proposed OAR 690-008-0001(9) defines “Reasonably Stable Groundwater Levels” and specifies the amount and type of data needed to make the determination. The Proposed rules further allow that if adequate data do not exist, but there has been no groundwater extracted or authorized for extraction in the groundwater reservoir, the Department may presume that groundwater levels are reasonably stable:

“If water level data are insufficient to perform either test in (a) for a given year, then the Department will presume that groundwater levels are not reasonable stable unless:
(A) the most recent evaluation of reasonably stable applies to a year within 5 years of the given year, in which case the Department may presume that the recent evaluation still applies; or
(B) *groundwater has not yet been extracted or authorized for extraction from the groundwater reservoir, in which case the Department may presume that groundwater levels are reasonably stable.*”

Proposed OAR 690-008-0001(9)(A)(b) (emphasis added). While we understand WRD’s rationale for including (B), it’s clear that a size limit to the exemption needs to be added in the rules. For example, a recent groundwater permit application in an arid area in SE Oregon approached 18 cfs. It would not be reasonable, nor responsible, to allow such a large groundwater permit to be issued under an assumption—based on no data—that the groundwater levles are reasonable stable. We request the following addition shown in underline:

“If water level data are insufficient to perform either test in (a) for a given year, then the Department will presume that groundwater levels are not reasonable stable unless:

(A) the most recent evaluation of reasonably stable applies to a year within 5 years of the given year, in which case the Department may presume that the recent evaluation still applies; or

(B) groundwater has not yet been extracted or authorized for extraction from the groundwater reservoir, and the application is for an annual volume not to exceed 150 acre-feet, in which case the Department may presume that groundwater levels are reasonably stable.”

Proposed OAR 690-008-0001(9)(A)(b) with proposed addition shown in underline. This would provide for a first groundwater application to be issued and facilitate groundwater level data collection, while also protecting the resource against catastrophically large new groundwater development in areas where data is lacking.

4. The Proposed Rules should be amended to add limits for new groundwater permits that can be approved as groundwater levels approach the 25’ decline limit.

The Proposed Rules define Reasonably Stable Groundwater Levels to mean, in part, “have not declined by more than 25 feet” from a described reference level. *Proposed* OAR 690-008-0001(9)(B).² In turn, *Proposed* OAR 690-300-0010(57)(d) states that water is available for a new groundwater use if, in part, the groundwater source exhibits reasonably groundwater levels per that definition.

We request that an annual limit be added to the volume of pumping authorized under new permits issued as the groundwater level nears the 25’ decline level. This is because a glut of permits, or even a few large permits, issued as 25’ is approached would run a high risk of causing declines to dip well below 25’, which would result in groundwater levels being not be reasonably stable. Limiting the amount of new pumping authorized each year could also help ensure we know what the incremental impact is on groundwater level before over-issuing additional permits. It would be prudent, as a 25’ decline is approached, to limit issuance of new permits to 150 acre-feet annually.

This could be done in a few different places; we suggest the following amendment or similar:

“(57) “Water is Available,” when used in OAR 690-310-0080, 690-310-0110 and 690-310-0130, means:

(d) The requested groundwater source exhibits reasonably stable groundwater levels, as defined in OAR 690-008-0001, and if there has been a total groundwater level decline of 22 feet or more, as determined consistent with OAR 690-008-0001, then the proposed use will not result in the cumulative annual authorization of new groundwater allocations exceeding 150 acre-feet; and ¶”

Proposed OAR 690-300-0010(57)(d) with proposed addition shown in underline. The numbers could be amended, or the limits described in another way. Again, this concept is important to

² There appears to be an issue with the lettering of subsections in OAR 690-008-0001.

incorporate to avoid a “run on the bank” situation as a groundwater level decline approaches 25’ and we request this or similar language be added.

5. The important “considerations” in the basin program rule option must be retained and strengthened.

As highlighted in our June 11, 2024 letter (attached), the sideboard considerations in *Proposed* OAR 690-008-0001(9)(d) for a basin specific approach to defining reasonably stable are important to retain and should be strengthened. As a matter of administrative law, any basin specific rules must be consistent with the 1955 Groundwater Act and thus the sideboard considerations should be written to ensure that consistency. We fully support requiring consideration of the three listed factors, but suggest they could be strengthened by making clear that adequately addressing impacts on each of these factors is a requirement of any basin specific approach.

6. Evaluate and consider adding language regarding new and amended definitions.

We suggest reviewing each of the Proposed Rules’ new or amended definitions for potential unintended effects on the implementation of statutes and rules pertaining to other than the new groundwater allocation. For instance, review for use of those terms in regulation of existing groundwater uses, Critical Groundwater Area statutes, Division 10 rules, *Proposed* Division 8 definition of Declined Excessively, etc. If unintended effects are identified, consider language clarifying that the new or amended definition only applies to allocations of new groundwater (e.g. new permit applications, limited license applications). Consider determining whether existing definitions could be retained for application outside of new groundwater allocation and/or addressed in separate, narrow rulemaking.

7. Conduct a review of protections for groundwater dependent ecosystems in the groundwater allocation rules to determine needs and opportunities to improve protection of groundwater dependent ecosystems.

The Proposed Rules offer important improvements for protecting groundwater dependent ecosystems (GDEs) through addressing impacts to streams under certain circumstances and better controlling reductions in groundwater levels, which work together with other relevant reviews in rules not included in this rulemaking. In light of the importance of GDEs across Oregon, we believe further work to improve protections for GDEs is warranted. We suggest that, in the coming year or two, WRD, with the assistance of experts in this field, conduct a review of the groundwater allocations rules to determine needs and opportunities to better protect GDEs. GDEs, utilizing a RAC with appropriate expertise. To be clear, we *do not* advocate delaying adoption of the Proposed Rules to undertake this endeavor, but do want to flag this as an item likely needing additional attention.

In conclusion, we commend WRD for undertaking this long-overdue rulemaking to correct course, using science and data, to more sustainably allocate the critically important resource of groundwater. We appreciate the thought, analysis, and exhaustive public process that went into developing the Proposed Rules. While the Proposed Rules could be more protective in some

areas, as described above, WaterWatch is very supportive of the Proposed Rules because of the significant benefit they will provide for Oregon's water future.

Sincerely,

/S/Lisa A. Brown

Lisa A. Brown

Staff Attorney

lisa@waterwatch.org

503.295.4039 x102

Attachment: WaterWatch 6-11-2024 letter RE: WRC Agenda Item K - Groundwater Allocation Rulemaking (6-14-2024)



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission

725 Summer St. NE, STE A

Salem, OR 97301

Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

June 11, 2024

RE: WRC Agenda Item K - Groundwater Allocation Rulemaking (6-14-2024)

Dear Chair Quaempts and members of the Commission:

Thank you for the opportunity to comment on the critically important proposed Groundwater Allocation Rules (Proposed Rules). WaterWatch was a member of the Groundwater Allocation RAC. We have provided comment to the Commission a few times previously in support of the rulemaking. WaterWatch is very supportive of the Proposed Rules and appreciative of the OWRD's thoughtful, in-depth work and robust public engagement that went into developing the Proposed Rules.

WaterWatch will be submitting a detailed comment letter to the rules coordinator, including proposed language to add clarity to certain provisions and to advocate for strengthening certain resource protections, but writes here to express our support for the Proposed Rules, address a few specific issues, and urge your support.

Testimony from the public rulemaking process needs to be utilized and considered

As you are likely aware, there were four public rulemaking hearings held around the state in April and May, and a written comment period that closes June 14th. A great many people offered thoughtful and compelling oral testimony at the hearings in support of the Proposed Rules. This was the official public rulemaking process and we urge the Commission to watch the testimony, which is available on OWRD's Groundwater Allocation webpage. This includes testimony from an April 4th hearing in Bend, which included local people and organizations testifying in support of the rules and the central Oregon municipal interests sharing their perspectives. Comments in support of the rules outnumbered comments of concern at the April 4th Bend hearing. Many additional thoughtful comments in support were voiced at the May 21st hearing in Salem, which included an option to testify virtually and support for the rules was voiced at each of the four hearings. We flag this because it would be an unfair and unbalanced process if the added opportunity to comment directly to the Commission on June 14th erased, or undermined, all of the effort that went into testifying during the original, official rulemaking hearings. We similarly urge full consideration of the comments that will be submitted by the June 14th deadline.

Key reasons WaterWatch supports the Proposed Rules

- **Alignment with Oregon's 1955 Groundwater Act (ORS 537.505 *et seq.*)**

The Proposed Rules would align with statute. The existing rules, in contrast, do not align with statute as demonstrated, for example, by the plummeting groundwater levels in places like the Harney Basin caused

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by over-issuance of groundwater permits, and the fact that the existing permitting process fails to protect senior water rights from injury caused by pumping. Importantly, the Proposed Rules define and maintain (with regard to new allocations) reasonably stable groundwater levels, better protect groundwater use for human consumption, better protect senior water rights (including instream water rights), and would limit issuance of new permits to when water is available for the use.

- **Science-based and data-driven.**

The proposed Division 9 rules related to pumping affecting streamflow are consistent with the best available science in Oregon and beyond. Within Oregon, groundwater studies by the U.S. Geological Survey (USGS), in cooperation with OWRD, in major basins like the Klamath, Deschutes, Willamette, and Harney demonstrate the influence of groundwater pumping on streams. Recent nationwide studies across the United States also provide evidence for pervasive impacts to streamflow due to groundwater pumping. Further, the proposed Division 8 rules defining “reasonably stable” are based on an OWRD analysis of thousands of groundwater levels across the state that was peer reviewed by USGS. The ‘dynamically stable’ concept applied in the rules uses groundwater level trends to determine sustainability, which is a modern and up-to-date approach also supported by recent studies.

- **Implements a “Default to No” approach to avoid over-allocation where data is lacking.**

The Proposed Rules reverse OWRD’s decades-long damaging “Default to Yes” approach, whereby when reviewing a groundwater permit application, if data was lacking to determine whether groundwater was already over-allocated, the permit would be issued. This “Default to Yes” approach led directly, most recently, to the extremely challenging (and expensive) groundwater over-allocation problem in the Harney Basin. In contrast, the Proposed Rules establish the type and amount of data needed to determine whether groundwater levels are reasonably stable, and then change the default so that a lack of data will result in denial, or “Default to No.” This is a major and critically important change.

- **Implements a significantly more robust protection for senior rights on hydraulically connected surface water.**

For decades, the existing rules have resulted in issuance of groundwater permits that have reduced streamflows and injured senior surface water rights, in contravention of the Groundwater Act and the foundation of prior appropriation. This is because the existing Division 9 rules only require consideration of a fraction of the pumping impacts. The Proposed Rules remedy this by requiring full accounting of the impacts of proposed pumping on hydraulically connected surface water, combined with consideration of whether the surface water is over-appropriated, or withdrawn, in determining whether to issue a new groundwater right.

- **Important security for existing domestic well users.**

Many people in rural areas of Oregon rely on exempt domestic wells to provide drinking and household water. While exempt wells can pose their own problems in certain contexts, jeopardizing access to drinking water for existing domestic well owners by over-allocating groundwater to other junior uses is clearly problematic. It should be noted that simply drilling domestic wells deeper is not always workable due to water quality problems that can be encountered at increasing depths. Further, there is a significant expense associated with deepening domestic wells. The Proposed Rules’ implementation of the 1955

Groundwater Act's requirement to determine and maintain, with regard to new allocations, "reasonably stable" groundwater levels will provide important security for this drinking water source.

Specific Comments (again, WaterWatch will be submitting detailed comments on the rules but we wanted to highlight a few important things to the Commission in advance of the Bend Commission meeting):

1. The 'considerations' in the basin specific rule option should be retained and strengthened.

The Proposed Rules allows for a basin specific approach to defining and applying the statutory term "reasonably stable" groundwater levels. Specifically, the rules state:

"The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission's authority in ORS 536.300 and 536.310. Any proposed superseding basin program definition *must consider*, at a minimum, the anticipated impacts of the new definition on:

- (A) the number of wells that may go dry; and
- (B) the character and function of springs and groundwater dependent ecosystems; and
- (C) the long term, efficient, and sustainable use of ground water for multiple beneficial purposes."

Proposed OAR 690-008-0001(9)(d) (emphasis added). These are common-sense considerations that are important to Oregonians *and* that are consistent with the 1955 Groundwater Act. Further, there is certainly nothing unworkable or burdensome about 'considering' the impacts of a basin rule definition on these factors. OWRD included the basin specific rules option to address concerns raised by certain water user groups in the RAC about basin specific hydrology, resulting in flexible Proposed Rules.

While the Proposed Rules rightly require that basin rules consider the impact of any new definition on these factors, we note that these factors closely link to requirements of the 1955 Groundwater Act that must be met. We therefore suggest that, not only is it critically important to retain these considerations, but that including stronger sideboard requirements for the basin specific option would help ensure transparency and alignment with the statute. This would also help support stronger basin rules that better meet the needs of all interests.

We also note that while the basin rule option offers local flexibility, the Proposed Rules already account for variations in hydrogeology and hydrology across the state, because those are part of what drives the groundwater levels, groundwater level trends, and hydraulic connection to surface water that are required to be considered in the permitting process contained in the Proposed Rules.

2. The Proposed Rules implement important pieces of the Integrated Water Resources Strategy.

The 2017 Integrated Water Resources Strategy (IWRS) calls on the state to "Develop Additional Groundwater Protections" (Recommended Action 11.D). This recommendation expands upon a number of needed actions identified in the 2012 IWRS, including a call for the protection of groundwater in the regulatory and permitting processes (2012 IWRS actions 10F, 10G). The Proposed Rules bring agency practices into alignment not only with statutory directives, but also with the recommendations in the IWRS.

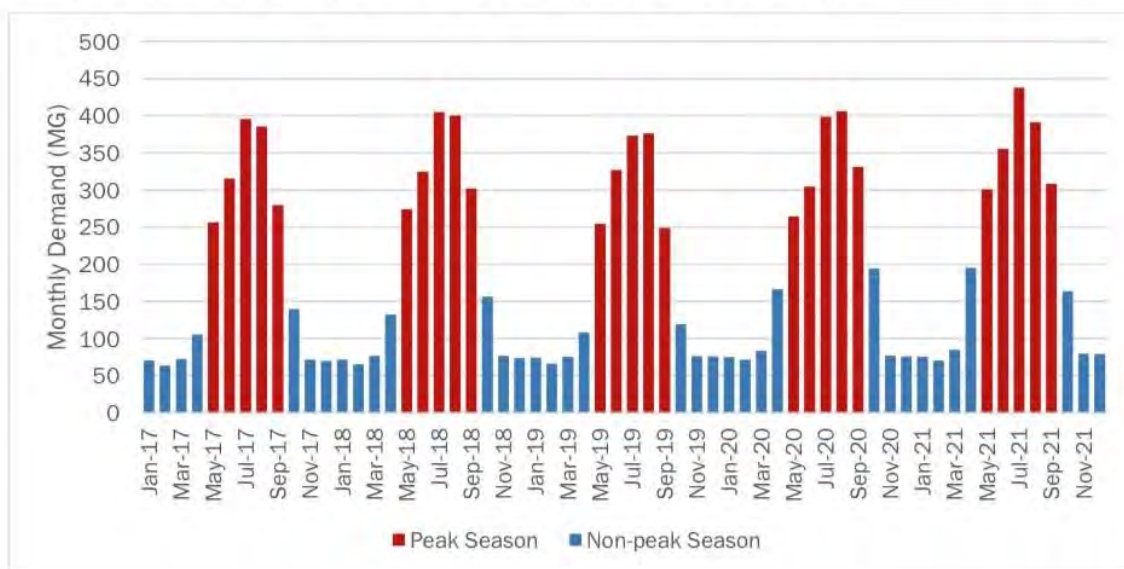
3. Cities have the water rights and tools to work within the Proposed Rules to meet reasonable water needs including providing additional housing.

A full discussion of cities' water data is beyond the scope here, but claims that the Proposed Rules' science-based, sustainable groundwater permitting approach would conflict with developing additional housing or meeting cities' water needs do not appear supported by data.

As an example, below is information from the 2022 City of Redmond Water Management and Conservation Plan (WMCP). It is important to note that **currently, the city’s average daily demand is only about 25% of its already permitted water rights, and by 2043 the city projects that average daily demand will still be well under 50% of its permitted water rights.** (City of Redmond WMCP, p. 5-5).

“Exhibit 2-6 shows total monthly demand, with the peak season of May through September in red and the non-peak season in blue. The average monthly demand was 337 MG during the peak season and 95 MG during the non-peak season. The MMD averaged 404 MG and these peaks occurred in July (2017, 2018, and 2021) and August (2019 and 2020).”

Exhibit 2-6. Monthly and Seasonal Demand, 2017 through 2021



Source: City of Redmond WMCP, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-9).

On Figure 2-6, the red bars show the dramatic increase in water use due to outdoor summer water use (e.g. lawn watering and landscape watering). The graph shows that it is *not* household use driving water demand – it is strictly peak summer use driven by outdoor watering. The current water use could support water for far more households by addressing the high peak summer use, for example through better conservation practices including but not limited to landscaping that is more adapted for the amount of water naturally available during the summer months.

To examine this further, Exhibit 2-11 (also from the City of Redmond WMCP), shows how water use for multi-family residential use (shown in orange) is much more flat year round and does not contain the large outdoor water use peak currently associated with single family homes (shown in blue). There appears ample room for conservation practices to free up water needed for additional multi-family housing, or any housing not entailing extensive outdoor watering.

Exhibit 2-11. Monthly Consumption by Customer Category, 2017 through 2021

Source: City of Redmond Water Management and Conservation Plan, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-12).

The City of Redmond WMCP also provided this analysis:

“Average monthly peak season water use in 2021 was 3.5 times higher than non-peak season water use for single-family residential connections (due to outdoor landscape watering associated primarily with large residential lots), down from 4.1 times higher in 2017. In addition to the City’s water conservation outreach activities, this reduction is likely attributable to a reduction in average lot sizes for single family homes driven by changes in zoning and real estate market dynamics. Average monthly peak season water use for multi-family water service connections is consistently 2.2 times higher than nonpeak season water use. The 2021 multipliers for commercial and City water use were 3.5 and 6.3, respectively.

These ratios suggest that conservation efforts focused on reducing outdoor use by single-family homes and certain commercial customers with large landscape water use, may help to address peak-season demand (see Exhibit 2-10).”

(P. 2-11). This analysis highlights opportunities to provide additional water that could be directed to additional housing through bringing down “outdoor landscape watering associated primarily with large residential lots.”

The City of Redmond WMCP also provides other data that highlight water saving opportunities, including a “Maximum Operational Demand,” which adds a significant peak to the maximum day demand caused by people turning on their outdoor watering during the same hours each day. (P. 5-3 to 5-5). Addressing that peak, for example with scheduling or reducing outdoor use, or in-city water tanks, could instead provide water for housing.

Finally, the population of City of Redmond was 37,342 in 2022, which the city projects will increase to 56,810 by 2043. (City of Redmond WMCP, p. 5-1). The Mayor of Redmond recently stated: “We have

enough water rights that we acquired over the last 20 years to meet a population of 75,000 people." (Redmond Spokesman, *State signals it's likely to deny Redmond's application for future groundwater*, October 16, 2023.) This means City of Redmond is many decades away from needing additional water, if ever, providing ample time to apply modern techniques, programs and transactions, such as implementing lawn watering schedules or restrictions and prioritizing xeriscaping – in order to sustainably meet the city's needs without causing added groundwater declines.

Further, there are many additional tools, such as water right transfers, water reuse, infrastructure improvements to bring down peak use (e.g. in-city water tanks), and the Conserved Water Act, that can all contribute to ensuring robust water supplies for the cities in a sustainable manner.

In sum, any statements that cities must be allowed to acquire additional new groundwater permits need to be objectively evaluated with available data, including data provided in the cities' WMCPs. Reviewing City of Redmond's WMCP, for instance, shows that there is ample opportunity to provide water for a great deal of additional housing, including by addressing the pattern of water use; that it is not household use driving peak water demand; and that the city's existing water rights provide for a long horizon to develop sustainable strategies.

Conclusion

Thank you for the opportunity to comment and for your continued work on this critically important issue. As noted above, we will be filing additional detailed comments to the rule coordinator. While the Proposed Rules could be more protective in some areas, WaterWatch is very supportive of the Proposed Rules because of the significant benefit they will provide for Oregon's water future and we therefore urge your support. We commend Oregon for taking this long-overdue action to correct course, using science and data, to more sustainably allocate the critically important resource of groundwater. We look forward to seeing rules adopted at your September meeting.

Sincerely,

/S/Lisa A. Brown

Lisa A. Brown

Staff Attorney

lisa@waterwatch.org

Oral Comments – Bend Public Hearing (April 4, 2024)

Lisa Brown (RAC Member; WaterWatch of Oregon)

For the record, Lisa Brown from Portland, Oregon. I am a staff attorney with WaterWatch of Oregon. And to follow our Executive Director's comments, I want to start just by saying that you know the proposed rule align with the 1955 Ground Water Act and with the Department's duty to implement the law and to highlight a few pieces of the proposed rules that we think are critical. One is defining reasonably stable and better implementing that requirement at least as to new allocations of groundwater. Better protecting hydraulically connected surface water from pumping impacts, and with that better protecting senior surface water rights including the instream water rights. And of course, also being more protective of existing domestic wells, which in some parts of the state are the only wells available for drinking water. These improvements are long overdue and critically needed and under the existing rules you know what we've seen is over issuance of groundwater permits that have created just extremely difficult problems across the state, including plummeting groundwater levels as deep as 100 feet or more, and as a member of the RAC that's trying to tackle this in the Harney Basin now, you know I sort of have a firsthand seat at seeing how hard it is to really address this over allocation once it's happened. So, we just think it's critically important to not create this problem in other parts of the state. And I want to say you know we have a lot of tools in Oregon to address reasonable water demands without compromising our groundwater and all that it supports, and I think these rules put us on a path to you know better utilizing those existing tools. And to make a brief comment about municipal use in particularly in this Central Oregon area, I mean without getting into the data, and we'll address this in our written comments as well, but you know when you really look at the data on water use, what you see is that the water demand is really driven by these big summer peaks that are related to outdoor watering that I think is just not climate adapted so when we really dive into that data what you see is that two things that really pop out. One is, there's an ample amount of water; it just needs to be better used and directed towards household use. And secondly, that there's also a long-time horizon to do this when you look at the water rights available. So, we'll put some more detailed comments in on that issue. And in the end I would just thank the Department for the effort that went into this rulemaking, the scientific rigor, all of the data that was reviewed, the public process that preceded the RAC, the extensive RAC process, and just really the thorough discussions that we've had. And while we think there are some areas in the rules that could be strengthened, and we will submit comments to that extent, WaterWatch is very supportive of this rules package, so thank you.

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Lisa Brown (RAC Member; WaterWatch of Oregon)

For the record, Lisa Brown with WaterWatch of Oregon and a member of the groundwater allocation RAC. And I want to open by sincerely thanking the Commission for first recognizing the importance of revising Oregon's groundwater allocation process and for your thoughtful, years long leadership in working with the agency to address this critical issue. You know, I believe this is one of the most important things the agency can do at this point, and your leadership has been invaluable. And we also want to express our appreciation for all the great work that the agency staff has done in developing its rules. And, you know, Oregon is fortunate to have the 1955 Ground Water Act, even if we have not always lived up to it, and to have increasingly robust, groundwater data and analysis available all across the state. And, you know, what the proposed rules do is use the science and this extensive data that's now available to build a groundwater allocation system that aligns with statute and really puts Oregon on a much more sustainable path. And the rules also implement important pieces of the Integrated Water Resource Strategy, namely the 2017 strategies recommendation to develop additional groundwater protections, which in turn expands upon the 2012 Strategy call for protection of groundwater in the permitting processes. And before going further, I do want to flag, you know, that there were four rulemaking hearings held around the state in April and May, at which a great many people provided thoughtful and compelling testimony in support of the rules. And this included testimony from individuals, Tribes, organizations, and even notably, a member of your predecessor board. And the first hearing was held in Bend, at which local individuals, local organizations, and municipal interests all testified and at which comments of support outnumbered comments of concern. And the May 21st hearing in Salem built on that. And you know, notably, there was support for the rules at all of the hearings. And so, I would just urge you to listen to all of that testimony. It's available on the agency's website. Because, you know, it would be, I think, an unfair result if today's opportunity to get in front of you directly sort of undermined or undervalued that testimony that a lot of effort went into. We did submit a letter earlier in the week that highlights kind of the key components of the rules that form, you know, the basis of WaterWatch's strong support for the rules and respecting time. I will not go into those right now. And Zach touched on a number of them. But I would refer you to that letter. And, you know, I think it's important to recognize that the rules, you know, these proposed rules didn't set out to address all the groundwater issues. You know, we have issues of overallocation with impacts from transfers and other issues that need to still be addressed in separate processes. And WaterWatch also has some suggestions for modest improvements to the rules, that we think will make them more clear and more protective, which we'll submit in comments today. But, you know, regarding the important issue of new groundwater allocation and just working to ensure that we don't make like these super difficult problems worse across the state. You know, the proposed rules make significant and meaningful changes that are critically important for Oregon's people and for the ecosystems that rely on this whole clean groundwater. And so, we're here today to voice our strong support for the rules and also to urge your support. And we look forward to the rules being adopted in September.

Oregon is Not Running Out of Water

An Integrated Surface Water and Ground Water Management Plan as an Alternative to the Proposed Groundwater Allocation Rules

By: Malia Kupillas, R.G., C.W.R.E., L.H.G. Washington, Board Member of the Nestucca, Neskowin and Sand Lake Watershed Council, Co-Chair of the Oregon Geology Map Advisory Committee for the Department of Geology and Mineral Industries, wetland scientist, fourth generation farmer in Kansas, Small Woodland owner in Oregon and PhD student at Oregon State University (Water Resource Science)

Introduction

Oregon is not running out of water. Oregon has a problem with commingling wells that has created groundwater declines in many areas that have been designated groundwater limited or groundwater critical.

Oregon has a problem with lost natural recharge to the aquifers from roadside ditches, impervious surfaces, filled wetlands, and wet meadows that have been converted into duck ponds. Drain tiles have been installed in farm fields and not managed for recharge. We have lost the beavers who help store surface water and create wetlands. These are just some examples of lost recharge. Therefore, Oregon has reached a point where the comingled well issue needs to be addressed. Some wells may need to be repaired, winter precipitation needs to be better managed and stored using wetlands, artificial recharge and aquifer storage and recovery, drain tile management and beavers to capture part of the recharge water that is currently lost to the ocean too soon.

The proposed rules do not take into account that in the hydrologic cycle water is not only going out of the groundwater system, but water is also going into the groundwater system and being stored. Therefore, water is never lost. Only a portion of the irrigation water is lost or consumptively used. The remainder of the water returns into the soil and becomes recharge water. These proposed rules imply that once groundwater is pumped, then it is gone forever. Therefore, these rules ignore the recharge aspect of the water cycle and what can be done to capture lost recharge that is going to the Pacific Ocean too soon.

I am proposing an integrated surface and groundwater management plan as an alternative to the proposed Groundwater Allocation Rules. This management plan implements the proposed Integrated Water Resources Strategy (IWRS) and Place-Based Planning. The alternative plan presented below will manage Oregon's surface water and groundwater in a sustainable and integrated manner. The alternative plan presented below will provide a "long-term plan and measurable goals for water sustainability" (State Audit). The alternative plan will allow the limited acres of prime farmland that are not covered with rights to obtain water rights and allow junior surface water rights to switch to groundwater when the streams need additional water to meet senior surface water rights and in-stream rights.

Background

Stream flows and groundwater levels have been impacted by comingling wells and the loss of our natural recharge for the following reasons:

Comingling wells, especially in the basalts, move water to the bottom of the aquifer system as water is chased to the bottom. A comingled well acts as a pumping well 24 hours a day, 7 days a week and 365 days a year. This causes groundwater declines that are not due to over-appropriation. The decline in water levels from comingling wells mimics an over-drafted aquifer until the system eventually reaches a new equilibrium. Comingling wells can impact the discharge of shallow aquifers

that provide baseflow to streams in the summer. Therefore, these declines are not a function of an over-drafted aquifer system, but a well construction problem that is wasting water. Oregon Revised Statute, ORS 540-720 states that the waste of water is not allowed. The wasteful use of groundwater is defined in OAR 690-008-001(11). Commingling of water is considered a wasteful use of water under OAR 690-200-0043.

- ORS 540.720 – Unauthorized use or waste of water: No person shall use without authorization water to which another person is entitled, or willfully waste water to the detriment of another. The possession or use of such water without legal right shall be prima facie evidence of the guilt of the person using it.
- OAR 690-008-001(11): Wasteful Use (of groundwater) means any artificial discharge or withdraw of ground water from an aquifer that is not put to a beneficial use described in a permit or water right, ***including leakage from one aquifer to another aquifer within a well bore*** (emphasis added). Effective 12-14-1988 and 12-14-1990.
- OAR 690-200-0043: Commingling of Waters – A water supply well shall not be completed in a manner that allows commingling or leakage of ground water by gravity flow or artesian pressure from one aquifer to another. See definition of an aquifer.
- OAR 690-200-0050(9): “Aquifer” means a geologic formation, group of formations, or part of a formation that contains saturated and permeable material capable of transmitting water in sufficient quantity to supply wells or springs and that contains water that is similar throughout in characteristic such as potentiometric head, chemistry, and temperature. See Figure 200-2, which is in Attachment A.

In very few cases more water is used from an aquifer than is currently recharged naturally. One example is the Wilsonville area that has been impacted by both overdraft conditions from the City of Wilsonville’s municipal well system and chasing the water to the bottom through all the comingling wells. Again, commingling wells also have an impact on the Wilsonville aquifer system. Therefore, the impact from commingling wells needs to be considered before assuming an aquifer is over-drafted.

Ditches along roads serve as additional stream channels during storm events causing the stream’s water level from the storm to peak sooner and at a higher level. The ditches quickly transport stormwater to the streams and the ocean before the stormwater has a chance to infiltrate and recharge the aquifers. Therefore, ditches along roads reduce groundwater recharge to aquifer systems.

Impervious surfaces reduce recharge surface area.

Straightened stream channels for flood control and other purposes have disconnected the floodplain from the stream. Excess surface water during a flood would infiltrate into the floodplain and recharge shallow aquifers for later discharge into the stream. The straightened stream channels also move surface water to the ocean faster and reduces stream channel surface area for recharge where a stream loses water through its channel. Therefore, stream channels that have been straightened for flood control or other reasons have reduced aquifer recharge.

Drain tiles remove water from the fields during the winter that would have recharged the aquifer systems.

Forests are not managed for groundwater recharge, but are managed for the Spotted Owl and other wildlife species.

Beavers and beaver dams that store surface water, create wetlands and increase groundwater recharge have been lost. Beavers and beaver dams benefit the stream system and increase recharge to the aquifer system.

The above impacts result in the rapid loss of water to the ocean, thereby greatly reducing the amount of time for that water to infiltrate into the soils and recharge aquifer systems. However, some of the lost recharge water can be captured using the following methods:

- Commingled wells can be repaired. The Mosier area serves as an example. Additional discussion is provided on comingling wells in the next section that shows areas with groundwater level declines that are due to comingling, not overdraft.
- Artificial recharge (AR) (OAR 650-350-0110)
- Aquifer storage and recovery (ASR) (OAR 650-350-0010)
- Drain tiles can have control structures added at the discharge points that allow water to be stored in the soil at the beginning of the season. This allows nitrates and herbicides to break down under reducing conditions. The drain control structures also allow the control of the water levels in the fields later in the year. Some fields can be sub-irrigated using this soil moisture for a period of time, which reduces the amount of water needed for irrigation from other sources. Therefore, drain tiles can be managed for aquifer recharge and natural sub-irrigation.
- Forests can be managed for groundwater recharge in a healthy and sustainable way. Historically, our forests have always been a mosaic of open areas from a recent burn (early successional) to a forest with old growth characteristics (late successional). The indigenous people used fire to help control the density of underbrush to control fuel loading for when the forest did burn. Attachment B is an article on a study where snow accumulates in a forest annually that shows how important it is to manage a forest as a mosaic of ages for groundwater recharge and later discharge into the stream systems. This also provides a diversity of habitat for wildlife and reduces the risk of catastrophic wildfires.
- Beavers can be re-introduced to their previous areas to restore lost water storage in the stream system and create more wetlands.
- Beaver analog dams can be built in areas where beavers cannot be established keeping in mind that beavers are the better engineer.

Comingled Wells in Groundwater Limited Areas

Below is a discussion of three areas where water levels have stabilized and now show seasonal fluctuations after a decline was caused by comingling wells. These areas are Mosier, Stayton-Sublimity, and Mt. Angel. The Harney Basin is also discussed because Leonard (1970) noted "The effects of separating layers between water-bearing beds is largely offset by the common practice of setting 50 to 100 feet of surface casing and leaving the rest of the well open to all lower water-bearing beds. As a result, water levels, yields, drawdowns, and specific capacities of most wells in the valley represent a composite of several water-bearing beds." Therefore, these wells are comingling and can cause a decline that may not be overdraft.

Mosier Area:

Doug Woodcock, during an Oregon Ground Water Association Presentation on October 23, 2009, stated that the Columbia River Basalt Group (CRBG) forms discrete aquifers and, therefore, wells completed in basalt formations should be limited to a single aquifer (Malia Kupillas notes, 2009). Mr. Woodcock also referred to the groundwater in the Mosier area and referenced the 1988 publication by Lite and Grondin that discusses the hydrogeology in the Mosier area. Mr. Woodcock also noted that the water levels in the Mosier area are flattening out, which indicates the individual basalt aquifers are

reaching a new equilibrium from all the commingling. Figure 1 is a hydrograph showing how water levels have started leveling out in the Mosier area, demonstrating how the commingled basalt aquifers are reaching a new equilibrium.

Lite and Grondin (1988) referenced Newcomb (1959 or 1963) who recognized that wells in the region obtaining water from the Columbia River basalt frequently intercepted multiple aquifers. Lite and Grondin also reviewed water well records and they were able to show how improperly constructed wells that commingle allow water to flow from the Priest Rapids aquifer downward to the Pomona aquifer in the Mosier area.

Burns et.al (2012) further studied the long-term water-level declines in the basalt aquifers near Mosier, Oregon. They observed that many of the groundwater-level measurements in the study are from wells that are potentially open to multiple aquifers. The groundwater level in each of these wells represents a composite hydraulic head. They also noted that commingling wells allow leakage from the aquifer system that can result in groundwater-level declines until the aquifer system reaches a new dynamic equilibrium. Therefore, one indication that basalt aquifers are commingled is when the seasonal static water levels stop declining and show the seasonal response to precipitation, which are shown on Figure 1 from Wasco County.

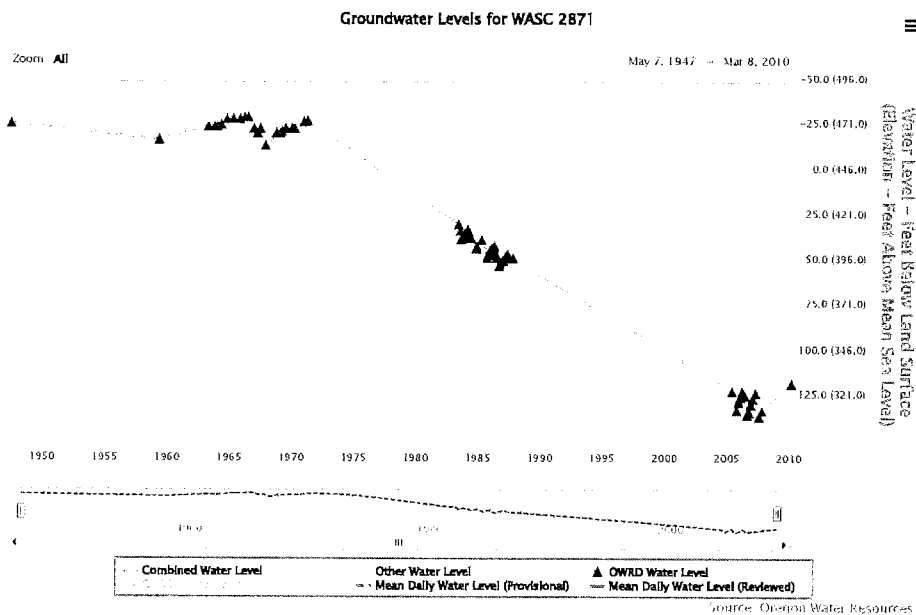


Figure 1. Water level decline from comingling and then water levels stabilized when aquifer reached a new equilibrium. Water levels were not monitored in this well after 2010.

The USGS (2016), in cooperations with the Wasco Soil and Water Conservation District and the Mosier Watershed Council, noted that “State well-construction standards are designed specifically to prevent this condition.” The paper is referring to the problems of municipal and irrigation wells commingling the basalt aquifers. OAR 690-200-0043, which was effective in 1978, does not allow commingling.

In 2016, the Oregon Water Resources Department (OWRD) established a Rules Advisory Committee to develop Special Area standards for wells completed into Columbia River Basalt Group aquifers in the Mosier area (OAR 690-200-0028). The Mosier Watershed Council and others in the community had asked OWRD to develop the special rules to meet one of the conditions for obtaining Federal grant money. The Mosier area was going to start repairing the worst of the commingling wells and the Federal grants required rules that would not allow any new basalt wells or deepened wells to

commingle. The Special Area standards developed for Mosier could then be applied to all the Columbia River Basalt Group aquifers in the State. I and Greg Kupillas served on this Rules Advisory Committee. The new rules are being applied to new ground water right applications which propose to obtain water from basalt aquifers throughout the State. The Special Area Standard developed by the Rules Advisory Committee for the “Mosier Area,” is OAR 690-200-0028(4).

Stayton-Sublimity Groundwater Limited Area:

Water levels in the Stayton-Sublimity area have stabilized and show seasonal water-level fluctuations (Figure 2). However, OWRD has allowed a new basalt well to be drilled that caused a 50 ft decline in water levels the following summer in an adjoining neighbor’s well that resulted in burning up the well pump. A new pump was installed deeper in the well. (Figure 3) Unfortunately, it took the neighbor 12 years to contact me about the potential for the neighbor’s well suddenly impacting the water levels in his well.

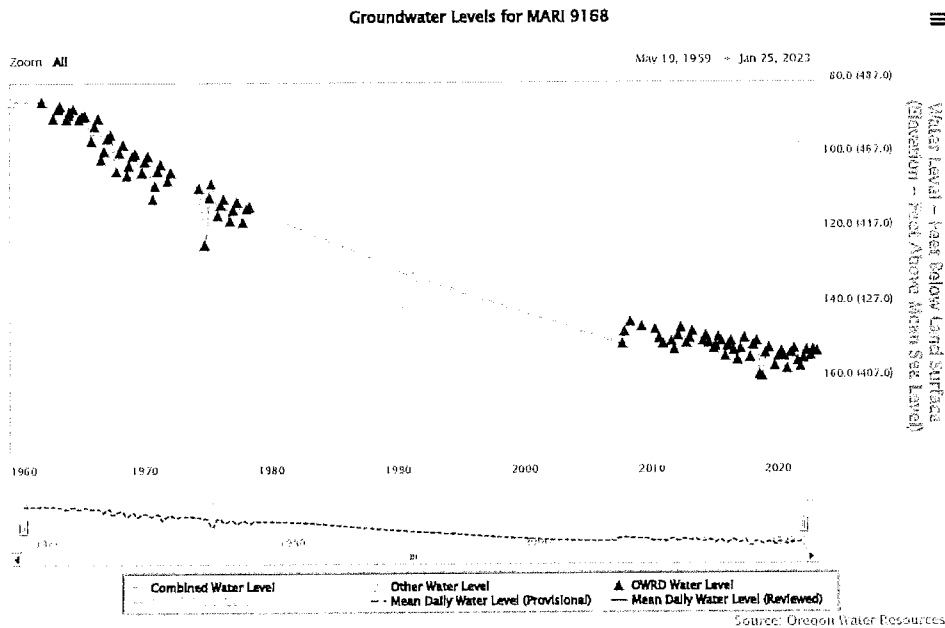


Figure 2. Shows decline and water levels stabilizing, which is indicative of a decline caused by comingling wells.

Figure 3. MARI 17131 (Koellmann/Hassler) Water Levels (ft, MSL)

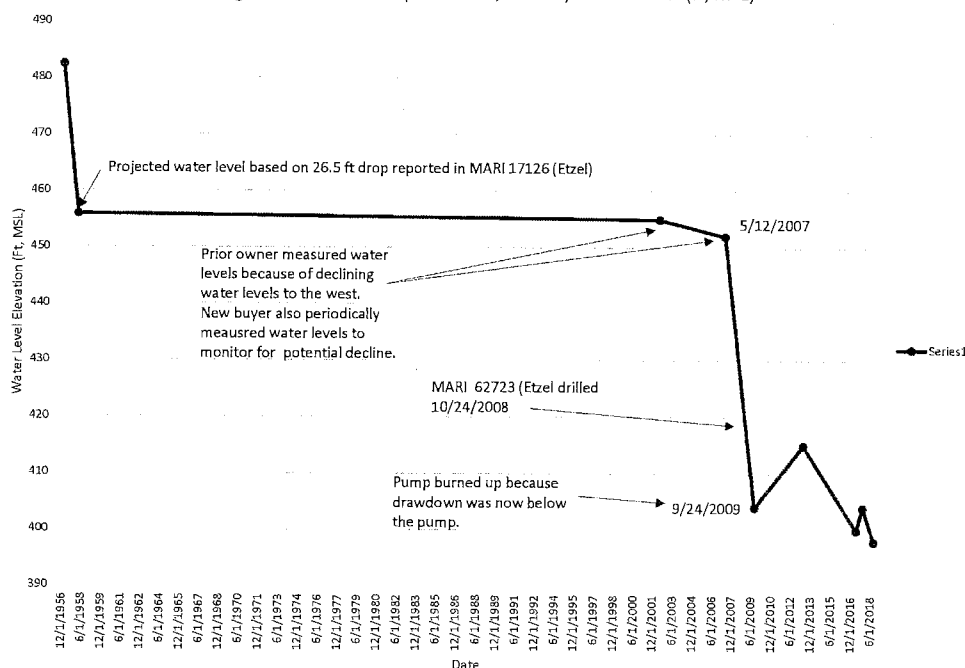


Figure 3. Shows an assumed sudden drop in water levels in MARI 17131 when a neighbor first drilled their well (MARI 17126) in 1958 and the driller noted a 25-foot drop in water levels when drilling from one water bearing zone into another. The sudden drop in water levels indicates a second aquifer (water bearing zone) with a different water level was encountered. Prior to the drilling of the neighbor's well, MARI 17126 was flowing artesian. Therefore, the neighbor's original irrigation well was probably comingling. Also shown on the chart is the second drop in water levels when the neighbor drilled a new irrigation well (MARI 62723) near their original irrigation well (MARI 17126).

A review of the well logs indicated that the new well was comingling and the lower portion needed to be sealed off to meet the water right condition stating that the new well could not obtain water from a different water source. I contacted Well Enforcement with the information regarding the sudden drop in water levels and requested that that the Department run a video survey of the new well to confirm the new well was comingling. OWRD informed us that the basalts are all one aquifer and my client needs to deepen his well to follow the water. OWRD has also allowed a transfer to add the new well to the existing water right, without verifying that the new well obtains water from the same aquifer allowed by the water right, in spite of all our communications regarding the concerns that the new well

is comingling into the deeper more regional aquifer system. However, the water levels in the deeper system are now stable (See Figure 2 above) and since the initial 50-foot drop, the water levels have not declined in my clients well. Therefore, my client has not needed to deepen their well. If OWRD does not video the new well, then my client will be forced to file a "wasting of water" claim.

The tragedy in this case is the nearby stream used to run year-round and was fish bearing. With the neighbor's comingling well, the stream is now dry in the summer and is no longer fish bearing.

Mt. Angel Groundwater Limited Area:

The Mt. Angel area has experienced groundwater level declines that were thought to be due to overdraft conditions. Consequently, the area was designated as the Mt. Angel Groundwater Limited Area. However, around 2005 or 2006, water levels stabilized and started showing seasonal fluctuations that are shown on Figure 4. The water level data we have collected through the years for different clients also show the area can be subdivided into at least four sub-basins, with two of them still showing very minor declines over a longer period of time.

A review of areas covered or not covered by water rights indicates there are about 880 acres of prime farmland not covered with groundwater rights and 87.5 acres of junior surface-water rights that could benefit from a supplemental groundwater right that would allow them to switch to groundwater at some point in the summer to leave more water in the stream system for the fish.

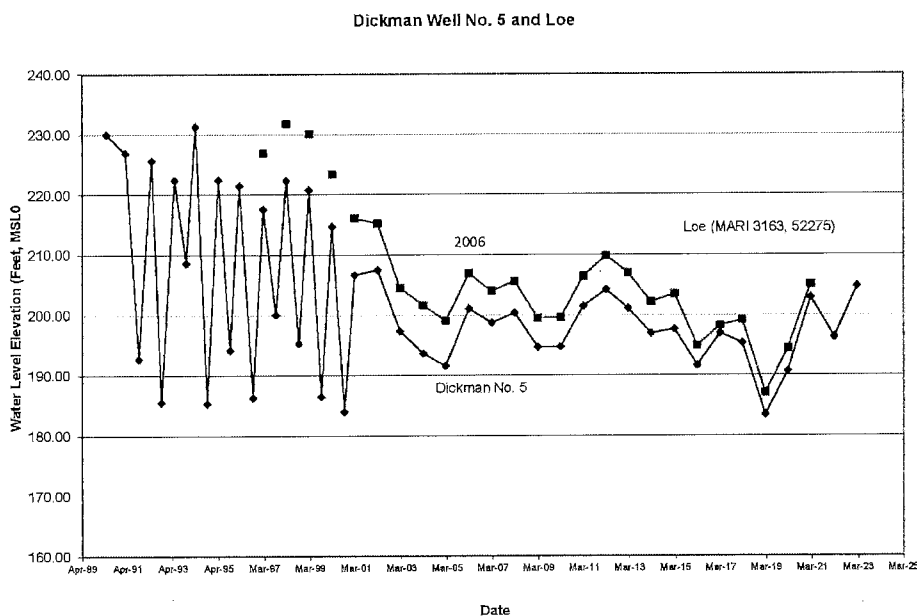


Figure 4. Hydrograph shows the decline from commingling wells and the new equilibrium that started around 2006.

Harney Basin:

Leonard, 1973, in a USGS Publication on Ground-water Resources in Harney Valley, Harney County, Oregon, noted that the wells drilled in the area tended to have a short length of surface casing and this method of construction allows water to circulate from higher head to lower head zones. The common drilling practice is to exclude the near-surface alluvial material and finish the well open through the deeper beds in the valley fill and underlying rocks so that several confined aquifers are tapped by each well. Therefore, the water level in these wells represent the mean of the potentiometric head (water level) of several aquifers. What they did not note is that this type of well construction is conducive to causing declining water levels. Therefore, the effect of commingling wells in the Harney Basin needs to be considered before any further action is taken.

The Alternative to The Proposed Groundwater Allocation Rules That Makes Surface Water and Groundwater Sustainable in Oregon

Surface water and groundwater need to be managed conjunctively for all uses in the State of Oregon in a sustainable way. This is accomplished by doing the following:

- Repairing critical comingling wells,
- Recharging aquifers using AR and ASR to offset the loss of recharge from road side ditches, impervious surfaces, drain tiles, dikes to control floodwater, straightening of channels to reduce flooding and other impacts to recharge.
- Restore or create wetland areas to capture stormwater and allow it to recharge local aquifers.
- Require everyone to conserve water including municipalities, industry, and agriculture using best management practices.
- Store enough water in the subsurface through AR and ASR so all prime agricultural land can have a water right. Junior surface water right holders that may be regulated off can have a supplemental groundwater right. This allows the junior surface water holders the use of surface water when surface water is available in the spring and leaves water in the stream when needed the most for temperature control and fish. This helps spread the demand for irrigation water between surface and groundwater.
- Store additional groundwater through AR and ASR during years with above-average precipitation for use during the years with below-average precipitation.
- Implement proper rangeland management for soil health and wildlife habitat. See publications by Bohen and Buckhouse (1985), and Lessons Learned by John C. Buckhouse for an introduction on rangeland management that can be used in place of fencing off riparian areas and streams. This allows grazing to control fuel loading, maintain wildlife habitat, and also allows impacted streams to recover naturally.
- Implement proper forest management practices for water recharge and fire resistance. This means forests will be managed as a mosaic of successional timber and not managed for just one species of wildlife. Therefore, some areas of timber will be clear cut to mimic forest fires and where the greatest recharge to groundwater will occur. Other areas can be managed as uneven-age stands with proper thinning to facilitate groundwater recharge. Other areas, especially those prone to landslides, will be managed with old growth characteristics and proper thinning.
- Implement proper Juniper management in Eastern Oregon.
- Manage drain tiles to control groundwater storage for sub-irrigation and improving water quality.
- Restore beavers to their natural habitat for water storage and additional fish and wildlife habitat.

Therefore, gaps in water rights can be filled in, and water resources can be made sustainable regardless of climate changes by repairing wells, using artificial recharge and aquifer storage and recovery, maximizing conservation, and re-introducing beavers. The impacts from additional groundwater rights are mitigated through recovering some of the winter recharge water that is currently lost. If all of these measures could be implemented, the proposed Groundwater Allocation Rules would be unnecessary.

The Success of Managing Water Conjunctively can be Measured

The success of managing Oregon's water conjunctively and sustainably can be measured using the following indicators.

- Water levels stabilize or increase in groundwater limited and critical areas.

- Surface water flows are maintained at acceptable levels for fish, not wished-for levels.
- Fish have areas where temperature is met along stream reaches for refugia during hot days from groundwater discharge or shading. Make sure there are adequate refugia for sustainable fish and aquatic populations. Measure stream temperatures at the refugia and not where sun hits the stream all the time. The fish know where the cool places are.
- Remaining prime farm land is covered with water rights in the areas where water levels are stable or AR/ASR projects are active in the specific aquifer system to mitigate the impact of the new water right.
- Supplemental groundwater rights are issued to cover primary surface water rights with junior priority dates. This will allow the junior surface water right holders to switch to their supplemental groundwater rights in summer to leave more water in the streams in the late summer months and delay the impacts to the streams from pumping groundwater. Senior surface water right holders are not regulated off and stream flows are maintained in the summer, thereby improving TMDL's.
- AR and ASR projects are completed where needed to make groundwater use sustainable and allow the above water rights to be issued.
- Drain-tile discharge control structures are installed, which reduces the amount of water pumped for irrigation and water quality for nitrates and herbicides improves.
- As beavers are re-established, stream flows in the summer stay consistent with historic flow levels or increase. Winter storm peaks will be lower and occur later in relation to the storm.

The Surface Water and Groundwater Management Tools Needed for the Integrated Surface and Groundwater Management Plan

The majority of the rules and infrastructure for the Integrated Surface and Groundwater Management Plan are existing. However, a lesson has been learned from one ASR project in the Mt. Angel area. The ASR project proved that ASR is feasible in the area but that it is not cost-effective for one or several farmers to bear the burden of AR and ASR projects when everyone in the basalt basin benefits. In addition, not all farmers will have the land that is good for AR to recharge the shallow aquifer that can be used as the source of water for injecting into an ASR well. Those are some of the reasons why there is such a small number of AR and ASR projects in agricultural areas. Restoring beavers and creating wetlands to capture stormwater also need to be completed where the stormwater would have been naturally stored at a local level within each watershed. Therefore, there needs to be an organization at the watershed scale who can manage the AR, ASR, wetland and beaver projects throughout the watershed.

Using the Mt. Angel area as an example, AR can be used in the Pudding River watershed to recharge shallow alluvial aquifers that meet drinking water standards. The AR stored water can be used by ASR projects for injection into select deeper basalt wells. AR and ASR combined with beavers and restored wetlands can provide enough stored water to offset the impacts from new groundwater rights on the remaining prime farmland. Impacts from junior surface-water right holders obtaining supplemental groundwater rights will also be offset. Additional recharge during wet years can store groundwater for drought years. These changes will improve summer stream flows and make water more sustainable in the future. We estimate that there are about 880 acres of prime farmland left in the Mt. Angel area that are not covered by groundwater rights and 87 acres of junior surface water rights that need to be covered with supplemental groundwater rights. This would require about 1,400 gallons per minute to be injected for 181 days (ASR cycle) to offset the impact from covering the remaining prime farmland and junior surface water rights with groundwater rights. There are existing wells that obtain water from shallow alluvial aquifers that could easily provide the yield needed for the ASR projects in the respective sub-basins.

At this time, a group of farmers and the Pudding River Watershed Council are starting to work together to see how to make AR and ASR work at the watershed scale. This also includes adding more beavers to the watershed, managing existing drain tiles, and best management practices for conserving water.

The Mosier Watershed Council has started repairing commingling wells, and the Upper Grand Ronde Watershed Council, Mid-John Day/Bridge Creek Watershed Council, and the Harney County Watershed Council are looking at AR and ASR projects. Therefore, existing Watershed Councils are starting to step into the role of managing surface and groundwater at the watershed level for “Place Based Planning.” To assist the Watershed Councils in implementing “Place Based Planning” and the “Integrated Water Resources Strategy” it makes sense to expand Watershed Councils into Water Management Districts where needed.

These Water Management Districts would be responsible for looking at potential projects from a watershed perspective to increase recharge, and applying for grants to fund these projects. Water Management District staff would be responsible for carrying out the necessary field work to support these projects, such as reading water meters and measuring groundwater levels for AR and ASR projects. Water Management Districts would not assume any responsibilities currently allocated to the OWRD. However, OWRD staff would not need to measure water levels if the Water Management District is measuring water levels in the watershed as a part of their water level monitoring program for the watershed.

The Water Management Districts would be similar to the Ground Water Management Districts (GWMD) in Kansas that were established in the mid 1970’s. One tool that was developed in Kansas is a water savings bank for the farmers to use. The water savings bank requires every farmer to have a flow meter on each irrigation well and they are required to report their water use. Water saved in one year because of crop rotations and best management practices is banked for the farmer’s future use. The benefit of the bank was realized the first year it was implemented. Kansas was hit with a three-year drought that started during the growing season. Farmers were able to irrigate their crops by borrowing water from the bank they would use the next year. This allowed them the following year to plan what crops they would plant where because they knew how much water they would have. They could leave some land idle, based on crop rotations, to save water in the soil for the following year if the drought continued. They could also dryland farm some of their land. The water bank is managed by the Central Kansas Water Bank Association (K.A.R. 82a and K.A.R. 5-17 and it **encourages conservation, water metering and water use reporting.** This would meet one of the requirements of the State Audit (2023) for gathering data.

The Ground Water Management Districts in Kansas also focus on conservation and may be expanding to include municipalities that are in the GWMD 5. Examples of conservation practices that a Water Management District could be involved with are listed below:

Conservation (Everyone)

- Municipalities:
 - Implement water conservation every year. **State Audit, public education.**
 - Alternate days people can irrigate lawns by neighborhood in summer.
 - Each summer, have the media report about water conservation techniques.
 - Other methods to keep people used to thinking about and conserving water.
- Agriculture:
 - Use best management practices for irrigation including soil moisture sensors, Low Elevation Sprinkler Application (LESA), nozzle control, mobile drip irrigation, web-based irrigation scheduling, etc.

- Use cover crops, no-till or other practices that improve soil health and increase soil moisture.
- Install drain-tile control structures to control when and how much water is drained from the field.
- Use rangeland best management practices to restore riparian area health and store more water in hyporheic zone. Fencing is used only when other options do not work.
- Use forestry best management practices to improve forest health, reduce wildfire risk and recharge groundwater.

A Water Management District could better manage AR and ASR projects, drain tiles, wetland projects, beavers and beaver dams where appropriate. In 2018, Idaho recharged 530,000 acre-feet in the Eastern Snake Plain aquifer through AR. Recharge projects replace some recharge lost to road ditches, drain tiles, and altered stream channels. **AR and ASR could be considered mitigation under State Audit and Integrated Water Resource Strategy (IWRS).**

Water Management District Funding

The Ground Water Management Districts in Kansas are funded by a water tax paid by each property owner within the GWMD. In Oregon, the funding from the Oregon Watershed Enhancement Board (OWEB) would continue. Additional funding to cover additional staff needed to carry out the necessary research and recharge monitoring is further explained below.

- Each Water Management District would have a water tax that stays in the District to help fund specific staff positions, research and water management projects. The Kansas water assessment tax for 2017 was \$0.05/acre land assessment and \$0.67/acre-foot water use charge. We paid \$8.00/year for our quarter-section (160 acres) of farm land in Barton County, which is not irrigated. Municipalities would contribute based on acre-feet of water used, and domestic well owners would be charged a flat fee. This way everyone in some way contributes to the funding of the Water Management District where they live and use water.
- The Water Bank is independently funded through the fees it collects to process the proper forms for its programs.
- One of the main strengths of Watershed Councils is their ability to obtain grant funding. In the same capacity, the Water Management Districts would obtain grants for research projects and ASR and AR projects.
- There will be savings to farmers and the State because farmers will be applying for fewer temporary transfers, drought emergency water rights, and regular transfers. Water management would become more streamlined. Annual water management would become more routine and agriculture would have more reliable sources of water with drought management built into the system.

Key Statutes

The key statutes are listed below with emphasis in bold:

- ORS 531.110: "All water within the state from all sources of water supply belongs to the public." **Note: Everyone should help pay in some manner for the management of the State's water resources in their watershed.**
- ORS 537.120: "all waters within the state may be appropriated for beneficial use,"
- ORS 537.525(3): "Beneficial use, **without waste**, within the capacity of available resources, be the basis, measure and extent of the right to appropriate ground water."
- ORS 537.525(5): "Adequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial,

industrial, thermal, recreational, and other beneficial uses.” **Note: No use has a greater priority over another use.**

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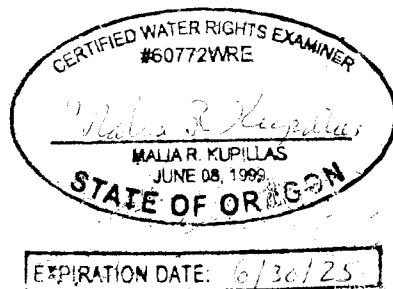
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Exp 6/1/25

Malia R. Kupillas, R.G., C.W.R.E., LHG (Washington)

PhD student, Oregon State University, Water Resource Science

Attachment A: Figure 200-2

Attachment B: Braybrook, Rowan and Jaal Mann. *Snow for Trees: Forestry Techniques for a Changing Climate*

Attachment C: Statement of Qualifications

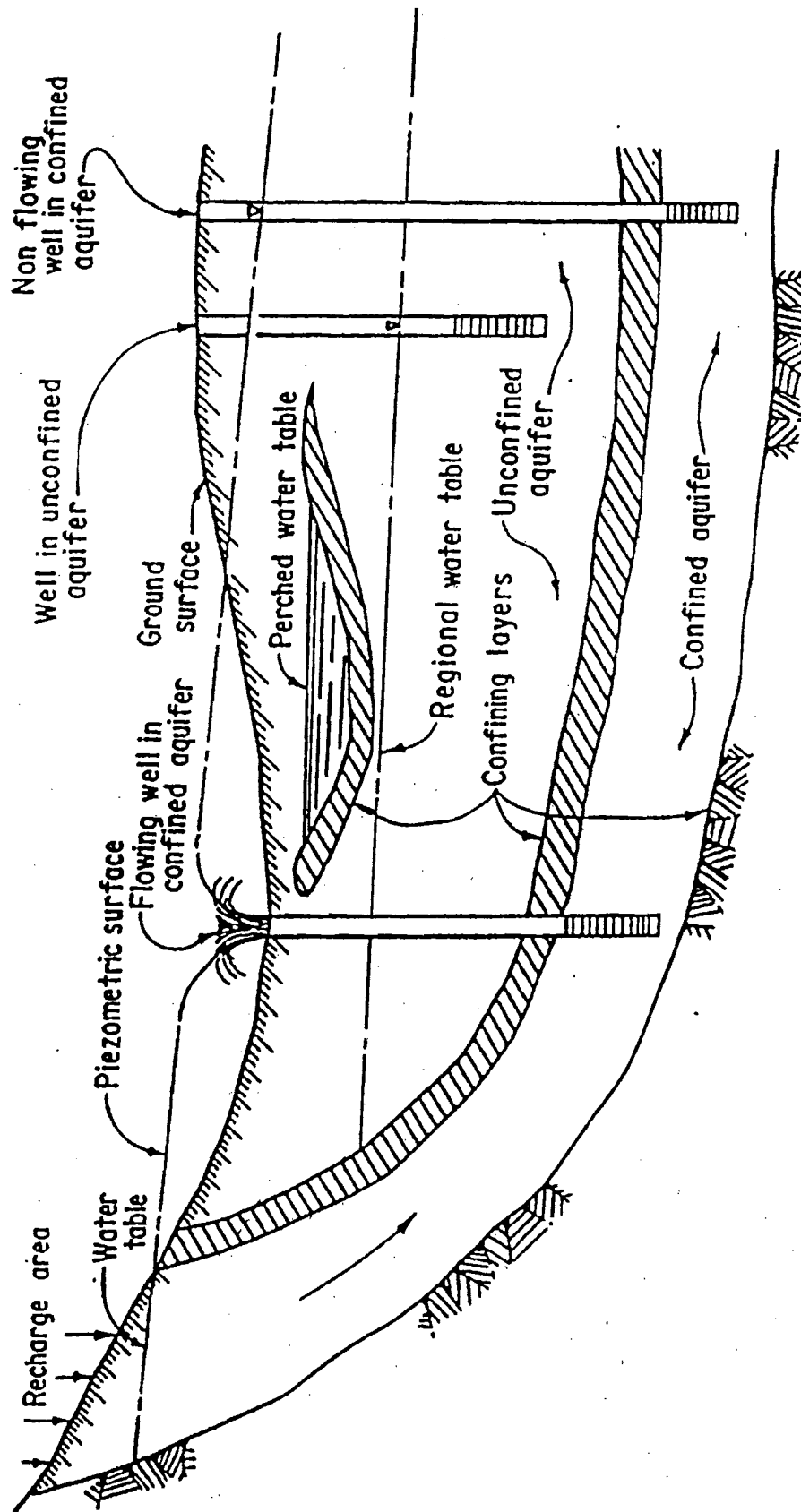


Figure 1-2.—Types of aquifers. 103-D-1401.

Snow for Trees: Forestry Techniques for a Changing Climate

By Rowan Braybrook and Jaal Mann

Climate change is impacting landscapes on a large scale, and forests—one of our largest carbon sinks and a critical part of any climate mitigation strategy—are at risk. If climate change is making forests more vulnerable, can innovative forest stewardship make them more resilient and sustain the role they play in watershed protection? This question led us at Northwest Natural Resource Group (NNRG) to create an experiment in practical forestry methods, in collaboration with forward-thinking partner organizations.

The Nisqually Community Forest (NCF) is located in the foothills of Mount Rainier in Washington State, in the upper Nisqually River watershed. Forests across most of this landscape have been clearcut two or three times and replanted at high densities, leading to homogeneous stands of young trees competing for sunlight and increasingly limited soil moisture. NCF is on a mission to use forest management techniques to conserve and increase stream flows in the watershed, which provides valuable habitat for threatened Chinook salmon and steelhead populations, while also improving forest resilience in the face of climate change.

In collaboration with NNRG, NCF is taking an ecological forest management approach of thinning the forest and managing for older trees that can better withstand the impacts of climate change, including greater resistance to fire and disease. Thinning forests can also increase drought tolerance by reducing the number of stems competing for finite water resources.



Rowan Braybrook



Jaal Mann

The connection between tree canopy cover and water

Tree canopy cover influences water availability in the forest. Continuous canopy cover, such as the tree crowns of overstocked stands, can intercept snow and cause it to melt or sublimate before reaching the ground. This can lead to less snow accumulation on the ground through the winter and then to drier soils in the summer. This is especially true on the west side of the Cascades, as the east side naturally sees sparser forests and more winter sun. Forestry techniques like thinning and gap cuts (small clearcuts around 0.5 to 1 acre in size) are sometimes recommended to increase snowpack, and thereby increase water availability and forest resilience in the face of drier conditions.

NNRG wanted to provide local proof of concept for these forestry methods and confirm they are likely to lead to increased snow accumulation and slower snow melt. Over the past two years, we've used several different methods to monitor the snow accumulation across three forest types: gap cut, thinned, and control. Each area was monitored through a combination of trail cam photos, snow depth measurement transects, and snow water equivalent measurements.

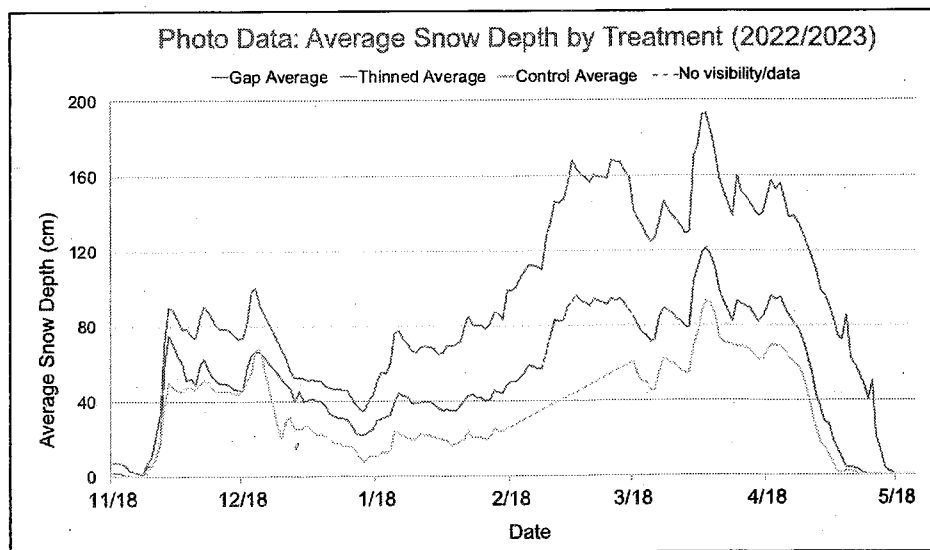
Our expectation was that more snow would accumulate in the gaps and the thinned forest than the control (unthinned) forest, where snow would be intercepted by tree crowns and would sublimate or melt more quickly than in areas with less dense canopy cover. We expected to see the most snow accumulation in the gaps.

Snow and soil moisture

The results indeed showed that significantly more snow accumulated in the gaps, and, key to our restoration work, the thinned forest also accumulated more snow than the unthinned forest. Thinning is the main forest management strategy we use at NNRG to improve forest health and generate revenue while also maintaining carbon stocks, providing cooling shade, and creating increasingly diverse wildlife habitat as the stands mature.

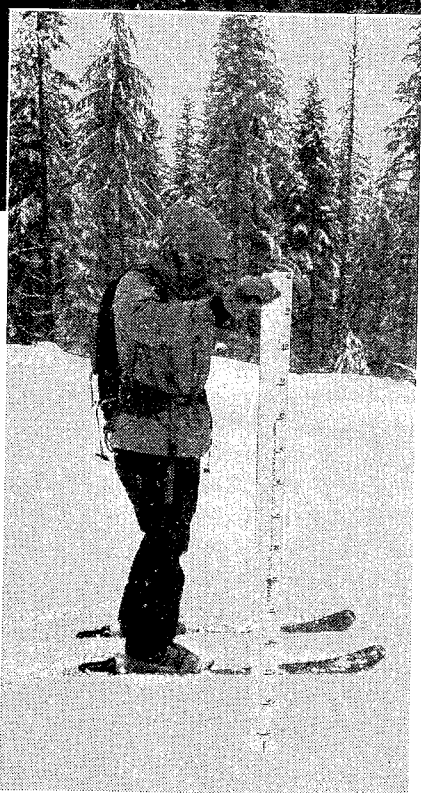
The snow in the gaps and thinned areas also lasted significantly longer into spring; when the snow in the unthinned control forest had fully melted, the gap still had about three feet and the thinned areas had nearly a foot of snowpack. Stretching out the snowmelt later into the spring can reduce the impacts of summer drought on trees and increase the supply of cool water to streams, which will be increasingly essential for fish habitat as our climate warms.

As an extension of this research, we're also replanting the gaps in the forest with seedlings sourced from lower elevations



GRAPH COURTESY OF NORTHWEST NATURAL RESOURCE GROUP

Over the course of the winter, clear patterns emerged regarding the relationship between the snow depth and retention of snow. Gap cuts retained the most snow, while thinned areas retained more snow than the control overstocked forest stands.



PHOTOS COURTESY OF NORTHWEST NATURAL RESOURCE GROUP

In the 140-acre research site in the Nisqually Community Forest, there are 19 gap cuts from 0.5 to 1 acre in size, stands thinned between 50-70 percent, and control areas with a stocking density of approximately 280 trees per acre. From November through May, researchers collected snow depth measurements in test plots biweekly during snow accumulation and weekly during snow ablation.

maintain their soil moisture throughout the summer. If you'd like to follow along as we release study updates, please subscribe to our newsletter: <https://www.nnrg.org/subscribe/>.

Climate change forces us to think big. The scale of change, even locally, involves millions of acres, many of which are overstocked and vulnerable to the host of stresses that climate change exacerbates. But beyond thinking big, we need to learn and implement; large-scale changes have happened before and can

happen again. The question we need to ask now is—how do we help the forest, so it can help us? *WF*

Rowan Braybrook and Jaal Mann work for Northwest Natural Resource Group, an ecological forestry nonprofit based in Seattle that specializes in working with nonindustrial landowners. Mann can be reached at jaal@nnrg.org, and Braybrook can be reached at rowan@nnrg.org.

and more southern seed zones, a strategy often referred to as "assisted migration." The theory behind assisted migration is that the off-site seedlings will be more resilient to the warmer and drier conditions of the future. Over time, the gaps will be filled with young trees from what is hopefully a more drought-tolerant genotype of local species.

This summer, we've started a soil moisture monitoring program to quantify the influence of the snowpack on soil moisture in each of the different management areas. We're especially interested to see how well the different stands



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Attachment C

MALIA ROSNER KUPILLAS, R.G., C.W.R.E., L.H.G.
Pacific Hydro-Geology Inc.

PROFESSIONAL REGISTRATIONS:

Licensed Hydrogeologist, Washington (914) – 2002 to present
Certified Water Rights Examiner, Oregon (60772WRE) – 1999 to present
Registered Professional Geologist, Oregon (G1354) – 1993 to present

PROFESSIONAL COMMITTEES:

Oregon Geology Map Advisory Committee, member since 2002 and Co-Chair since 2008 (26 members)
State of Oregon's Ground Water Advisory Committee for 6 years and chair for two of the years (9 members)
Oregon Water Resources Department Ground Water Advisory Subcommittee (13 members)
Oregon Water Resources Department Well Construction Rules Advisory Committee
Closed Loop Ground Source Heat Pump Boring Rules Committee (15 members)
Marketing and Technical/GWAC Committees, Oregon Ground Water Association
Nestucca, Neskowin, Sand Lake Watershed Council Board Member, 2020 to present
Water Technical Committee and Assessment Team for developing the Hydrogeomorphic Wetland Classification System
Clackamas County Emergency Preparedness Council, 2022 to present

PROFESSIONAL HISTORY:

Pacific Hydro-Geology Inc., President, 5/1994 to Present
ATEC Associates, Inc., Staff Scientist, 5/1994 to 2/1995
Landau Associates, Inc., Senior Staff Hydrogeologist, 8/1988 to 2/1994
Kansas Geological Survey, Groundwater Section, Research Assistant, 9/1986 to 6/1988
Ground Water Associates, Subcontractor, June 1986

ACADEMIC/TRAINING HISTORY:

Oregon State University, Water Resource Science PhD program - Fall 2006 to present
Certified Water Rights Examiner Workshops, sponsored by the Oregon Water Resources Department - Fall 2003, 2004, 2008 through 2022
DEQ Certificate of Training for Wellhead Protection Plan - 1996
Basic Wetland Delineation Training Course, Portland State University - 1996
Managing Forest Riparian Areas, Field Exercise, Oregon State University Extension Service - 1996
Managing Your Woodlands, Oregon State University Extension Service - 1995
Protecting Stream Corridors Workshop - Oregon State University Extension Service - 1995
DEQ Soil Matrix Cleanup License, Oregon (14262) - 1994 to 1996
Behavior of Dissolved Organic Contaminants in Groundwater, University of Waterloo - 1992
OSHA Training
 OSHA 8-Hour Refresher Course – 1989 through 2024
 OSHA 8-Hour Hazardous Waste Supervisor Training - 1990
 OSHA 40-Hour Hazardous Waste Training - 1988
M.S. in Geology (Hydrogeology), University of Kansas, Lawrence, Kansas - 1988
 Thesis: Stratigraphy of the Quaternary Alluvium in the Great Bend Prairie, Kansas. Funded by Ground Water Management District No. 5
B.S. in Geology (minor in mathematics), Wichita State University, Wichita, Kansas - 1986

PUBLISHED WORKS:

Geology near Blue Lake County Park, Eastern Multnomah County, Oregon. Oregon Geology. 1993.
Bet, J. N. and Rosner, M. L. (Describes and maps the subsurface stratigraphy in east Multnomah County).

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Malia Kupillas (Board Member of Nestucca, Neskowin and Sand Lake Watershed Council; Co-Chair of Oregon Geology Map Advisory Committee for the Department of Geology and Mineral Industries)

Thank you for the opportunity to provide public comments today to you on this topic. My name is Malia Kupillas. I am a registered geologist, certified water rights examiner, licensed Hydrogeologist in Washington. I'm also the board member of the Nestucca, Neskowin and Sand Lake Watershed Council. I am co-chair of the Oregon's Geologic Map Advisory Committee for the Department of Geology and Mineral Industries. I'm a wetland scientist. I'm a fourth generation farmer in Kansas and a PhD student at Oregon State University. And I do want to thank you for this again, opportunity to testify. My first comment is I have submitted written testimony that lays out an alternate surface water and groundwater management plan that integrates everything that the state has been trying to do with place-based planning, and it's integrated water resources and, and I see this as an alternative path to these proposed groundwater allocation rules. And it's the direction the state should be taking. And I would like to present and offer to the Commission that I would really like to present this plan to the Commission and explain how it works, how it integrates and give you a better understanding of that. So please contact me, and I will be happy to give you that presentations. The other thing that I want to comment on is two comments that Justin Iverson made where he said that water level declines in Harney Basin would not have happened if these proposed rules had been in effect. And that's not true. As a certified water rights examiner, I'm well aware that the existing rules would have required a determination if groundwater is available and if they had looked at the water level data and seen those declines, then they would have checked the box that said no, groundwater is not available. We would not have waited and let it continue to decline. Also, the new water rights that were issued contain limitations. And one of those limitations is if a decline is observed, then the Water Resources Department is required to start working with the farmer, either regulating the water right off or working with the farmer to see if they can improve efficiencies and use less water as they're irrigating. So, there were already two opportunities the Department has failed to implement to get us to where we are now.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Malia Kupillas

My name is Malia Kupillas. I am a registered geologist, certified water rights examiner, licensed hydrogeologist in Washington. I'm a board member on the Nestucca, Neskowin & Sand Lake Watershed Council. I am co-chair of the Oregon Geology Map Advisory Committee for the Department of Geology and Mineral Industries. I'm a wetland scientist. I'm a fourth generation farmer in Kansas and I would like to address the previous person's testimony in Kansas. My family farm that I now manage is in Groundwater Management District 5 and it was formed in 1976 and those farmers have been regulating and watching their water use and trying to conserve ever since. And they actually funded my master's thesis. And I'm currently a PhD student at Oregon State University in Water Resources Science and I just want to make a one major statement and that is Oregon is not running out of water. I have developed an integrated surface water and groundwater management plan as an alternative to the proposed groundwater allocation rules. Therefore, Oregon is not running out of water. Oregon has a problem with combing wells that has created groundwater declines in many areas that have been designated groundwater limited or groundwater critical. This is a construction problem, not an overdraft problem. Oregon has a problem with lost natural recharge to the aquifers from roadside ditches, impervious surfaces, filled wetlands, wet meadows that have been converted into duck ponds. Drain tiles have been installed in farm fields and not managed for recharge. We have lost the beavers who help store surface water. And these are just some of the examples of lost recharge that we are not capturing that we're quickly sending to the ocean every single winter. Therefore, Oregon has reached a point where commingled wells may need to be repaired, winter precipitation needs to be better managed and stored using wetlands, artificial recharge and aquifer storage and recovery drain tiles need to be managed and beavers restored to capture part of the recharged water that is currently lost to the ocean too soon. I am proposing an integrated surface and groundwater management plan as an alternative to the proposed groundwater allocation rules. This management plan implements the proposed Integrated Water Resources Strategy and Place-based Planning. The alternative plan will manage Oregon's surface and groundwater in a sustainable and integrated manner. The alternative plan that I'm proposing will provide a long term plan and measurable goals for water sustainability that will also help us with addressing climate change, no matter what that climate change is. The alternative plan that I'm proposing will allow the limited acres of prime farmland that are not covered with water rights to obtain water rights, which allows us to maximize our agricultural economics for the state. And the junior surface water rights can switch to groundwater when the streams need additional water to meet senior surface water rights and in stream water and in stream rights. This is part of the conjunctive management. The rules as proposed will make it impossible to implement all of the elements of my integrated plan, which is my doctoral dissertation. Therefore, this rule making process needs to be paused as we look at these other options before we go forward with these rules.

.

HARTT Laura A * WRD

From: Marc Liverman <marcpdx@gmail.com>
Sent: Friday, June 14, 2024 8:00 AM
To: WRD_DL_rule-coordinator; LANE Mindy J * WRD
Subject: Proposed Revisions to Groundwater Allocation Rules

Some people who received this message don't often get email from marcpdx@gmail.com. [Learn why this is important](#)

Dear Ms. Hartt, Chair Quaempts, and members of the Water Resources Commission:

I am writing today as a private citizen and long-term resident of Oregon to encourage your support for proposed revisions to the Water Resource Department's groundwater permit allocation process.

It is long past time for the Department to:

- Stop over-issuing groundwater pumping rights,
- better account for impacts on surface water, and
- stop defaulting in favor of issuing new groundwater rights when data are unavailable to determine whether the resource is already over-appropriated or if the proposed new use would be sustainable.

These changes are necessary to prevent further groundwater declines across the state that will harm rivers, streams, lakes, wetlands, and springs that are characterized by the addition of cold, clean groundwater. Declining groundwater levels have also harmed existing surface water rights, including instream water rights, irrigation, and municipal and private water supplies for more than 70 percent of Oregon residents. This will also ensure that available water supplies will be more resilient to the effects of climate change.

Please act now to adopt the proposed revisions to the groundwater permit allocation process, and thus reduce the adverse environmental, economic, and social effects of over-pumping hydraulically connected groundwater.

Thank you for the opportunity to comment and for your continued work on this important issue.

Sincerely,

Marc Liverman
4388 SW Twombly Ave
Portland, OR 97239



June 12, 2024

VIA EMAIL AND CERTIFIED MAIL

Laura Hartt, Water Policy Analyst
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301
wrd_dl_rule-coordinator@water.oregon.gov

RE: Approve Groundwater Rules That Better Protect Groundwater and Wildlife

Dear Ms. Hartt and the Oregon Water Resources Department:

On behalf of the Center for Biological Diversity, I submit these comments on the Oregon Water Resources Department's ("OWRD") proposed changes to groundwater permitting and allocation rules ("Proposed Rule").

As our region faces an ever-increasing demand for groundwater amidst the intensifying effects of climate change, improving Oregon's groundwater permitting rules is of the utmost importance. Existing rules have resulted in over-issuance of groundwater permits and caused major groundwater-level declines across the state that have harmed rivers, streams, lakes, wetlands, and springs that rely upon inputs of cold, clean groundwater. This, in turn, has harmed groundwater dependent ecosystems and wildlife. Declining groundwater levels have also harmed existing surface water rights, including instream water rights for wildlife, and domestic well owners who rely on groundwater for drinking water and household use.

The Proposed Rule is a necessary first step to prevent further groundwater degradation and, in several ways, puts Oregon on a path to more sustainable permitting by: defining "reasonably stable" and preventing new permits from being issued if groundwater levels are not reasonably stable; establishing the amount and type of data needed to find that groundwater levels are reasonably stable and requiring denial of a permit if data is not available; and protecting senior surface water rights, including instream water rights for fish and wildlife, by requiring a full accounting of the impacts of proposed pumping on hydraulically connected rivers and streams.

Despite these necessary changes, the Proposed Rule fails to adequately address the issues caused by Oregon's over-allocated groundwater systems. Across Oregon, groundwater levels are falling at unsustainable rates due to overuse. While the Proposed Rule prevents the rate of decline from worsening, it does nothing to slow or stop the current rate of decline, nor does it address issues with permits in existence or permit applications in process at the time of the rule's adoption. As discussed further below, OWRD must (I) tighten language providing a major loophole for new permit applications, (II) reduce the rate of decline necessary to find "reasonably stable" groundwater levels, and (III) better protect groundwater dependent ecosystems and wildlife.

I. The Proposed Rule must not allow for the unsupported presumption that groundwater levels are reasonably stable for first permit application.

The Proposed Rule allows OWRD to assume, based on zero data, that groundwater is not over appropriated if there is no other known groundwater pumping in the area. Specifically, the Proposed Rule provides that if data is insufficient to show that groundwater levels are reasonably stable, OWRD will “presume that groundwater levels are not reasonably stable.” However, the Proposed Rule goes on to provide a major loophole to that presumption, stating that it will presume groundwater levels are not reasonably stable “unless ... groundwater has not yet been extracted or authorized for extraction from the groundwater reservoir, in which case the Department may presume that groundwater levels are reasonably stable.”

OWRD must tighten this language by either: (1) requiring that, to presume groundwater levels are reasonably stable based on no groundwater extractions from the reservoir, it must be confirmed with sufficient data; or (2) removing the language in subpart B altogether.

II. The Proposed Rule must reduce the average rate of decline necessary to find that groundwater levels are reasonably stable.

Although the Proposed Rule defines “reasonably stable” groundwater levels and prevents new permits from being issued when groundwater levels are not reasonably stable, the definition is too generous. The definition of “reasonably stable” in the Proposed Rule includes “an average rate of decline of no less than 0.6 feet per year over any immediately preceding averaging period with duration between 5 and 20 years,” and a maximum decline of 25 feet from a reference point to the year in which reasonably stable is evaluated.

An average rate of decline of 0.6 feet leaves room for groundwater sources to decline to severely degraded levels in only a few years, as a groundwater system can completely destabilize in only 1 or 2 feet decline. To remedy this issue, the rules must provide an average rate of decline that is lower than 0.6 to meet the definition of “reasonably stable.”

III. The Proposed Rule must better protect groundwater dependent ecosystems and wildlife.

The Proposed Rule must do more to reverse the decades-long damage to groundwater levels and better protect groundwater dependent ecosystems (“GDEs”) that support a vast array of wildlife in our state. In total, Oregon has about 3,479 square kms of groundwater-dependent wetlands, which is about 45.4% of the 7,660 square kms total wetlands mapped in Oregon, and over 1,200 plant and animal species in Oregon are obligately or facultatively dependent upon groundwater.¹ By taking a more proactive approach to protecting GDEs, Oregon could prevent myriad groundwater-dependent animals and plants from becoming endangered or threatened with extinction, obviating the need for listing under the Endangered Species Act.

¹ Oregon Atlas of Groundwater Dependent Ecosystems (2022) at 26, 40 available at https://www.groundwaterresourcehub.org/content/dam/tnc/nature/en/documents/groundwater-resource-hub/Oregon_Atlas_of_Groundwater_Dependent_Ecosystems_2022.pdf.

One major issue with the Proposed Rule is that it defines the term “Potential for Substantial Interference” to mean that use of groundwater “will cause streamflow depletion” and thus “may cause or may have caused substantial interference with a surface water source.” By limiting this definition to apply only to streamflow depletion, however, the Proposed Rule fails to apply to situations where groundwater use may harm surface waters that lack streamflow, such as wetlands, marshes, fens, seeps, and other GDEs.

GDEs rely on groundwater for their structure, composition, and function.² These ecosystems include a broad range of aquatic habitat types that support a vast array of species that rely on groundwater for all or part of their life cycle. GDEs are characterized by their overwhelming biodiversity and their ecological importance, as they are often the only perennial sources of water in semi-arid or arid regions. GDEs also function as ecological refugia due to their climate-buffering capacity and resilience to short- and long-term climate variation.³ Despite providing climate-resilient refugia habitat for many species, however, these ecosystems are particularly vulnerable to human impacts from groundwater overuse and hydrologic alterations.

Climate change and increased irrigation demand in Oregon will further stress groundwater sources that feed GDEs. Reliance on groundwater is already increasing rapidly in Oregon, where agriculture represents 85% of statewide water demand,⁴ and this is expected to increase due to prolonged growing seasons and increased rates of evapotranspiration from climate change.⁵ Most climate models project that precipitation will increase in winter but decrease in summer, which implies that the number of consecutive days without rain will increase during the dry season.⁶ Some studies also suggest that precipitation events and dry periods will become more intense in the coming decades.⁷

² Kløve, B., Pertti, A., Bertrand, G., Boukalova, Z., Widerlund, A., Goldscheider, N., et al. (2011). Groundwater dependent ecosystems. Part I: Hydroecological status and trends. *Environ. Sci. Policy* 14 (7), 770–781.

³ Cartwright, J. M., Dwire, K. A., Freed, Z., Hammer, S. J., McLaughlin, B., Misztal, L. W., et al. (2020). Oases of the future? Springs as potential hydrologic refugia in drying climates. *Front. Ecol. Environ.* 18 (5), 245–253.

⁴ Oregon Water Resources Department. 2015. Oregon Statewide Long-Term Water Demand Forecast. 76 p. Salem, OR.

⁵ Oregon Water Resources Department. 2017. Oregon’s 2017 Integrated Water Resources Strategy. Mucken A and Bateman B (eds.) 190 p. Salem, OR.

⁶ Abatzoglou, J.T., R. Barbero, J.W. Wolf, and Z.A. Holden. 2014a. Tracking interannual streamflow variability with drought indices in the U.S. Pacific Northwest. *Journal of Hydrometeorology* 15:1900–1912.

Rupp, D.E., J.T. Abatzoglou, and P.W. Mote. 2017. Projections of 21st century climate of the Columbia River Basin. *Climate Dynamics* 49:1783–1799.

⁷ Pendergrass, A.G., et al. 2020. Flash droughts present a new challenge for subseasonal-to-seasonal prediction. *Nature Climate Change* 10:191–199.

Rupp, D.E., L.R. Hawkins, S. Li, M. Koszuta, and N. Siler. 2022. Spatial patterns of extreme precipitation and their changes under ~2°C global warming: a large-ensemble study of the western USA. *Climate Dynamics* 59:2363–2379.

In Oregon, surface water evaporation is generally expected to increase as temperatures increase.⁸ Even if changes in precipitation could increase the average net water balance (precipitation minus evaporation), the likelihood of drought, particularly during summer, will also increase as precipitation becomes more intense and seasonal.⁹ Surface water in Oregon during the irrigation season is almost fully allocated,¹⁰ so increased water demand or decreased surface water supply is likely to prompt additional groundwater development.

In August, when Oregon's streams often experience their lowest flows and warmest temperatures, cold-water groundwater inputs are ecologically important for the growth and survival of aquatic species. Because Oregon's mean August stream temperature is expected to increase in most streams by 10-20%,¹¹ it is especially important to protect groundwater inputs to provide cold-water refugia for anadromous fish and other species. Increased drought combined with invasive annual grasses will also change the fire regime in eastern Oregon, which will disproportionately harm springs, groundwater-dependent rivers, and riparian phreatophyte communities—deep-root plant communities that draw their water directly from groundwater.

As these effects of climate change further stress surface water levels and temperatures in Oregon, the demand for groundwater for irrigated agriculture and municipal use will become ever greater. Indeed, climate change will significantly affect irrigation practices and the availability and use of scarce water in Oregon. Bigelow and Zhang (2018) provided a direct assessment of climate adaptation through the lens of agricultural irrigators in Oregon.¹² Their findings highlighted how agricultural producers in Oregon have already begun acquiring supplemental irrigation rights, which give irrigators access to another source of water if they cannot withdraw the full amount of water granted to them through the primary water right from the primary source (e.g., if junior surface water users are regulated off in a given basin, a supplemental groundwater right could be used to make up the shortfall). But while this practice may allow irrigators to “adapt” to drought conditions or dwindling surface water levels by drawing water from another source, it will put added, increased stress on groundwater levels and GDEs.

Oregon's groundwater rules must go farther to protect GDEs and the wildlife who rely on them. Specifically, groundwater allocation “within the capacity of the resource” must adequately consider the beneficial value and capacity of GDEs.

⁸ Abatzoglou, J.T., and D.E. Rupp. 2017. Evaluating climate model simulations of drought for the northwestern United States. *International Journal of Climatology* 37:910–920.

⁹ Oregon Climate Assessment 2023.

¹⁰ Oregon Water Resources Department. 2017. Oregon's 2017 Integrated Water Resources Strategy. Mucken A and Bateman B (eds.) 190 p. Salem, OR.

¹¹ Isaak DJ, Wenger SJ, Peterson EE, Ver Hoef JM, Nagel DE, Luce CH, Hostetler SW, Dunham JB, Roper BB, Wollrab SP, Chandler GL, Horan DL, Parkes-Payne S. 2017. The NorWeST summer stream temperature model and scenarios for the western U.S.: a crowd-sourced database and new geospatial tools foster a user community and predict broad climate warming of rivers and streams. *Water Resources Research* 53: 9181-9205.

¹² Bigelow, D., and H. Zhang. 2018. Supplemental irrigation water rights and climate change adaptation. *Ecological Economics* 154:156–167.

In addition to considering whether groundwater sources are hydraulically connected to surface waters with streamflow when determining the “Potential for Substantial Interference” of a new groundwater permit, the Proposed Rule must adequately consider the connectivity of groundwater to other surface water features like wetlands, marshes, fens, and other GDEs without streamflow that could also be harmed by pumping.

Finally, only four governmental entities in the world currently have GDEs explicitly listed as a source for water management consideration, and Oregon is not yet one of them.¹³ Oregon must protect our biologically diverse and ecologically important GDEs a conservation priority, particularly within the context of its groundwater permitting system.

Conclusion

Improving Oregon’s groundwater permitting rules is long overdue, and the Proposed Rule changes must be implemented promptly to prevent further worsening of a severely damaged groundwater system. Adopting the Proposed Rule, however, should be the bare-minimum that OWRD does to correct the decades-long overallocation of groundwater permits, safeguard against the harmful effects of climate change, and put our state on a better and more responsible path to sustainable groundwater management for both Oregon residents and the wildlife that depend on these important water sources.

Sincerely,



Margaret E. Townsend
Senior Freshwater Attorney
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0374
(971) 717-6409
mtownsend@biologicaldiversity.org

¹³ Rohde M, Froend R, Howard J. 2017. A global synthesis of managing groundwater dependent ecosystems under sustainable groundwater policy. *Groundwater* 55(3):293-301.

DATE: 04/04/24

TO: OWRD; WRD_DL_rule-coordinator@water.oregon.gov

FROM: Marilyn Tate Koenitzer; 20856 Bobwhite Ct; Bend OR 97701; mltknows@gmail.com

RE: GROUNDWATER RULE MAKING - APPROVE

I commend you for suspending water permit approvals for new wells without proof of adequate water to sustain the well. Also for going through this process of groundwater investigation and rulemaking. At last!

I have lived in Oregon almost all my adult life, 45 years in Corvallis, and two in Bend. In Corvallis, where few were concerned about availability of water, there was concern in rural areas about lack of groundwater. One of those places was on the southwest side of the urban growth boundary near me. People living there were finally able to get water when the area was annexed. Several large areas in South and Southwest Corvallis had to be annexed due to health hazards and/or lack of water. As you know, Corvallis gets its water from the Willamette River and the Rock Creek Watershed, not from wells. In summer, when El Nino years occurred, the Willamette water level was so low that it stank with the smell of rotting algae. Our home water filter turned green. Even though our household had enough city water, I occasionally was uneasy about the reliability of both sources.

In the city of Bend now, I am very concerned about the declining water from all sources. All these years I have been heavily involved in environmental issues as a volunteer with environmental organizations. I've been studying water issues in Bend for two years.

In Central Oregon we are all drinking from essentially the same pool of water with thousands of different sized straws. Even though we don't know the size of the pool, we do know the rate of recharge in the Cascades aquifers if we get rain or snow. That's the big if! With climate change, predictions are just that, but seem to be tending toward less water. At the same time Central Oregon is rapidly adding humans.

Oregon's Land Use Goals do not tie growth approvals to water availability. We have to change that, and soon. Bend is one of the fastest growing cities in the US. That is not likely to stop with full coverage in major US newspapers, such as the Washington Post last year, touting the wonders of the Bend area. Redmond is looking to expand and has been denied a permit to drill a new well. We shall see if that holds. The other smaller cities to the north are growing as well as bedroom communities to Bend.

Still, Oregon allows exempt wells to pump 15,000 gallons of water per day without metering to know how much is being used. Or for what. So far we aren't able to lessen over-appropriated water rights or water wasted by rights holders to comply with outdated regulations on usage. People flood rocks or lawns to comply. Not to mention golf courses in the desert. A lot of water is wasted to comply with outdated regulations. About 1,000 wells have gone dry in Deschutes County this year! I have heard well drilling charges of \$100,000.

- I am in full agreement with OWRD rule updates that address new well permit applications while protecting the water rights of existing users. Contrary to some

beliefs, the proposed rules will not take all water from farmers in this desert, but assure that new permits will not harm the aquifers or existing users.

- I support the metrics for groundwater sustainability as identified in your proposed rules.
- I agree that permits should not be granted in situations where data do not exist to support a sustainable aquifer.
- I agree that you should correlate groundwater and surface water to preserve waterways and all life that depends on our rivers.
- The established correlation between ground and surface water must be considered in all decisions that affect water usage and allocation in order to preserve waterways and all life that depends on our rivers. I know that your current rulemaking applies only to new groundwater permits. Oregon must, however, address other pressing issues, including entrenched water rights, lack of metering of unpermitted wells, wasted irrigation water, and lack of land use planning tied to water availability.

Again, thank you for your bold first steps in revamping the well permitting process to protect our declining, vital groundwater.

MTK

HARTT Laura A * WRD

From: marilyn koenitzer <mltknows@gmail.com>
Sent: Friday, June 14, 2024 3:20 PM
To: WRD_DL_rule-coordinator
Subject: June 14 Hearing Comments

Some people who received this message don't often get email from mltknows@gmail.com. [Learn why this is important](#)

OWRD Commissioners:

This morning, June 14, 2024, I made comments on behalf of the League of Women Voters of Oregon (LWVOR). I should have made those comments representing myself, not LWVOR. Those comments were that the Oregon Land Use Goals and Policies do not link land use development to water availability. Redmond, Oregon applied for a new water permit and was denied. Bend will need to apply for a new permit as well and needs that water to supply its growth.

My new comments:

Few have spoken about the “missing link” in our state land use goals between development and availability of water for it. You are not responsible for creating that link, but you inadvertently are becoming part of it with your rule making. I hope my testimony raises awareness of the lack of connection.

I agree with the testimony of Mayor Melanie Kebler of Bend who is concerned that Bend will have trouble meeting state mandates for housing with future water constraints. Both Mayor Kepler and Annette Liebe mentioned the unique characteristics of the Deschutes Basin. Ground water comes from many sources, but is uneven. Ms. Liebe said ground water has been declining two feet per year in parts of the Basin and 50 feet (over a relatively short period of time). That is alarming to many of us.

More can be done with conservation by almost all water users, but conservation can only go so far. The state is actually regulating water somewhat, mainly through your rule making. It is past time for the state to acknowledge the part it plays in putting pressure on our water resources by mandating growth with its population projections, urban growth boundary regulations, density requirements and housing mandates.

The Department of Land Conservation and Development can link land use to water availability. It can create policies for use by cities and counties to ensure sustainable water supplies for development. It could also promulgate rules for conservation, if necessary. Having policy coming from the land use perspective could also alleviate pressure on your rule making.

I agree with your current rule making as I said in a previous letter, and I hope you can find a way to tackle exempt wells which are going dry at an accelerated rate. It is shocking that they can extract 12,000 gallons per day without being metered. I also hope we can define beneficial use with a conservation slant.

At your hearings it has been heartening to hear so many people on the same page on water issues.

I appreciate the listening and caring you exhibited during the two day meeting in Bend.

Thank you for all you are doing to try and save water for Oregon,

Marilyn Koenitzer
mltknows@gmail.com

20856 BOBWHITE CT
BEND OR 97701-7740
541-231-0156

HARTT Laura A * WRD

From: Mark.H <Mark.Hutto@protonmail.com>
Sent: Thursday, May 16, 2024 9:00 PM
To: WRD_DL_rule-coordinator
Subject: Rulemaking Information for Groundwater Allocation OAR 690, Divisions 8, 9, 300, and 410 – Notice and Opportunity to Comment

Some people who received this message don't often get email from mark.hutto@protonmail.com. [Learn why this is important](#)

To Whom It May Concern,

I oppose changes that would restrict new water rights for legitimate domestic and food production purposes. While we have had issues with marijuana growers, Oregon is quickly becoming an authoritarian state that ignores its citizens and lacks verifiable elections. These new regulations will only increase skepticism and erode respect for regulatory bodies. Thank you for your time.

Mark Hutto
Medford, OR

Sent with [Proton Mail](#) secure email.

HARTT Laura A * WRD

From: Mark Morgan <mmorgan@hermiston.gov>
Sent: Tuesday, April 9, 2024 9:01 AM
To: WRD_DL_rule-coordinator
Subject: New Groundwater Rights Rulemaking Comment

Some people who received this message don't often get email from mmorgan@hermiston.gov. [Learn why this is important](#)

Over-subscription of groundwater creates significant costs to existing residents of Hermiston.

The City of Hermiston supplies drinking water to more than 20,000 residents; 100% of which was supplied by stable/declining groundwater sources in 2023 from the Lower Umatilla Basin Critical Groundwater Management Area. The Hermiston City Council has taken numerous steps to protect future water supply.

In 1996, City Taxpayers approved a \$9M Levy to construct a 9-mile transmission pipe & treatment plant to supply Columbia River water to City residents & businesses. This facility now supplies significant non-potable water for industrial, agricultural, and employment uses, but the cost associated with pumping & treating the water means that the City's water utility still opts to produce most of its drinking water from groundwater wells.

In 2017, the Hermiston City Council voted to adjust the water utility rate structure from a "declining block rate," to an "inclining block rate," which increases the unit rate as more water is used. This change reduced total groundwater consumption by utility customers by 187 million gallons (15%) from 2018 to 2019, while nearly doubling costs to rate-payers. This change freed up some water rights capacity, but according to PSU, Hermiston has added approximately 2,100 residents (11.6% increase) from 2018 through 2023, with continued growth expected. With continued residential, commercial, and industrial growth, groundwater consumption in Hermiston in 2023 had nearly reached back to 2018 levels; just 23 million gallons (2.6%) less than 2018, with 2024 usage likely to surpass the 2018 mark.

In 2023, the City spent \$3M to expand potable water supply piping to enhance supply from it's Columbia River source, with plans of future needs from that source increasing. The city has also begun a Limited License application for an Aquifer Storage & Recovery (ASR) program to pump, treat, & store wintertime Columbia River water. This process will create relatively expensive water, but will be critical to ensuring potable water supply for the largest city in Eastern Oregon.

Hermiston is an example of how over-subscription of finite groundwater resources leads to significant costs to existing users.

Thanks,

Mark Morgan
Assistant City Manager
(541) 567-5521
180 NE 2nd St.
Hermiston, OR 97838
Where Life is Sweet

**Note: As of 1/1/24, my email domain has changed to "hermiston.gov"*



Oregon Council Trout Unlimited
POB 740
Gladstone, OR 97027

May 24, 2024

Laura Hartt
Rulemaking Coordinator
Oregon Water Resources Department

Re: The Oregon Council of Trout Unlimited supports the proposed Groundwater Allocation Rules Revisions.

The Oregon Council of Trout Unlimited (OCTU) is the statewide, grassroots affiliate of the national Trout Unlimited organization. We have 3,400 members in Oregon. Our mission is to care for and recover rivers and streams so our children can experience the joy of wild and native trout and salmon and the clean cold streams we revere in Oregon.

Of the proposed revised rules, the key revision is the requirement that a groundwater source have a documented sustainable reserve before a new extraction permit will be issued.

The current process is unsustainable for fish and wildlife and for future human use both through negative effects on surface water quality and flows and the costs associated with rapidly falling groundwater levels. Climate change makes it imperative that we reverse this trend.

As stated in the OWRD email of March 1, 2024: *"Current groundwater right permitting rules allow for aquifers to decline beyond what nature can replace and do not consider long-term or cumulative impacts on surface water. Addressing the long-term impacts of groundwater use requires updating the rules for reviewing new water right applications."*

The Oregon Council of Trout Unlimited strongly supports the proposed groundwater allocation rules revisions.

Sincerely,

A handwritten signature in blue ink, reading "Mark W. Rogers". The signature is fluid and cursive, with the first name "Mark" and last name "Rogers" clearly legible.

Mark W. Rogers
Chair Oregon Council

Oral Comments – Bend Public Hearing (April 4, 2024)

Mark Salvo (Oregon Natural Desert Association)

My name is Mark Salvo. I'm the Conservation Director for Oregon Natural Desert Association. ONDA's mission is to protect defend and restore millions of acres of public lands in Oregon's high desert. We maintain offices here in Bend, in Portland, and represent more than 18,000 members and supporters who contribute their time talent and funds to ensuring a future for Oregon's dry side. It is on their behalf that our organization supports the Oregon Water Resources Department scientific data driven approach to updating his policies to conserve and sustained groundwater resources. Seeps, springs, wetlands, creeks and streams are the lifeblood of Oregon's desert. Fish, wildlife, and watersheds are utterly dependent on these rare desert waters, many of which are inextricably connected to area aquifers. Water resources will become even more critical in the high desert as climate change warms and dries this environment. In fact, Oregon's high desert is warming faster than most of the rest of the country. For these reasons, we are supportive of the Department defining reasonably stable groundwater levels and formulating rules that will be protective of hydrologically connected surface water. In fact, beyond what is currently proposed we would like to see a requirement that the state examine the impacts of any new application on groundwater dependent surface waters such as seeps, springs and wetlands, to ensure that any new permit would not have adverse consequences for these vital components of desert ecosystems. Importantly, updating Oregon's allocation rules to sustain groundwater and connected surface waters will have salutary benefits on other state priorities in eastern Oregon, including conservation and recovery of imperiled species, management of fire and climate resilient landscapes, and continued sustainable economic development throughout the region. In this way the new groundwater management regulation can serve as a foundation to support other local, federal, and state investment and implementation of an array of conservation economic programs across the huge proportion of the state. So, for that reason, thank you again for your work on this important new rule.

HARTT Laura A * WRD

From: HARTT Laura A * WRD
Sent: Friday, April 5, 2024 11:17 AM
To: Martin E. Millard
Subject: RE: Notice of proposed rulemaking

Hi Martin,

This email is to acknowledge we have received your written comments. You also may wish to attend one of the upcoming informational sessions and subsequent public hearings. During each informational session, we offer an overview of the proposed rulemaking and then take questions from the public, so that would be a good forum to ask your questions. Afterwards, we accept oral public comments. I'll note that the hearing scheduled for May 21 is a hybrid one, so you need not be there in person to participate. Dates, times, and locations are as listed in the notice and as posted on our [website](#).

Also, we have posted the info session/hearing recordings from our Bend meeting held yesterday, in case you'd like to review those:

- [Bend Info Session](#)
- [Bend Hearing](#)

Thank you for taking the time to comment, Laura

[Laura Hartt \(she/her/hers\)](#)

Water Policy Analyst | Rules Coordinator | Tribal Liaison

725 Summer St NE Suite A | Salem OR 97301 | Phone 971-720-0963 | Laura.A.Hartt@water.oregon.gov



[Integrity](#) | [Service](#) | [Technical Excellence](#) | [Teamwork](#) | [Forward-Looking](#)

From: Martin E. Millard <martinemillard@hotmail.com>
Sent: Thursday, April 4, 2024 5:47 AM
To: HARTT Laura A * WRD <laura.a.hartt@water.oregon.gov>; WRD_DL_rulecoordinator@water.oregon.gov
Subject: Notice of proposed rulemaking

You don't often get email from martinemillard@hotmail.com. [Learn why this is important](#)

To Laura A. Hartt,

I was sent the below notice from a fellow Oregonian. The notice doesn't mention anything about what is being proposed or changed. I went to the website <https://www.oregon.gov/owrd/programs/gwwl/gw/pages/groundwater-rulemaking.aspx> listed on the flier and I'm still having trouble figuring out what is being proposed or changed. Is this really how Oregon state agencies give Oregonians notice of changes to law that will affect us? It seems underhanded and sneaky. My impression is Governor Kotek wants to build a lot of homes and expects existing farms and property owners to cut back on water use for the new developments.

We, my family and I, do not support any of the changes. Whoever wrote the literature is being deceptive, possibly to prevent Oregonians from understanding what will be codified into law and to prevent Oregonians from being able to oppose the measure.

Document "GW Allocation Rulemaking Backgrounder FINAL Feb 2024.pdf" states:
"Oregon is one of many western states dealing with rapid groundwater depletion."

1. Please provide a measurement of the groundwater depletion mentioned in the document.
2. Is the ground water depletion state wide or certain regions?

"Previous water rights determination practices did not consider long-term impacts to groundwater and surface water when granting water rights."

3. Please provide an explanation on how "previous water rights did not consider long-term impacts to groundwater and surface water when granting water rights."

4. Will these changes affect farms across the state?
5. What is "Market-based solutions." mentioned in the document?
6. Below is the notice, please point out where it states what is being changed:

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

**NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

CHAPTER 690
WATER RESOURCES DEPARTMENT

FILED

02/22/2024 6:03 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amend, repeal, and adopt rules pertaining to allocation of new groundwater rights.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/31/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Laura Hartt
971-720-0963
laura.a.hartt@water.oregon.gov

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

Filed By:
Laura Hartt
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 04/04/2024

TIME: 7:00 PM - 9:00 PM

OFFICER: Laura Hartt

IN-PERSON HEARING DETAILS

ADDRESS: Deschutes Service Building, 1300 NW Wall Street, Bend, OR 97703

SPECIAL INSTRUCTIONS:

This hearing will be conducted in-person. Each person attending the hearing who wishes to comment will be asked to sign in on a sign-up sheet upon arrival. During the hearing, the hearing officer will call on members of the public to provide oral comment in the order in which attendees have registered to comment. The hearing will begin no earlier than 7:00 p.m. and close no later than 9:00 p.m. Based on the number of people who have signed up to provide oral comments, the hearing officer may set reasonable time limits for each commenter.

The hearing session will be recorded and available for viewing within 48 hours of the close of the hearing on the rulemaking website: <https://www.oregon.gov/owrd/programs/GWWL/GW/Pages/Groundwater-Rulemaking.aspx>.

Auxiliary aids for persons with disabilities are available upon advance request. Please email WRD_DL_rule-coordinator@water.oregon.gov or call (971) 720-0963 as soon as possible, but at least 48 hours in advance of the hearing for which an aid is needed.

In addition to presenting oral comments at the hearing, anyone may submit written comments until 5 P.M. on May 31, 2024, which is the close of the public comment period. Written comments should be sent to "Laura Hartt" at Oregon Water Resources Department, 725 Summer Street NE, Suite A, Salem, OR 97301 or by email to WRD_DL_rule-coordinator@water.oregon.gov.

Comments received after 5 P.M. on May 31, 2024, will not be reviewed or considered by the agency unless the agency

Respectfully,
Martin E. Millard & family

CC/BCC: Interested parties and government agencies

P.S. We have law makers here in Oregon who are harming Oregonians by continuously violating our rights under the US Constitution, Bill Of Rights, etc. You do not have authority to continuously violate our rights and prevent us from feeding our families healthy food, growing food, raising livestock, or access to water. You are wasting our time by forcing us to dedicate more and more of our precious time to preserve our rights from out-of-control law makers. Similar to the widespread medical propaganda we, Oregonians, have been forced to endure to coerce us into taking medical procedures such as covid shots. Enough is enough, you are making our lives worse and destroying the state of Oregon.



Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, Oregon, 97301
wrddl_rule-coordinator@water.oregon.gov.

April 4, 2024

Members of the Oregon Water Resources Commission and Department

The Oregon Groundwater Act was enacted in 1955 and it is past time for clear rules to protect this valuable resource that provides clean drinking water and fresh, cold water discharge to streams and rivers for all life.

The League of Women Voters of Deschutes County appreciates the widespread notification, public presentations, listening sessions, and transparency of the Oregon Water Resources Department. Research by the Department in the Deschutes basin has provided a much better understanding of a resource we once considered unlimited. We appreciate the scientific study and expertise that supports the rule making in determining and regulating critical groundwater regions.

The League of Women Voters of Oregon believes that water is a resource that should be managed for the benefit of the public and as sustainable habitat for all life forms. We support policies and statutes that promote comprehensive long-range planning for conservation and management of the groundwater and the improvement of water quality.

The League believes that consideration of the availability and quality of water should be an essential condition of any land use decision. We live in an arid region that is currently impacted by severe drought with falling well water tables. Some wells are failing, and the most common response is to dig the well deeper. Out of sight and misunderstood the water in our aquifers is being depleted faster than it is being recharged. There is potential for long term personal and financial harm to individuals and communities. The future is uncertain.

The Oregon Water Resources Commission and Department has the responsibility for ensuring access to fresh water for all life forms. We support the efforts of the Department to identify regions of concern early, notify well users and managers, and implement effective regulatory measures. We support the Criteria for Designation of Critical Groundwater Area 690-010-0120 under OAR Chapter 690 Division 10 and ORS 537.730 to 537.742

Thank you for this opportunity to comment.

League of Women Voters of Deschutes County Leadership Committee
LWV DC Water Committee: Becky Powell
20607 Coventry Cir. Bend, Oregon, 97702: 541-389-5693

LWVdeschutes@gmail.com
541-931-9096



June 14, 2024

Oregon Water Resources Commission
Water Resources Department
725 Summer St. NE, Suite A
Salem, Oregon, 97301

Welcome Chairman Quaempt, Vice Chair Smitherman and members of the Commission

I am Becky Powell representing the League of Women Voters of Deschutes County. We support the Amendments of Chapter 690 Oregon Groundwater Rules and submitted a letter in April to that effect.

Thank you for coming to Bend to listen to the arid eastside of the Cascades and for this opportunity to share some comments in addition to our previous testimony.

Enactment of the 1955 Groundwater Act gave Oregon a rare opportunity in the western states to manage our groundwater. It is past time for clear rules to protect our valuable clean drinking water and streamflow.

The League believes that the interdependence of land use planning and water planning must be recognized and required at all levels of government. Land use decisions in the Deschutes River Basin are being made without regard to the availability of water or accounting for the impact of these decisions on water quantity and quality. Cities and developers are struggling with the economic impacts but must have clear guidelines to prevent injury to existing water needs.

The League recognizes that effective planning for water protection and use is most effective with a complete inventory of the water resource including all domestic wells. There are more than 20,000 exempt wells in the basin that are not monitored or regulated and some are known to exceed the three-household limitation and irrigate more than 1/2 acre. Priority efforts should be directed to geographic areas with identified problems and vulnerabilities.

In order to achieve equitable distribution of water for all living beings it is essential we understand the nature of the resource. We appreciate the department's work researching the Deschutes River Basin, educating and listening, and supporting basin planning with expert assessments.

Thank you.

Leadership Committee. League of Women Voters of Deschutes County

Mary B. Powell
20607 Coventry Cir. Bend, Oregon 97702
MLp504e@bendbroadband.com

Oral Comments – Bend Public Hearing (April 4, 2024)

Mary Powell (Deschutes County League of Women Voters)

I'm Mary Powell. I'm with the Deschutes County League of Women Voters, and we want to thank the Department for being so helpful in having all these public meetings and providing a lot of opportunities for people to have their input and also for their years of study in the Deschutes Basin, providing a lot of information on groundwater which I hope everybody will take advantage of. The Groundwater Act was enacted in 1955, and its past time for clear rules to protect this valuable resource. It provides clean drinking water and fresh cold-water discharge to streams and rivers for all life. The League of Women Voters believes that water is a resource that should be managed for the benefit of the public and a sustainable habitat for all life forms. We support policies and statutes that promote comprehensive long-range planning for conservation and management of the groundwater and improvement of water quality. We believe consideration of the availability and quality of water should be an essential condition of any land use decision. We live in an arid region that is currently impacted by severe drought with falling well water tables. Some wells are failing, and the most common response is to dig the well deeper which doesn't seem to be like the best solution if the water table's falling. I think a lot of people assume that the thousand feet of water table is everywhere available and frankly we doubt that. Out of sight and misunderstood, the water in our aquifers is being depleted faster than it's being recharged. There's potential for long range long-term personal and financial harm to individuals and communities, and the future of precipitation and availability in this basin is uncertain. The Oregon Water Resources Commission and Department has a responsibility for ensuring access to fresh water for all life forms. We support the efforts of the Department to identify regions of concern early, notify well users and managers, and implement effective regulatory measures. We support the criteria for designation of critical groundwater area and thank you for this opportunity.

Oral Comments – Water Resources Commission Public Hearing
(June 14, 2024)

Mary Becky Powell (League of Women Voters of Deschutes County)

We've supported the RAC and sent in a letter in April to that effect with the voters of Oregon also supports the RAC as proposed, and I just and I'm just going to in the interest of time to submit our testimony to you for later reading.



Clackamas River Basin Council

P.O. Box 1869 • Clackamas, OR 97015 • www.clackamasriver.org • Email: info@clackamasriver.org
503.303.4372 FAX 503.303.5176

May 16, 2024

Laura Hartt
Rulemaking Coordinator
Oregon Water Resources Department
WRD_DL_rule-coordinator@water.oregon.gov

Dear Laura Hartt,

The Clackamas River Basin Council (CRBC) supports the Oregon Water Resources Department efforts to update rules for new groundwater right applications. The CRBC was authorized by the Clackamas County Board of Commissioners in 1996 as an implementer for the Oregon Recovery Plan for Salmon and Steelhead, specifically with a responsibility to improve state waterways.

The CRBC's specific mission is: *"To foster partnerships for clean water, to improve fish and wildlife habitat, and to enhance the quality of life for those who live, work, and recreate in the Clackamas River Basin."*

The Council collaborates with numerous partners to improve the quality of the Clackamas River, and provide a unique showcase of habitat restoration in a rural-to-urban setting. Our voluntary partnerships exceed \$10 million in grants over more than two decades. Together, we support extensive restoration and in-stream habitat projects for watershed health.

The proposed rules concerning groundwater rights will help to ensure the streams that sustain the fish, wildlife, and people of the Clackamas River continue to flow for current and future generations. Ground water is critical for maintaining summer base flows, and can be a significant source of the cool, clean water that our iconic salmon and steelhead rely on to live. Over-pumping of groundwater creates low flow conditions thereby limiting fish access to side channels and off-channel rearing areas, and creates potential fish passage barriers. Failing to address the overutilization of ground water undermines the Council's continual efforts to recover State and Federally-listed salmonids in the Clackamas basin, and must be avoided if recovery efforts for these culturally and economically significant species is to be successful.

CRBC is aware that several existing groundwater rights and exempt groundwater uses in the Clackamas River Basin will not be impacted by WRD's new rules. CRBC is not aware that said existing groundwater usage is adversely impacting the tributaries nor the mainstem of the Clackamas River. However, we ask that you place existing and exempt water use on the Department's list for future considerations of ground water use and management.

Please also consider the status of water right holders that are requesting time extensions to perfect their rights and for unperfected water rights that have not yet requested time extensions. If water use measurement and reporting is not already part of the unperfected water use permits, please consider incorporating them in your review of the existing, and yet to be received, time extension requests as a

matter of public interest review. The Council appreciates the opportunity to provide input on the proposed rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "David Bugni", written in a cursive style.

Executive Director

David Bugni
Chair

HARTT Laura A * WRD

From: Maynard Freemole <maynardfreemole@gmail.com>
Sent: Friday, June 7, 2024 3:21 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater allocation rule revisions

Some people who received this message don't often get email from maynardfreemole@gmail.com. [Learn why this is important](#)

Oregon Water Resources Department:

Please institute the revisions currently proposed for the Groundwater Allocation Rules. These proposed revisions seem long overdue, a condition that news of difficulties with the groundwater supply in the Bend area highlight and reinforce. It appears that lack of data about use and overuse of this resource has been an issue because it led to granting new allocations that overtaxed the groundwater capacity in the area. The proposed rules offer an opportunity to correct this situation, and to gather and provide essential data for making decisions.

Data-supported decisions based on these revisions should not only help recover groundwater supplies, they should protect the stream flows and cold water inputs that are vital to so many of Oregon's fish and wildlife stocks. Furthermore, we cannot ignore the increasing effects of climate change on this vital resource. Due to the climate challenge, it is more important than ever to stop issuing water use permits that could, clearly, tax our groundwater resources beyond possible recovery in our time. The city of Bend is not unique in facing this challenge to conserve and maintain the quality and availability of groundwater in Oregon.

Please institute the proposed revisions of this rule.

Thank you.
Maynard Freemole

Oral Comments – Water Resources Commission Public Hearing **(June 14, 2024)**

Melanie Keebler (City of Bend)

My name is Melanie Keebler. I'm the mayor of Bend. Welcome to Bend. Thank you for being here with us today. I'm here on behalf of the City of Bend and the Central Oregon Cities Organization or COCO. And collectively, we are nine cities responsible for providing water to over 150,000 people in central Oregon. And we continue to be cities in one of the state's fastest growing regions. COCO has submitted comments to the Water Resources Commission on the groundwater rules, and I'm not going to read the whole 14 page letter but provide some highlights for your consideration today. We've been closely engaged with the groundwater allocation rulemaking process for about two years, and throughout that time, we've been providing input about how our Deschutes Basin and Deschutes aquifer are different and should not be swept up in statewide, one size fits all, set of updated rules. Unfortunately, we feel we still have little to show for those efforts. To be clear, COCO supports fully the Water Resource Commission's action to update groundwater rules across the state and take care of this precious natural resource. We recognize the allocation of groundwater has been over appropriated in some parts of the state, and understand these rules are needed to prevent further groundwater declines. That's especially true in basins with shallow and ancient aquifers, where these rules are perhaps needed the most. However, the impact of these rules in the Deschutes Basin is marginal at best and will fail to support the incredible collaboration that we've had here in Deschutes for many years. So, some key items that we're still struggling to understand. We feel these rules will do little to arrest the decline of groundwater levels in the Deschutes Basin due to our unique hydrology and hydrogeology. The Deschutes Basin receives roughly 4000 cubic feet per second of annual recharge, and municipal water users account for only 2% of this recharge. That's fundamentally different than other basins, where pumping actually exceeds annual recharge. Ultimately, the cessation of new groundwater permitting will do little to achieve the Commission's policy objective of arresting the decline of groundwater levels in the Deschutes Basin. These rules also include little to no consideration of exempt and unregulated wells in central Oregon. The new groundwater allocation rules ignore over 18,000 groundwater wells in the Deschutes Basin and don't account for them. That equates to roughly 4 billion gallons per year of Deschutes Basin groundwater not considered into the rules. And we understand there are statutory reasons for that. But I think this is a moment when we're having this groundwater conversation to get into that hard discussion about those exempt wells and what they are doing to our groundwater. These rules also fail to extend the groundwater mitigation program that has been so successful in the Deschutes Basin. This is the only mitigation program in the state. It's a critical tool for central Oregon cities as they plan for the future. And it's a product of that great collaboration that we have here. We need to keep this program functioning past the 2029 sunset and build on the momentum we've gained as a basin. The rules also fail to consider impacts to cities, and we'll talk about this more in a minute. But these rules do not include any consideration of our other mandates for housing, buildable lands and/or the financial capital that's going to be required to adapt water systems to. The new rules in this conversation are conservation and mitigation requirements. These rules also, and we are thankful to have the idea of an off ramp for our basin, those rules, as they are written right now, are unclear and problematic. That's an

option that's supposed to be a path forward for basins like ours. And we would like to pursue that option. But, it has vague sideboards that are not clear, and there's no dedicated support from the Department, and the earliest Department staff says that they could assist us with this effort is 2027. We would like to do better for our fastest growing cities in central Oregon, again, to help us create that basin-specific rules that meets the goals of this groundwater rulemaking effort, while recognizing our uniqueness as a basin. We are perhaps the most studied basin in Oregon. We have seven US Geological Survey peer reviewed and published studies that set out in detail the hydrogeological framework of the Deschutes aquifer and our unique attributes. Most of these studies were funded in part by OWRD. The science is routinely utilized in discussions and meeting groups as we collaborate on water issues in the basin. And we want to point out the City of Bend, we had a joint meeting between our council and the Warm Springs Tribal Council, and that was an excellent example of the type of collaboration that we do in our basin. Water was a number one topic for both of our councils, and staff from our councils are going to plan to continue to meet. And we'll be meeting in July to underscore our commitment to conservation, water quality and working with our basin partners. Ultimately, the point here is that the City of Bend and COCO see these updated rules as actually an impediment to continuing that place-based, collaborative work that our basin has been engaged in for decades. So, COCO is asking for greater clarity about terms that are used in the proposed rules, and about how the rules will be applied and implemented in the basin, and most importantly, if that off ramp to basin-specific rulemaking is our only option. We are asking the Commission for a clear path forward and a commitment for the resources to help us get that process underway as soon as possible. Ultimately, we support the intent behind these rules, but have many concerns, some of which I've mentioned here today. I hope you'll take the time to read our full comments that we've submitted to you and consider our needs, and thank you very much for the opportunity to speak

HARTT Laura A * WRD

From: Micah Wait <micah@wildfishconservancy.org>
Sent: Tuesday, May 21, 2024 3:56 PM
To: WRD_DL_rule-coordinator
Cc: Emma Helverson
Subject: OWRD Proposed Groundwater Allocation Rule Revisions

Some people who received this message don't often get email from micah@wildfishconservancy.org. [Learn why this is important](#)

To: Laura Hartt, Oregon Water Resources Department
From: Micah Wait, Wild Fish Conservancy
Re: OWRD Proposed Groundwater Allocation Rule Revisions

Wild Fish Conservancy supports the OWRD's proposed groundwater allocation rule revisions. Wild Fish Conservancy is a nonprofit conservation organization headquartered in Washington State and dedicated to preserving, protecting and restoring the northwest's wild fish and the ecosystems they depend on, through science, education, and advocacy.

Wild Fish Conservancy supports the OWRD's proposed groundwater allocation rule revisions for a number of reasons. We believe these revisions are an improvement to the existing regulations, which have resulted in an over-issuance of groundwater permits. Under the existing rules groundwater rights can be issued even when they may negatively affect surface water flows. By determining reasonably stable groundwater levels, the proposed revisions will improve protections for stream flows and cold water inputs in systems where the groundwater is hydrologically connected to surface water. These rule changes will help to protect valuable fish habitat threatened by climate change and population growth.

Micah Wait
Wild Fish Conservancy
(206)953-9305

www.wildfishconservancy.org

HARTT Laura A * WRD

From: Michael Beaty <mike_beaty@icloud.com>
Sent: Tuesday, May 28, 2024 1:41 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rules

[Some people who received this message don't often get email from mike_beaty@icloud.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

OWRD,

As a land owner and water user residing in Baker County, I wholly support implementation of the updated OWRD rules for issuing new groundwater permits.

Integrating surface and groundwater administration and management is long overdue, as demonstrated by the statewide adverse impacts to existing surface and wells from excessive groundwater permitting in recent years.

Thank you,
Michael Beaty
PO Box 449
Halfway, Oregon
97834
Sent from Mb iPhone

Oral Comments – Bend Public Hearing (April 4, 2024)

Michael Preedin (City of Sisters)

I'm Michael Preedin. I'm the Mayor of Sisters. I'm also the current vice chair and former chair of Central Oregon Cities Organization. And I'm also the co-chair of COCO's water subcommittee. I've been talking more about water in the last two years than I ever have in my whole life. COCO has been engaged in water conservation and planning in the Deschutes Basin for over 25 years. Over that time, we've worked closely with the Oregon Legislature and the Oregon Water Resources Commission to pass bipartisan, basin-specific legislative bills over the last 20 years to create a system of stream restoration and water allocation for our unique basin. The Commission approved the Deschutes Groundwater Mitigation Program and other collaborative efforts in this basin since that time that have led to tremendously positive developments. And I'll give you just four. We've increased the flow in the middle Deschutes, River fourfold during that last 20 years. We've restored Whychus Creek, a key tributary for the system. We've had collaborative solutions for the Crooked River that have united local, state, and federal policymakers. And foundational funding for canal lining and piping allowing for stream and river flow restoration. All of this only happened because stakeholders in our basin, in this area, have been sitting down together collaboratively for over two decades. A successful effort continues to this day because, based on specific data and place-based efforts have been proven to work. This method needs to continue well into the future, past the current threshold of what the mitigation program is, which is just a few years down the road. But I'd like to talk about Sisters specifically. I have to represent my people. So, regarding this City of Sisters water system, we completed a water system master plan update in 2023, which has a lot of great information. And it reveals that while we have historically stayed way ahead of average daily water demand, the future looks much more uncertain. Assuming the City's growth rate coincides with the Population Research Center published values and no other changes are made to average consumption rates, the City's maximum daily demand is anticipated to exceed the design source supply in only 2028. We're growing that fast, and it includes already implemented and future water conservancy measures, so it's very concerning certainty for water needs to happen for Sisters. And I represent the people of Sisters, and we need to support the future growth through certainty of water for our cities. And the rules as written do not support that effort. And that's really all I have for you guys.

HARTT Laura A * WRD

From: Michele Jones <mzjoregon@gmail.com>
Sent: Friday, March 22, 2024 7:05 PM
To: WRD_DL_rule-coordinator
Subject: water rights

[Some people who received this message don't often get email from mzjoregon@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Sirs

Growing food at a small scale should not be restricted. Focus on growing illegal marijuana or licensing for growing things people can't eat.

The small farmers are doing a great service to the community and should be encouraged not discouraged. We all need food and might need it to be grown locally even more in the future. Stand up for Oregonians and our rights to survive.

Thank you
Michele Jones
610 Montara Way
Eugene, OR 97405



Jefferson County Farm Bureau

*798 SE Dover Lane
Madras, Oregon 97741
Phone 503/250/2460*

June 14, 2024

Oregon Water Resources Department
Laura Hartt
725 Summer St. NE, Suite A
Salem, Oregon 97301

WRD Ground Water Rule Making Public Comment

Jefferson County Farm Bureau has two main concerns with any rule making:

- (1) Our Opal Springs aquifer needs to be preserved for Jefferson County and not be allowed to be used for mitigation for communities or cities outside of Jefferson County. That should always be the case for all aquifers in relationship to their communities or cities within their basins and sub-basins within a county.**
- (2) Being a junior water right holder in the Deschutes Basin we need to be made whole and not have the water rights that should be going to us continue to be converted to mitigate ground water depletion within the basin. In our opinion that is over committing water resources and not allowing for adequate recharge and will not resolve the problem.**

We truly understand the need for correctly managing the water in Oregon by watershed and aquifer, having been in a drought for five years that has greatly impacted agriculture in the North Unit Irrigation District. Over-allocation is a key issue that any rule making needs to address. A study needs to be made to identify how the over allocation occurred and the impacts that have occurred because of the over allocation for each basin, watershed and aquifer(s).

Sincerely,

Mickey Killingsworth

**Mickey Killingsworth
Secretary-Treasurer
Jefferson County Farm Bureau**

Home of North Unit Irrigation District

Oral Comments – Bend Public Hearing (April 4, 2024)

Michael Buettner (City of Bend)

Mike Buettner, Utilities Director here for the City of Bend, providing some comments tonight here on half of the City of Bend. First, I want to just recognize the importance and need for updating these groundwater rules. I think we've all experienced groundwater level declines, extreme drought over the last several years across Oregon, and these existing, the current rules are in need of updating. They're unclear, and I think leave a little bit too much to interpretation for all parties. So, thank you to the Department for taking up this effort to update these rules. I also want to express appreciation for staff's efforts to date and really want to highlight their accessibility throughout the RAC process. Annette, Justin, Laura throughout this whole process, you and your technical experts were always available to us to ask questions, to have a quick conversation in between the rulemakings to really get an understanding of really where we are headed. I wish we would have agreed more, but I do appreciate the fact that you will carve out time and wanted to note that here today. This has been a really long process. I think we're going on three years since the initial notification that the Department was going to head in this direction. Bend and my fellow Central Oregon City municipal water managers have been engaged from the start. Our support includes the white paper that we originally put together that pulled together the most relevant groundwater research completed in our basin really to help move conversations along around the Deschutes Basin groundwater conversation and hoping that we would end up with a set of rules that works well for us. We attended all eight RAC meetings, pushing your attendance quota I think a couple of times. We attended several Water Resource Commission meetings, have met with most Water Resource Commissioners, two public hearings and dozens of meetings in between to keep our leaderships, to keep our councils updated, on really the current trajectory of these rules. In short, we're invested, and we've invested hundreds of hours in this rulemaking effort today. Ultimately, we feel it was possible to develop a more effective set of rules for Oregon and the Deschutes Basin, specifically. There's a library of research on Deschutes Basin hydrology that could have been incorporated. This is outlined in the white paper I mentioned earlier. This process was long enough to include specific provisions for basins already active in place-based planning efforts and ultimately, as you've heard already these rules don't address the thousands of exempt wells that are largely unregulated across Oregon and have just as much of an impact as many of the water users that are targeted through these rules. We value the opportunity to create basin-specific groundwater management tools as is outlined in these draft rules; however, I want staff and the public to know that this is a long and uncertain path with zero guarantees for municipalities. The fastest growing cities in Central Oregon, in Oregon, have no clear path to water planning. There's no clear funding, guidance, or dedicated support from OWRD for us to access as we pursue basin-specific rules for our basin, and this process is projected to take three to five years minimum I'm told, and we're told by staff from this from the Department they wouldn't have capacity to take this up or to assist until 2027 which is simply unworkable for us. Ultimately and perhaps most importantly this coincides with the 2029 sunset of the Deschutes Basin Groundwater Mitigation Program. Deschutes Basin cities have invested millions of dollars into this program over the years. This program or some form of it needs to continue to allow movement of water within the basin. Our rate payers are depending on it. Ultimately, we need predictable yet nimble rules to navigate an uncertain path forward that's filled with variables outside of our control. You've heard climate

change. You've heard artificial recharge, exempt wells. Those are all things that are outside the scope of these rules. We as cities have clear mandates for providing enough buildable lands, as you've heard. We have to meet the water demands of those buildable lands. Some central Oregon cities like Bend are navigating new obstacles such as the state-mandated affordable housing needs analysis and the new legislative rules for climate friendly and equitable communities for cities over that 50,000 people. Ultimately these draft rules do not adequately consider the fiscal impacts to cities, municipal water providers or our customers, only further adding to concerns around affordability in our communities. So, here's what we need moving forward from OWRD. We need commitment from OWRD leadership that water certainty for Central Oregon cities will be a top priority in the future. Municipal water providers like myself, Redmond, Bend, Sisters shouldn't be required to navigate this level of uncertainty given the existing regulations already around water management and conservation plan that we're subject to. We need certainty. We need certainty on the future of the Deschutes Basin Groundwater Mitigation Program. We need assurances from OWRD that this program or some form of it will continue. Again, our rate payers are depending on that program moving forward. And lastly, I'll end with this. We need funding. We need funding for water supply projects. We need funding for water conservation programs. We need funding for water affordability programs for our customers. We can't make this shift on our own, and we need flexible funding tools designed specifically for cities in our short and long-term challenges. So, thanks again to OWRD staff for all of your work today. We really appreciate it, and Bend and other Central Oregon cities are standing by waiting to assist moving forward.

The department has failed to adequately acknowledge the impacts these rules will have on agriculture, rural communities and small business owners. It is my belief that they are missing an opportunity to collaborate and work with everyday Oregonians. The truth is it is the state of Oregon and OWRD overallocation and 50 years of lacking data collection that has created this issue. Not just everyday Oregonians that use and need water like the department implies. And while these new rules will have a rubber stamp effect on new ground water rights, they will have effect on current domestic well users nor update the departments lacking in information collection. The department has not come up with a plan to engage current well users, water right holders nor any wish to impart more knowledge upon this population.

I have given testimony and listened to testimony these past few sessions. Almost every Oregonian other than nonprofits want and are pleading with the state for a basin-by-basin approach. Why this department isn't listening and working more to get these rules right is beyond me.

I could go on and on for hours on this subject, but I believe at this point that OWRD doesn't want to work with Oregonians. One only has to look at the insulting "greater Idaho" movement to see that Oregon communities are feeling like they are a marginalized voice. OWRD wants to shove these new rules down Oregonians throats and then expects these same communities who were asking for a clearer path to a basin approach to then just adhere and work seamlessly with the department? What a silly notion. Meanwhile domestic wells will continue to be over pumped and city lawns watered in the summer. These rules will hurt farmland feeling the effect of climate change and stifle affordable housing. I wish the department would take a deep breath and just dive deeper into these rules to collaborate and work with the people.

Thank you,

Molly Collins

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Molly Collins (Willamette Valley)

I'm Molly Collins and I'm married to a third-generation farmer in the Willamette Valley. I've been listening and interacting with these meetings for the past three years. So, I've kind of been in it and I've learned a lot. I see a need for rule making and I think that's clear. But the communities impacted have been pleading with this Department to honor and incorporate a basin-by-basin approach. The Department says that these are forward-looking rules that won't affect existing users, but Oregonians in critical groundwater areas, Harney County and Deschutes County would heed a different story to a lot of us. The public testimony from ag communities, municipalities, representatives from various counties, mayors and even state representatives would testify differently. Some may believe this has been a robust rulemaking process with a diverse RAC and significant assessment and public outreach. But I would argue unless you're a politician or work for a nonprofit, then most of the Oregonians being affected or who have a vested interest have other jobs. These meetings scheduled for April, May is one of the most busiest times for the entire agricultural sector. That's why my husband's not on these and this is not their day job. I would argue that a vast majority of Oregonians have no idea that this rulemaking is even happening on public outreach too. The OWR website has been intense since February. I'm 36 and I can't imagine someone in a rural community with rural internet connections or someone of my parents' age having the ability to really get into the website and understand everything that's going on. The website has changed a lot in the past four months. With the new updates coming in, the Department may believe it's acknowledged, and it isn't minimizing that there will be an impact to users, but this will. Hence the rush to end a rubber stamp approach these rules have. One only has to look at the Willamette Valley basin studies on the OWR website to surmise that curtailment will be on the horizon. I respectfully decline the notion that the rules allow for options for a basin by basin approach. I could go into the Department's belief that it has a sound technical basis for the definition of reasonably stable water levels and surface water and groundwater across the state. But the lack of basin by basin data or their lack of acknowledgement that maybe we should get more of that data and the one rule for the whole state of Oregon suggest otherwise. I understand and I really do believe that majority of OWRD and the RAC truly believe they have encouraged engagement and coordination and that may be with policies for managing interstate aquifers with other states, but that doesn't negate that they have failed to encourage engagement and coordination within the state of Oregon, nor honor the basin by basin approach that the state has encouraged for the last three decades. Overall, I support new rules because this is the closest Oregon has gotten to it. I support it because I'm a mom of hopefully a fourth generation farmers. We are in it, and I believe in climate change. Oregon has had an opportunity to do better and work with Oregonians for 69 years, since 1955. Three years may seem like such a long time, but not to me, and clearly not to other Oregonians who value and respect and depend on these rules and water. It is my hope that the Department makes the rules and engage current water right holders more and foster way more community engagement so people can know what's going on in their basins and do better. I really do appreciate all the work that everyone has done, but I just think that we could take a breath and just get it right. It would be so much better for Oregonians.

June 9, 2024

I support new groundwater rules in Oregon

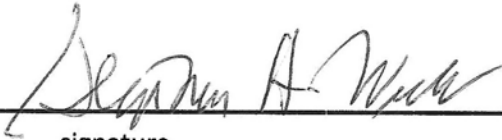
Dear Oregon Water Resources Department:

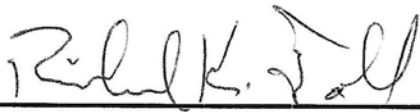
Oregon's water resources are critical to our rivers, safe drinking water and state economy, and they deserve our protection.

Drought is projected to become more frequent and more severe in Oregon in the next several decades due to climate change—endangering our wildlife, farms and drinking water. These new rules are a smart, science-based approach to plan for the future and ensure there is enough water for people and nature.

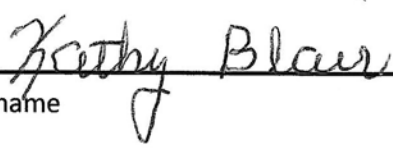
I urge you not to let Oregon run dry. I support new groundwater rules in Oregon that will secure a strong water future for nature and people.


Thank you from the members of Grace Memorial Church:

Stephen Weeks		97212
name	signature	zip

The Rev Canon Richard K. Toll		97222
name	signature	zip

Elaine Toll	Elaine Toll	97212
name	signature	zip

Kathy Blair	Katherine L. Blair	
	Kathy Blair	97216
name	signature	zip

Alicia Perkins Lehrke		97123
name	signature	zip

Ann Crockett Ann Crockett 97212
name signature zip

Myra W. Clark Myra W. Clark 97008
name signature zip

Jennifer Traeger Jennifer Traeger 97230
name signature zip

Gary Volke Gary Volke 97211
name signature zip

Bill Cassidy Bill Cassidy 97211
name signature zip

Zane Barlow Zane Barlow 97211
name signature zip

Sherri Vacarella Sherri Vacarella 97203
name signature zip

MARGARET LLOYD-PATTON Margaret Lloyd-Patton 97225
name signature zip

LEDDY R. PATTEN Leddy R. Patten 97225
name signature zip

MARY LAURENCE Mary Laurence 97232
name signature zip

MARTIN ELBERT Martin Elbert 97211
name signature zip

Yetunde Laniran Yetunde Laniran 97211
name signature zip

PAUL PARKER Paul Parker 97229
name signature zip

KATE FURQUA Kate Furqua 97215
name signature zip

Peggy Jo Bronson Peggy Jo Bronson 97219-3884
name signature zip

Jennifer Yeast Jennifer Yeast 97229
name signature zip

name signature zip

name signature zip

HARTT Laura A * WRD

From: Myron Redford <myronamity@yahoo.com>
Sent: Tuesday, June 11, 2024 2:49 PM
To: WRD_DL_rule-coordinator
Subject: New Groundwater Regulation rules

[Some people who received this message don't often get email from myronamity@yahoo.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Coordinator

I-support the new proposed groundwater regulations. I believe we are over using ground water in many areas & need to stop expansion or even cut back.

Thank you

Myron Redford

Redford/Wetle Farms

Amity, Ore

Sent from my iPhone

HARTT Laura A * WRD

From: Ned Austin <folquailhvn@aol.com>
Sent: Wednesday, June 5, 2024 4:33 PM
To: WRD_DL_rule-coordinator
Subject: New Ground Water Rules Have My Support

Some people who received this message don't often get email from folquailhvn@aol.com. [Learn why this is important](#)

I live in Central Oregon with Swalley Irrigation water rights on my property and a domestic well that is the only source of water for my home. The nearest public source is the Avion Water System about one quarter mile away.

That being said I still support the new groundwater rules for Oregon for the following reasons:

- +The impacts of climate change are real, and the State of Oregon needs to be more assertive about managing the possible consequences of this on groundwater resources in a more sustainable way.
- +Oregon's natural values are an important part of the State's economy and recreational values and many of these values depend on a sustainable management of its water resources.
- +Oregon's current groundwater rules are tied to historic practices no longer sustainable to the realities of the 21'st Century.

Sincerely,

Ned C. Austn
Bend, Oregon

Oral Comments – Bend Public Hearing (April 4, 2024)

Neil Brandt (WaterWatch of Oregon)

For the record my name is Neil Brandt, and I'm the Executive Director of the statewide nonprofit WaterWatch of Oregon. Our mission is to protect and restore flows in Oregon's rivers for the fish, the wildlife, and the people that depend on healthy rivers to survive. First, I want to thank the Department for taking on this critical issue. WaterWatch has been a member of the RAC process since the beginning and throughout. Like others here, we have invested significant staff time and effort into this process, and we want to thank the Department for the rigor and the strong use of science and data to inform this process throughout. As Justin spoke about at the beginning of this meeting in the informational session, we know that many places in Oregon, including here in the Deschutes, surface and groundwaters are connected. Groundwater is essential to our rivers, streams, lakes, wetlands, springs, and other groundwater dependent ecosystems that rely on cold, clean groundwater inputs to provide for the fish and wildlife that Oregonians cherish. Here in Oregon, we're lucky to have this 1955 Ground Water Act with its forward-looking standards. WaterWatch is very supportive of the Department's efforts to finally bring both rules and practice when it comes to groundwater allocation into alignment with the statute with these proposed rules. As we know our groundwater resources in Oregon are finite. It is critical that we work together to safeguard this resource for fish, wildlife, and people. These proposed rules are the first step toward sustainable groundwater allocation in Oregon into the future, and we'd like to thank you.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Neil Brandt (Water Watch of Oregon)

I'm the Executive Director of WaterWatch of Oregon, and I'm here tonight to highlight a few points. First, while we think these proposed rules could be stronger in certain places, which we will address in our follow up written comments, we believe these proposed rules make critically needed changes to align with the 1955 Groundwater Act, notably by (a) applying a science based and data-driven definition of reasonably stable groundwater levels and (b) protecting senior surface water rights both in stream and out of stream that have been systematically injured under the current rules through issuance of permits to pump hydrologically connected groundwater. These long overdue changes will help groundwater dependent ecosystems, people who rely on domestic wells, and senior surface and groundwater users alike. Some have claimed that the proposed rules would not work in certain places in Oregon. We've reviewed these claims and respectfully, we disagree. Our analysis is that the proposed rules will work well across Oregon and that's consistent with the robust data analysis done within the rulemaking process by WRD. On the issue of housing more broadly, we are confident that there is ample water supply and lots of tools available to provide the water needed for additional housing without jeopardizing Oregon's water future by permitting new unsustainable groundwater pumping. Further, the proposed rules also contain an option to develop basin specific rules regarding reasonably stable groundwater. That option requires consideration of critically important groundwater related components. We're very supportive of those components and in order to have a fair and sustainable system, we urge the Department that those components not be weakened or removed for any basin specific rules. In closing, WaterWatch is very supportive of the proposed rules, and we want to thank the Department for the thorough process, analysis, and thought that went into the rulemaking and for helping chart a more sustainable water future for Oregon.

Oral Comments – Central Point Public Hearing (May 16, 2024)

Nigel Von Hruska (N/A)

My name is Nigel Von Hruska. A small farmer, artist of glass, and soccer coach, and a lover of freedom. See, it takes freedom to have harmony. When freedoms are stripped away, we lose quality control of our own lives. Hence, losing harmony. As my family grows on our small farm of 30 acres with five grandchildren, all under the age of 6, with hopes of dreams of being self-sufficient on a regenerative organic farm, raising cows, chickens and pigs, and most of all the love for animals. With a growing population and a housing crisis and the lack of quality local foods, I suggest you rethink and table your motion for new rules until you understand the true impact of meeting our housing and quality food goals of the future. Limiting water use will only make reaching those housing goals and farming goals impossible. Last but not least, what about our well drillers? Would they lose jobs? Would it make their job more difficult? Would they lose revenue because of government overreach? Future Farmers of America will be a lost term. Well, at least in Oregon.

Dr. Noah Robinson
P.O. Box 1250
Cave Junction, OR 97523
Ph. 541-450-9523

Dear Ms. Hartt,

5/5/2024

I am Senator Art Robinson's principle assistant as well as his son and coworker in science for several decades. I also have a background in science with extensive experience and a PhD in chemistry from Caltech.

In addition, due to my father being barred from re-election, I am a candidate to replace him in the Senate.

I can tell you from first hand experience, both working with my father and as a candidate, that Oregon residents are extremely upset over the continuous expansion of regulations that make it more and more difficult for businesses to operate.

Our state needs farmers. We need our farmers to be productive and provide food at the cheapest possible prices. When farmers suffer, our other businesses suffer as well as all Oregonians.

This is an extremely poor time to be making new regulations that will restrict the ability to drill new agricultural wells.

While we recognize that it is important to occasionally prevent the drilling of an agricultural well due to a shortage of water in the area, the default position of the state should be to grant permission to drill these wells except in these rare cases.

New state agency rules that require a new well to have zero impact on surface water are obviously absurd. In science we know that everything effects everything. When you get out of bed, you change the rotation of the earth – but at an infinitesimal level.

I could not agree more with my father, Senator Art Robinson's enclosed letter. Please reconsider and do not put further restrictions on access to agricultural water.

Best Regards,



Noah Robinson

Received
MAY 09 2024
OWRD

Oral Comments – Central Point Public Hearing (May 16, 2024)

Noah Robinson (Cave Junction)

I'm representing Senator Art Robinson. I work with him. And also, I'm a candidate for the Senate as well. I think as well, the rules should be halted, and they should be investigated more carefully. What's been done for 100 years has been working well. For sure we have local problems. The marijuana people are a big issue in our area. They're all over the place. They take water illegally and they do cause problems. So that is, I think, a large part of what's going on, at least in some areas. This food industry is one of the most critical industries for our state. People in the cities, they can't live without food. They depend on the farmers. And just to make it more difficult for those farmers to get the water they need is an enormous stake. In terms of the amount of food that's exported, yes, food is exported, food is imported. It's not that much water going in and out, but the food industry is critical and that's what these that's what these farmers do. They provide the food for Oregonians. As far as I noticed some comments about climate change, this is an issue we studied. There's a similar problem there. Computer models trying to model things too carefully very often doesn't work. You can look at the computer model and find out that they're very flawed because they don't produce, they don't follow the actual data. And if you look at rainfall throughout the state as the temperature climate has naturally gotten warmer over the last 100 years, rainfall has not gone down. It's gone up a little bit. So, I don't expect that there's going to be a drop in future rainfall. So, these things need to be halted. We need to look at it more carefully. I'm also a farmer. I've lived in Cave Junction for more than 40 years. Our family has a farm there. When the when they halted new service water rights, you could get a new water right off the creek. But we never went back. And now those rights are very valuable because if you lose it, you don't get it back. There's no way to get it back. And I'm very much afraid that if the state moves in this direction and makes it more difficult for farmers to drill wells, makes it very difficult. It's not going to go the other way. We're not going to. We're going to be stuck with that and it's going to be very democratic with the state and the economy.

HARTT Laura A * WRD

From: Jim Guild <guildbuild@gmail.com>
Sent: Friday, June 14, 2024 4:51 PM
To: WRD_DL_rule-coordinator
Subject: Public comment groundwater rules updates

Some people who received this message don't often get email from guildbuild@gmail.com. [Learn why this is important](#)

Hello OWRD

I support the proposed rules revisions to the OWRD groundwater rules which are an extremely important step to steward our public groundwater resources.

Climate Change is increasing temperatures here in Oregon; reductions in climate change groundwater recharge are putting a spotlight on how OWRD issues new groundwater permits

I support the rule changes to require that no new groundwater permits are issued outside the capacity of the resource.

I especially feel that water conservation should be practiced more stringently with the groundwater rights that are now in place BEFORE any new groundwater rights are issued.

Any new groundwater rights should be correlated to consumptive uses that are correlated to today's 2024 year standards of water conservation and water stewardship, not consumptive use calculations of year over twenty years ago from year 2001.

Thank you for considering my views.

Nunzie Gould
19845 JW Brown Rd
Bend, OR 97703

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Nunzie Gould (Deschutes County)

I do thank you for making this opportunity available to the public and also for posting your previous work sessions and your public comment meetings that you've had in the past. I live in rural Deschutes County, and I've noticed a number of well rigs traveling to various neighbors properties and then I learned that their respective exempt wells have gone dry. And I'm intrigued that you've listed an average of 26 grand for deepening a well. But one of the things I'm noticing is because of the age of wells and the technology of when they were drilled, often deepening is not what's just occurring, what's occurring. Our brand new wells are getting sunk into the ground. And while I understand that going to the well might provide more water, it actually doesn't make more water. And so, my focus on my comments to endorse adopting the rules that you've written is also to be thinking about how we conserve the water that we have and make better use of the water that we have because that's really the most expedient way of making people across Oregon aware of the plight that we're in. I also follow a number of properties where groundwater extraction underwater rights are being attached to exempt wells and these are often properties that are either already in located in irrigation districts that curve could be served by irrigation agricultural water, or these are properties that are in the forest. And so, there's a whole other dynamic of what's going on, certainly in Deschutes County where I live, where the human thirst for more water is pushing people and pressuring, and I'm hearing it also from cities, you know, where they're trying to impart to OWRD that they need water for housing for the future demand of housing. And I just, I really don't buy that. For instance, the City of Bend is using today 9.8% per capita more water than they projected to be using for the per capita in the year 2040. So, I would like to really impart and thank OWRD for putting these proposed rules together. They are very needed. Our ecosystems need them. And to really stress that water conservation, just like LED light bulbs, is the way to be approaching the water scarcity and the climate advances that we are and have been facing. And I do believe that our water modeling needs to be using the best science and installing river gauges that are up to date and that can do computer reads. Those types of things are really critical for protecting, are in stream water assets and those are really an amazing draw for Oregon recreation, fish and wildlife, and the habitats that they provide. And then finally, I'd just like to say that springs in the high desert are very, very small and very treasured and very rare. They often are not defined as wetlands under a 5 acre minimum, and there are often much smaller than that. And we have an obligation for future generations of Oregonians to not strip those amazing ecological wonders from Oregon. So, thanks again and go forward and please adopt these rules.



April 7th, 2024

My name is Paul Lipscomb, and I am the Vice President of OLAWA: the Oregon Land and Water Alliance. We are a 501c3 organization based in Central Oregon. I have been authorized to submit this testimony on the currently proposed ground water rulemaking on behalf of our organization.

My father had a saying that he indulged his children with whenever we were working on a big project: “A job well begun is already half done.”

And so, on behalf of OLAWA, I would like to take a moment to applaud the Water Resources Department and its staff for an excellent start on the proposed new groundwater allocation rulemaking designed to safeguard existing groundwater resources through more sustainable water use and conservation practices. And in doing so, minimizing the short- and long-term negative impacts to existing water users, as well as to our publicly held streams, rivers, and lakes.

Of course, that said, there still remains much work ahead, particularly on a couple of important but neglected items.

First, groundwater needs to be managed with the same care, force, and effect that is now been accorded to surface water. The practice of allowing transfers of underground water rights to be moved from one aquifer to another, typically miles away, without regard for the differences in water depth, temperature, and turbidity is inimical to a well-designed and well-functioning statewide program of ground water use. But in the current proposals, transfers of underground water rights from one area to another have not yet been addressed by the newly proposed regulations. Although, clearly, they should be.

Second, water waste, whether it occurs on farm or off farm should be vigorously investigated and appropriate remedies taken. And, specifically, exempt wells, which typically are to be used only for domestic purposes should be measured for actual use and reported at least annually. Exempt wells should not be used at all for commercial purposes, nor for surface water storage simply to provide private amenities.

When it comes to our public water use and conservation, we are all invested. Both deliberate waste and accidental waste should be policed by the state. And offenders, and particularly repeat offenders ought to be prosecuted just as vigorously as the wrongful taking of deer, elk, fish, and other wildlife is already investigated and prosecuted.

Yet there is still no exempt domestic well water use law enforcement equivalent to the public management of our local fish and game regulations and potential penalties. This is both a regulation and enforcement problem, and so, the transition process would have to include an education component as well as an enforcement component.

There is a name for those who take more than their legal share of our publicly owned fish and ~~wildlife~~ resources. We call them poachers, and we prosecute them. Similar efforts should be made to reign in current abuses of our public water resources.

Thank you for this opportunity, and, again, congratulations on a job well begun.

Respectfully submitted,

Paul Lipscomb,

(OLAWA Vice President)

PO Box 579

Sisters, OR 97759

Judgelipscomb@gmail.com

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Penelope Kaczmarek (Lincoln County)

My name is Penelope Kaczmarek and I'm from Lincoln County. And I want to thank you Laura and all the folks at Water Resources for your hard work. And thanks also to all the non OWRD folks that have helped to develop the proposed rules. And thanks also for this opportunity to share my two cents. Although complex, the math here seems to me uncommonly straightforward. I'm a social worker and I'm not a scientist. I have served on the Mid Coast Water Planning Partnership Coordinating Committee and I'm a member of the Lincoln County Water Systems Alliance. But I'm not speaking as a representative of either of those entities today. In layperson's terms, it strikes me that it's been too much groundwater taken across too long a time equals a very worrisome groundwater level declines equals very compromised rivers, streams, lakes, wetlands and springs throughout our state. I live near the Siletz River, and any more summer water temps have grown to be lovely for swimming and altogether unlovely for everything that lives in the river. Too hot, too shallow, too shadeless, too used up. This in part due to industrial forest practices in this area that have negated many reasonable possibilities for water sequestration and have vastly contributed to the present too hot, too shallow, too shadeless scenario. Therefore, I'll make it short. I just want to let you know that I very much support Oregon Water Resources proposed groundwater rules revision, particularly as if I understand correctly, they will provide better protection of stream flows and cold water inputs to rivers and streams from the effects of over pumping groundwater.

HARTT Laura A * WRD

From: Peter Tronquet <pjtronquet@aol.com>
Sent: Thursday, May 16, 2024 3:08 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Policy Change

[Some people who received this message don't often get email from pjtronquet@aol.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Dear Water Resources Department,

I strongly encourage you to consider revisions to the groundwater permitting process for new pumping rights. A policy that requires knowledge of current groundwater levels before a new permit is granted is basic responsible management. If flows are not reasonably stable then do not grant the permit. If there is a possibility of impacting senior and instream water rights, do not grant the permit.

I served on advisory committees that helped ODFW write three wild salmon and steelhead conservation plans for south coast rivers. A great leap of faith was required because we had to assume there would be enough water in the rivers to allow the adult fish to spawn and for the juveniles to survive and grow. We knew that groundwater supplies the salmon ecosystem and without sustainable groundwater the fish would either suffer a decline in reproductive success or isolated populations risk going extinct. This was before climate change became the limiting factor it is today.

Groundwater has been over allocated for years. I stand behind a rigorous process for evaluating new permit requests that insures sustainable levels of groundwater and recognizes the groundwater connection to streams and wetlands and estuaries that people and fish depend on.

Sincerely,

Peter J Tronquet
2958 Greenbrae Ct
Lake Oswego, OR 97034
541-261 -5041

Sent from my iPad Sent from my iPad

HARTT Laura A * WRD

From: Peter Wiese <peterwiese48@gmail.com>
Sent: Tuesday, June 4, 2024 10:49 PM
To: WRD_DL_rule-coordinator
Subject: Ground water rules

[Some people who received this message don't often get email from peterwiese48@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

The rules you are proposing are restrictive and overly broad. I oppose the rules as written, and urge that they be re-done.

Sent from my iPhone



To: Oregon Water Resources Department
From: Phil Chang, Deschutes County Commissioner
RE: OWRD Groundwater Allocation Rulemaking public comment

April 21, 2024

Thank you for your efforts to address declining groundwater levels around the state.

Here in the Deschutes Basin, we have witnessed significant declines in the last two decades and in my first 3 years as Commissioner I have tracked 100s of domestic wells going dry in Deschutes County.

To address declining groundwater levels here we will need more than these new rules – and our response to the problem must be rooted in an understanding of why groundwater levels are declining here.

The best available science indicates that declining precipitation is the major factor behind recent groundwater level declines in the Deschutes Basin.

Groundwater pumping is the next most important factor and, in some localized areas, piping of irrigation canals has reduced decades old artificial recharge of groundwater.

We can't control precipitation levels but we can think about how much groundwater we pump and how we use it in order to address declining levels.

The Deschutes Basin is pretty unique within Oregon in that most of the groundwater usage is for municipal and residential purposes.

In many other basins, agriculture is the major use of groundwater and reducing groundwater consumption can often be accomplished by working with a relatively small number of users.

To free up groundwater to accommodate future growth in the Deschutes Basin, we will need tens of thousands of current groundwater users to conserve and become more efficient.

To speak to this specific rule making: restricting new groundwater permits in this basin may help keep groundwater level declines from accelerating, but I do not think the new rule will help to slow or reverse the declines.

To seriously address groundwater declines here we will need tens of thousands of groundwater users to become more efficient and to run their households and businesses with less. We also need any new users and growth to be as water efficient as possible.

Municipal customers and farmers can look to their water utility or the NRCS to provide technical assistance and incentives to conserve water.

But we have over 16,000 exempt domestic wells in Deschutes County and I do not know of any agencies or systems that encourage or support water conservation for that type of groundwater users.



We also need any new households developed here to be water-efficient.

As a general rule, new homes within cities are more efficient than new rural residences because of lot size, irrigated area, and municipal programs to encourage efficiency.

The Deschutes Basin needs the state's help to improve the efficiency of domestic well households and to encourage new homes to be as water efficient as possible.

Please proceed with this rule making and future groundwater policy making in ways that encourage future growth to occur within incorporated cities. Please also consider supporting development of programs to encourage and support conservation retrofitting of exempt well rural residences.

Phil Chang
Deschutes County Commissioner

Oral Comments – Bend Public Hearing (April 4, 2024)

Phil Chang (Deschutes County Board of Commissioners)

I'm Deschutes County Commissioner Phil Chang. Thank you for your efforts to address declining groundwater levels around the state. Here in the Deschutes Basin, we have witnessed significant declines in the last two decades. I've seen hundreds of domestic wells go dry in the last three years alone. But we need to do more to address groundwater declines than these rules and that needs to be grounded in an understanding of why groundwater levels are declining here. The best available science indicates that declining precipitation is the major factor behind groundwater level declines in the Deschutes Basin. You heard that from Justin. Groundwater pumping is the next most important factor, and piping of irrigation canals has some localized impacts as well. We can't control precipitation levels, but we can think about how much groundwater we pump and how we use it in order to address declining groundwater. The Deschutes Basin is pretty unique in Oregon in that most of the groundwater usage is for municipal and residential purposes. In many other basins, agriculture is the major use of groundwater, and reducing groundwater use can often be accomplished by working with a relatively small number of users. But to free up groundwater to accommodate future growth in the Deschutes Basin, we will need tens of thousands of current groundwater users to conserve and become more efficient. To speak to this rulemaking, restricting new groundwater permits in this basin may help keep groundwater level declines from accelerating, but this new rule will do little to help slow or reverse the declines we are experiencing. To seriously address groundwater declines here, we need tens of thousands of groundwater users to become more efficient and to run their households and businesses with less. We also need any new users and growth to be as water efficient as possible. Municipal customers and farmers can look to their water utility or the [Natural Resources Conservation Service] to get technical assistance and incentives to conserve water. But we have over 16,000 exempt domestic wells in Deschutes County, and I do not know of any agencies or systems that encourage or support water conservation for those groundwater users. We also need new households to be water efficient. As a general rule, new homes within cities are more efficient than new rural residences because of lot size, irrigated area, and municipal programs to encourage efficiency. So, the Deschutes Basin needs the state's help to improve the efficiency of domestic well households and to encourage new homes to be as water efficient as possible. Please proceed with this rulemaking in ways that encourage future growth to occur within incorporated cities. Please also consider development of programs to encourage and support conservation. Retrofitting of exempt well rural residences.

HARTT Laura A * WRD

From: Phillip Callaway <phillip_callaway@msn.com>
Sent: Sunday, June 2, 2024 1:50 PM
To: WRD_DL_rule-coordinator
Cc: Phillip Callaway
Subject: Support of Revised Groundwater Allocation Rules

Some people who received this message don't often get email from phillip_callaway@msn.com. [Learn why this is important](#)

Dear Oregon Water Resources Department:

I live in rural Linn County near Sweet Home and get my water from a well. There is a subdivision proposed to be developed immediately adjacent to me even though it is 7+ miles to the nearest town. I am very concerned about the potential negative impact the subdivision's groundwater use could have on my well and on the seasonal creek that runs onto my property from the site of the proposed subdivision. My situation is just one small example of groundwater allocation issues being faced all over Oregon.

I strongly support the OWRD proposed groundwater allocation rule revisions for the following reasons:

- 1) It is past time for Oregon to update the requirements for new groundwater permits to allow for the sustainable management of groundwater.
- 2) The effects of climate change make it imperative for the state to stop over-issuing groundwater permits.
- 3) The new rules are needed to protect stream flows from the impacts of overuse of hydrologically connected groundwater.

I look forward to the adoption of the proposed groundwater allocation rules.

Sincerely,

Phillip Callaway
PO Box 243
Crawfordsville, OR 97336



UNION COUNTY BOARD OF COMMISSIONERS

Donna Beverage, Commissioner
Paul Anderes, Commissioner
R. Matthew Scarfo, Commissioner

Shelley Burgess, Administrative Officer

1106 K Avenue

La Grande, OR 97850

PHONE (541)963-1001

FAX (541)963-1079

May 15, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301

RE: Comments on the 2024 Oregon Water Resources Department Proposed Groundwater Rules

The Union County Board of Commissioners offer the following testimony on the proposed new groundwater rules currently under consideration by the Oregon Water Resources Commission.

We support the objectives of the rules of "updating the groundwater allocation to be more protective of existing water right holders". This is very important as agriculture in Oregon accounts for a high percentage of the State's water use and is a vital economic sector in Union County.

Most water users agree there is a need to protect groundwater from over pumping where water levels are in decline and also to limit the long-term impact of unsustainable groundwater depletion around the state. Any OWRD rules must insure that decisions about allocation of new groundwater rights are made based on data specific to the area and watershed under consideration. The Upper Grande Ronde River Watershed Place-Based Water Planning Group in their implementation plan has identified that at this time the Upper Grande Ronde lacks sufficient groundwater monitoring wells, long term trend data, pumping/use data and data regarding surface water interactions. These are all needed to inform strategic groundwater resource planning and management.

The rules as proposed have the potential to stunt economic growth in our cities as well as hurt those in agriculture. OWRD could resolve this problem by making sure that water allocation decision are made only after necessary data is collected to back up those decisions. The proposed changes go too far, implementing a one size fits all for Oregon which is not a prudent decision.

Thank you for the opportunity to comment.

Sincerely,


R. Matthew Scarfo
Chairman


Donna Beverage
Commissioner


Paul Anderes
Commissioner

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Rachel O'Connor (Environmental Defense Fund)

My name is Rachel O'Connor. I am with Environmental Defense Fund and tonight I'm speaking on behalf of Oregon Water Partnership. Oregon Water Partnership represents seven statewide conservation organizations that work together to ensure abundant, cold, clean water to sustain our communities, livelihoods, and ecosystems. I'd like to thank the Oregon Water Resources Department for involving the public and various stakeholders in this process. Oregon Water Partnership strongly supports the proposed changes to the groundwater allocation rules. While we would like to see additional protections, which we will address in written comments, the proposed updates are essential for managing our water resources responsibly. There are four key reasons we support the new rules. First, the proposed rules are grounded in robust scientific research and data analysis. They ensure that groundwater management decisions are based on the best available science and data. New groundwater rights will only be granted if there's clear evidence that our water supply can handle it. Second, the proposed rules will help safeguard Oregon's groundwater from further over allocation. The current rules have led to significant groundwater declines in many areas, threatening water access and reliability for agricultural production, drinking water, groundwater dependent ecosystems, and important recreational and cultural resources. The proposed rules will help manage groundwater more sustainably. Third, the proposed rules improve how the state recognizes and manages the connection between surface and groundwater. Unsustainable groundwater use effects hydrologically connected surface water, which can injure senior surface water rights. Protecting the natural flow of rivers and streams is crucial for fish, Wildlife, and the people of Oregon 4th and finally, the proposed rules will help protect water supplies for future generations. Oregon's changing climate is bringing more intense droughts, increased evaporation from plants, and a shift in winter precipitation from snow to rain, all of which affect water supply and demand. Oregonians are already suffering the consequences of past allocation decisions, and allocations made today will affect groundwater sustainability in future decades. Oregon Water Partnership urges the adoption of the proposed rules. They represent a careful and responsible approach that will better protect groundwater resources for all. Oregonians, thank you for considering Oregon for Water Partnerships comments.

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Rand Dawson (Oregon Central Coast)

I'd like to offer a personal viewpoint. I'm Rand Dawson. I live with my wife, Catherine Dawson. We're seniors in our 70s and 80s. We live along the Oregon Central Coast. We are existing users of a 59 year old registered water right for residential use. My family history, the Dawson history, started in Oregon in the mid-Willamette Valley in the 1800s before Walmart and was built greatly tied to farming and reached out to management, for example of the Albany Creamery Association. So, water issues were part of our heritage from the beginning. That continued to a degree after I entered the Oregon and Alaska Bar Associations in 1975 and moving to Alaska, where in part we were privileged to work with professional trades dependent on surface water such as nationally regarded remote fishing lodges and guides and outfitters, all with significant boating and float plane operations dependent on many aspects of surface water and all its seasonal variations. The economic value, and this is the reason I mentioned part of that, the economic value of such diverse surface water recreational uses as Oregon also has, are severely underappreciated. Alaska also personally exposed my wife and me to dramatic climate change impacts seen over 30 years of flying bush planes across and through the huge mountain chains, often quite close, wing within wing touching distance of various obstacles and glaciers. Many systems of mountains and valley glaciers during that short period of time literally drained away and disappeared. Now, back at Oregon, we have been engaged with various statewide organizations and with water related environmental concerns or elected representatives of small city areas with water related supply or quality issues. Our civic encounters and amateur research, because we're not experts in the water issues at all, confirm the diverse wisdom of your current broad efforts underlying the proposed rule adoptions. Your basin by basin documented impacts to groundwater of the current system including increased demand or pumping are really quite striking. We support increased concern for groundwater aquifers and surface water rights and the many benefits they provide. So, we thank you for your priming the pump with such comprehensive new anticipatory pertinent regulations as are being discussed with us.

To the Water Resources Committee/Oregon Water Resources Department
May 31, 2024

I write to you having recently understood that a local small farm (under a half acre) in rural Oregon was prohibited from using their water supply because they did not have commercial water right for watering their garden.

The small farmer grows their garden and sells their produce at a local Farmers Market and their use of domestic water is not a large commercial operation. It is closer to a thriving home garden at a half acre in size.

Small Farmers like this do not threaten the ground water supply in our coast range watershed and in this case the amount of water used fits within the domestic use amount allowed.

Prosecuting the small users of ground or spring water and preventing them from producing food in our small rural community seems particularly harsh given we need more small farmers who produce local produce to support local healthy produce. Many of these small farmers are motivated to produce food for their community more than to make money. They provide produce close to the market they sell from and their volume is barely a business. They are doing the work that benefits the local community and in this case they are not using a lot of water. In many cases these small farmers grow this produce without the use of pesticides and herbicides, which prevent those chemicals from becoming a part of the water in their watershed.

I believe the Water Resources Committee could set some criteria to allow for farming scaled to water use that is under the domestic threshold.

Given you say essential criteria includes:

“Determine water is available if groundwater is reasonably stable, does not interfere with surface water flows and the aquifer can produce the water at the requested amount.”

It seems if it is determined that water use is under a domestic level, the use would be allowable without a Commercial Water Right. This is important since the Commercial Water Right may not be available and would take out the farmers ability to produce and sell until the right is issued, if in fact it would be.

Please work to have your rules governing water use fit the variety of situations to include helping and sustaining small farms that are critical to small community food production. These producers are critical for healthy local food to be available to all income levels in small rural farmers markets.



Randall Koch
Neskowin, Oregon

I do not speak for the following County advisory committees but I am sharing these roles I have been in to indicate my service to the community related to land use, safety and community welfare.

Past Chair of the Neskowin Citizen Advisory Committee (2019-2023)
Current Chair of the Neskowin Community Plan Steering Sub-Committee (2023-25)

Oregon Water Resources Department
Attn: Laura Hartt, Groundwater Allocation Rules Coordinator
725 Summer St NE, Suite A
Salem, Oregon 97301
Email: Laura.A.Hartt@water.oregon.gov

Received
MAY 28 2017
OWRD

Re: Ground Water Allocation Rulemaking

Dear Ms. Hartt,

Thank you for this opportunity to comment on the ground water allocation rulemaking. This is a joint letter of comment from the Water Resources chair and the Legislative Chair on behalf of the over 100 family owned ranches in the Jackson County Stockmen's Association (JCSA). We are writing concerning the Oregon Water Resources Department's (OWRD) rulemaking, pertaining to groundwater allocation for agricultural irrigation.

We strongly believe that OWRD should focus its energy and resources on groundwater studies, implemented across the state, before restructuring the groundwater allocation system. This proposed rulemaking systematically puts the cart before the horse and will result in a de facto moratorium on new groundwater use, even in areas where there is not a strain on groundwater.

We strongly believe changes to groundwater allocation should not be made through a rule making process. Rather this should be the purview of the State Legislature, after sufficient data has been gathered to justify legal changes, on a region-by-region basis.

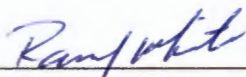
We strongly believe the proposed regulations will set standards not supported by sufficient data and that are not applicable statewide, leading to a one size fits all for ground water allocation among basins with vastly different ground water resources and demands.

We strongly believe that the proposed regulations will shift the burden of groundwater studies to individual landowners, many without the financial, human resources or expertise to perform multi-year studies before they can even apply for new groundwater rights. We presume that OWRD does have the resources and expertise to carry out the necessary studies, including studies leading to increased water conservation through monitoring, application, timing, improved plant cultivars, and other water saving measures. OWRD was directed and given funding for such studies through HB 2018.

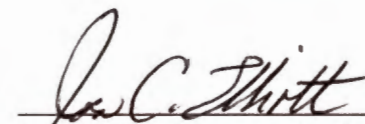
We strongly believe the groundwater allocation rules will be contrary to the statutory directive that allows for beneficial use within the capacity of the resource. The moratorium created by the proposed rules will hamper sustainable beneficial use in areas where groundwater resources are not currently overdrawn.

In summary, we strongly urge you to commit the necessary energy, staff, financial resources, and time to complete effective groundwater studies and consider that our greatly diverse State has greatly diverse groundwater resources and greatly diverse beneficial use demands.

Sincerely,



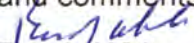
Randy White, JCSA Water Resources Chair
grw158@gmail.com



Jon Elliott, JCSA Legislative Chair
antelopewestemail@gmail.com

Laura,

Jon Elliott and I are re-submitting the enclosed written comments, prior to the May 31, 2024 deadline, on behalf of the over 100 family ranch members of the Jackson County Stockmen's Association. We appreciate Oregon Water Resources Department review and comments.


Randy White,

Chairman
JCSA Water Resources Committee
541-601-7897
Whiteranch1@q.com

Received
MAY 28 2024
OWRD



The League of Women Voters of Oregon, established in 1920, is a grassroots nonpartisan political organization that encourages informed and active participation in government. We envision informed Oregonians participating in a fully accessible, responsive, and transparent government to achieve the common good. LWVOR Legislative Action is based on advocacy positions formed through studies and member consensus. The League never supports or opposes any candidate or political party.

May 21, 2024

To: [Laura Hartt, Oregon Water Resources Dept.](#)

Re: **Amending Chapter 690, Divisions 8, 9, 300, and 410 of Groundwater Rules – Support**
(Amend, repeal, and adopt rules pertaining to allocation of new groundwater rights)

The League of Women Voters of Oregon (LWVOR) adopted positions on water in 1969, 1977, 1985 and updated and consolidated our positions in 2011 after two Water Studies ([Part 1](#) and [Part 2](#)). Using those positions, **LWVOR supports the draft rules proposed by the Oregon Water Resources Dept. and encourages adoption of those rules by the Oregon Water Resources Commission with an urgency the issue demands.**

The League of Women Voters of Oregon believes that water is a resource that should be managed for the benefit of the public and as a sustainable habitat for all life forms. The League supports Oregon state policies and statutes that promote comprehensive long-range planning for conservation and management of ground and surface water and the improvement of water quality.

The League believes that all planning for ground and surface water should include consideration for both the quality of the water and the availability of water to meet the beneficial uses.

The League recognizes that effective planning for water protection and use is most effective with a complete inventory of the water resource including all domestic wells and encourages moving toward this goal. Priority efforts should be directed to geographic areas with identified problems and vulnerabilities.

The League supports the need to build resiliency and innovation into water planning in order to address climate change impacts.

The proposed rules reflect the significant growth in Oregon's population as evidenced by the HUGE increase in domestic wells alone over the last 60+ years. Although these draft rules don't address exempt wells, the League has long argued that exempt wells need to be part of the conversation and should be part of future regulation. The proposed rules do reflect the appropriation of almost all surface waters and the over appropriation of groundwater in many areas of Oregon and the link between surface and groundwater. The rules identify the need for accurate data in order to process groundwater permit applications. The agency must have that data so as not to only rely on applicant information. Without that accurate scientific data, even more areas of Oregon will suffer from over appropriation, with dry wells for domestic, agricultural and other industrial uses.

The League has [supported](#) a fund for addressing water well deficiencies and we note that 185 wells have received funding, but the state needs to stop future crises since there have been reports of over 1,200 dry wells. Current data indicates the potential of more dry wells is significant. Besides current wells affecting groundwater availability, these wells can also affect surface water. The number of low-flow streams, especially in the last few years of drought, has significantly increased.

Climate change may well reduce groundwater replacement, certainly at the rate it is pumped using today's permit authorizations. The proposed rules recognize that groundwater levels need to be stable before permits are approved. Data is needed to be able to assess the permit request. **Unless the agency is provided with the funding and research--data-driven evidence that groundwater levels are stable--groundwater permits should not be approved in areas where this criterion is not met.**

The League will continue to support agency funding to assure accurate data when processing water permits. But Oregon cannot ignore the seriousness/lack of water availability. **We encourage the Water Resources Commission to adopt these proposed rules while also moving forward on increased basin studies and other means of collecting accurate data so the agency can fairly adjudicate Oregon's water quantity laws and rules.**

Thank you for the opportunity to discuss these proposed groundwater rules.



Rebecca Gladstone
President LWVOR



Peggy Lynch
Natural Resources Coordinator

cc: [Geoff Huntington, Governor's Senior Natural Resources Policy Advisor](#)

HARTT Laura A * WRD

From: Richard Benner <rpeterbenner@gmail.com>
Sent: Saturday, June 1, 2024 9:47 AM
To: WRD_DL_rule-coordinator
Subject: Groundwater

[Some people who received this message don't often get email from rpeterbenner@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Acquifers have been drawn down in

Sent from my iPhone the west for scores of years. Withdrawals must be reduced to levels that can be recharged to sustainable levels or the west will be harmed permanently.

Please take vigorous action as soon as possible.

Richard Benner

HARTT Laura A * WRD

From: Rich Thompson <richsthompson364@gmail.com>
Sent: Wednesday, June 12, 2024 8:52 AM
To: WRD_DL_rule-coordinator
Subject: New Groundwater Allocation Rules

Some people who received this message don't often get email from richsthompson364@gmail.com. [Learn why this is important](#)

Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

I have resided in the Ground Water Limited Area at the 1,100 level on Chehalem Mountain for 35 years and therefore, have concerns about certain of the policies and methods OWRD uses to approve WATER RIGHTS for surface water, especially for ground water use. YES, I do rely on a well for water.

While travelling into Newberg during late summer months and seeing the condition of Chehalem Creek with NO visible water, I feel certain that STE fish species can-not pass in many areas. More and more agricultural activities (hazelnuts, grapes, even cannabis) must be using much of the water that use to flow in Chehalem Creek. I can see the same with water that originates in the creeks that cross my property.

I Assume such commercial activities require water rights that must be approved by OWRD. However, to approve these applications without information and data to support approval of these uses is pure folly in my opinion.

In conclusion, I urge the OWRD Commission to improve and approve the way business is done, especially defaulting to a "YES" to new groundwater rights when data on the capacity of a water resource is lacking.

Thank You for the opportunity to comment on this situation.

Richard Thompson
Newberg, Oregon

HARTT Laura A * WRD

From: Richard Wininger <rwininger@msn.com>
Sent: Thursday, June 13, 2024 9:29 AM
To: WRD_DL_waterstrategy; WRD_DL_rule-coordinator
Subject: Re: Groundwater Allocation Rulemaking

[Some people who received this message don't often get email from rwininger@msn.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

I was just thinking about this issue and would like to make one addition to my comments below. That is, I don't know any individual or family that thinks it is a good idea to allocate additional water rights from the aquifer. The families out here (Deschutes County southeast of Bend) are on wells and many think we are over-allocated already. My guess is that many Bend and Redmond residents think the same thing. It seems to be the municipalities and some businesses that are pushing for more allocations. That is pretty short-sighted, in my view.

Richard Wininger

> On Jun 8, 2024, at 1:29 PM, Richard Wininger <rwininger@msn.com> wrote:

>

> I am writing in support of groundwater allocation rules that address sustainable water use. I live in Deschutes County, we have a deep well (860') shared by 3 families. We have already had to drill the well deeper about 3 years ago.

>

> I have watched with concern and disbelief the amount of development taking place in Bend and Redmond. We are continually talking about global warming, climate change and drought but seem to forget about that when the municipalities want to expand and have more water allocated to them. We need to stop doing that. I fully support sticking with the allocations they have now and Bend and Redmond can decide how, or whether, they want to expand. The actions they are taking to grow now are certainly not sustainable and will hurt current water users.

>

> I know all of this is difficult politically, but you are doing the right thing in making sure water allocations are sustainable and we are not depleting the system.

>

> Richard Wininger
> 60374 Arnold Market Road
> Bend, Oregon

HARTT Laura A * WRD

From: R.A. B. <rabriverbend@outlook.com>
Sent: Monday, June 10, 2024 8:12 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rulemaking -- Comments in Support

Some people who received this message don't often get email from rabriverbend@outlook.com. [Learn why this is important](#)

Rules Coordinator and Commission,

The following two paragraphs are offered to allow you to quickly tally this as an in-favor comment and skip the rest if you'd like.

- I strongly support the proposed rules. Continuing the current practice of defaulting to yes is the definition of flying blind. It's way, way past time to default to ... data. If the data aren't there, let's--in the name of Oregon's future--pause.
- Not adopting the rules is nothing less than a short-term indulgence by this generation, selfishly risking the welfare of tomorrow's Oregonians.

Now, for those who somehow have additional time (or eyesight), here's some color commentary:

I worked at OWRD for over a decade and wrote *The Oregon Water Handbook* (OSU Press, 2006). The first sentence of that book (first edition 1998): "To make a long story short, Oregon's out of easy water." That's truer today than it was a quarter century ago. I applaud the Commission and Department for these proposed rules which recognize this fact.

I just went to my basement to retrieve my copy of the book to see what I may have written about groundwater so long ago. I was pleased that pages 121 and 122 describe the 1955 Groundwater Act's clarion and robust declarations about the primacy of the public interest in managing groundwater uses. It turns out the Commission:

- is directed to insure the preservation of the public welfare, safety and health;
- is authorized to take actions--notwithstanding existing groundwater rights and their priority--when required to protect the public welfare, safety and health;
- can "control" wasteful groundwater practices;
- is empowered to invoke the police power of the state to control groundwater uses when there is wasteful use, declining groundwater levels, or when over-drawing of groundwater supplies exists or is likely ("impends").

So...compared to the powers vested in the Commission by the laws of Oregon for conditions such as we have today, these proposed rules are a model of moderation. No existing right is invaded or limited. No uses are proscribed. No blanket conservation practices are imposed. No agents of the state will descend on users to prosecute. No one using groundwater today is touched by the proposed changes.

All that's proposed is some sort of showing that enough groundwater is there to support a new use while not messing up the water table or harming other users.

This type of assurance is not radical; going forward without data is.

I'd respectfully submit that approval of these rules would be as significant as adoption of the 1909 Water Code or the 1955 Groundwater Act. This is a turning point for Oregon's water future. It's not often that proposed rules can be described as brave. These are. They're plain, and wise, and needed, and therefore controversial.

The Commission should steel itself against the passionate, but I think misguided, objections to these common-sense changes and approve these proposed rules. In service to all of Oregon—present and future.

Thank you.

Rick Bastasch
Salem, Oregon



May 21, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301
Submitted via email: wrd_dl_rule-coordinator@water.oregon.gov

RE: Proposed Groundwater Rules

Dear Ms. Hartt:

The Conservation Angler (“TCA”) writes to express its support for the proposed groundwater rules. Although they are not perfect, they are a significant improvement to Oregon’s existing groundwater regulations. TCA urges the Oregon Water Resources Commission to adopt them.

TCA is a nonprofit organization that uses science and law to protect wild salmon and steelhead in the Pacific Northwest. For example, TCA has worked with the Oregon Fish and Wildlife Commission to develop angling restrictions in cold water refugia in the Columbia River Basin.

Adopting the proposed groundwater rules is necessary to help protect cold water inputs to rivers and streams from overextraction of hydrologically connected groundwater. As climate change increases stream temperatures throughout Oregon, these cold-water sources are a lifeline to many of the state’s salmon and steelhead species. To help ensure these species continue to exist, the Oregon Water Resources Department must stop the unsustainable use of the public’s groundwater resources. The proposed rules are an appropriate step in that direction.

Oregon’s rivers and streams and cold-water species face unprecedented threats from the overallocation of water rights and climate change. Although much more work is needed to protect the state’s freshwater resources and wild fish from these threats, the proposed rules are an important step forward in responsibly managing groundwater and protecting cold-water sources.

Thank you.

Rob Kirschner

Rob Kirschner
Legal and Policy Director
The Conservation Angler
(503) 894-0439

HARTT Laura A * WRD

From: Bob Bumstead <robertgbumstead@gmail.com>
Sent: Sunday, May 19, 2024 9:18 AM
To: WRD_DL_rule-coordinator
Subject: ground water rules

Some people who received this message don't often get email from robertgbumstead@gmail.com. [Learn why this is important](#)

To Whom It may concern:

I support the new ground-water rules which will help to prevent the over allocation of our diminishing ground-water resources while protecting domestic use.

Robert Bumstead

--

Bob

Oral Comments – La Grande Public Hearing (April 18, 2024)

Rodney Case (N/A)

I'm Rodney Case, I'm a private landowner, mostly dry land, and a potential irrigator on that dry land, and so this severely affects me. I've been affected by my house well. Recently, I had to lower the pump, because my neighbor drilled a well a half mile north of me and another well half mile south of me, and consequently I started pumping air. So yes, we do have a problem. I'm not sure that your solutions are what we need. They are part of the solution. I think we need some reservoirs to store the water that is flowing past us right now that we cannot utilize. And I would go on record as recommending that the Water Resources Department and other state agencies back reservoirs for improving our groundwater situation.

HARTT Laura A * WRD

From: Mr Ryan Carson <mistercarson@protonmail.com>
Sent: Thursday, May 23, 2024 7:54 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rulemaking

Some people who received this message don't often get email from mistercarson@protonmail.com. [Learn why this is important](#)

Hello Laura,

In regards to the Groundwater Allocation Rulemaking efforts underway, I wanted to reach out to comment/ask, but with a journalist's video. It sounds as though costs for application are going to be cost prohibitive for small acreage growers looking to get a new water right. I was at first excited thinking new rules were going to give me a chance, but I'm not sure what to expect next, it appears big industry is using its strength. Could you please review this report and let me know if any information is incorrect, or if there are hopeful changes expected?

<https://www.youtube.com/watch?v=c5olm7Nxq44>

Thanks for your time,

Ryan Carson

Sent with [Proton Mail](#) secure email.

HARTT Laura A * WRD

From: Ryan Gill <ryan.gill@clouserdrilling.com>
Sent: Friday, June 14, 2024 2:14 PM
To: HARTT Laura A * WRD
Subject: Groundwater Allocation Project- Public Comment

Hello Ms. Hartt,

I would like to express my concerns with the proposed rules under the Groundwater Allocation Project. **I believe that the rulemaking should be paused, and additional time should be taken to write the rules.**

From my current understanding of the rules, the largest issue seems to be “potential for substantial interference” with surface water sources. That if any hydraulic connection exists with an over appropriated stream, that application will be denied. Experienced industry peers whom I respect, are concerned with the current modeling. They believe the modeling will always produce a value greater than zero when determining hydraulic connectivity to nearby streams. Additionally, there appears to be no limit on how far an evaluated stream can be from the proposed well.

This could deny water usage even in places where resources are available. Many industry peers and I believe that this could effectively be a stop on new ground water right applications. I believe in sustainable and responsible but beneficial use of our groundwater resources. I believe more time should be taken to resolve these concerns.

Thanks for your consideration,

Ryan Gill

Clouser Drilling Inc.

541-660-8980

www.clouserdrilling.com

HARTT Laura A * WRD

From: Sue Pollard <junipersuep@gmail.com>
Sent: Tuesday, June 4, 2024 11:05 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater rules change

[Some people who received this message don't often get email from junipersuep@gmail.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

To Whomever it May Concern,
As a farm family in Central Oregon we strongly oppose these proposed changes to the groundwater issue.

Thank you!
Scott and Sue Pollard
Sent from my iPad



orwja.org
PO Box 460
Fort Klamath, OR 97626
orwja@waterclimate.org

June 14, 2024

Laura Hartt, Rule Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A,
Salem, OR 97301
Submitted via email to WRD_DL_rulecoordinator@water.oregon.gov

RE: Groundwater Rulemaking Comments

Dear Ms. Hartt,

Below please find comments, critique, and suggestions from Water Climate Trust and members of the Oregon Water Justice Alliance regarding the Oregon Water Resources Department's proposed groundwater allocation rule changes to Divisions 8, 9, 300, 400, and 410. Water Climate Trust (WCT), the Oregon Water Justice Alliance (ORWJA), and the communities we represent are cautiously optimistic about OWRD's direction for deciding if new groundwater pumping permits can be approved. However, we worry that the long delay in implementing these critical parameters has allowed our groundwater levels to further deteriorate to the point that the rules will only slow their worsening rather than solve the (already significant) problem. These recommendations reflect the urgent need to protect: 1) the human right to water for essential domestic needs, and 2) instream beneficial uses and users of water including river-dependent Native American Tribes.

We firmly believe that the implementation of strong groundwater rules - both the proposed one currently up for comment and its companion one for curbing existing overallocation - is needed to: a) Curb excessive use/waste, by the agricultural industry, which pumps at least 82% of all water humans use in Oregon; b) Protect Oregon's rapidly depleting aquifers AND interconnected surface waters from permanent damage; and c) Plan for climate change-driven drought and less reliable water supplies to protect future flora, fauna, and humans: for far too long, western states in the U.S. have waged a war of dominion over water, and the devastating bill has come due in the form of degraded and shrinking water supplies. We can - and must - do better. These comments are submitted in good faith to both support components of your current proposed plan and to encourage even more robust ones. In short, with more detail below, we generally agree with your agency's assessment of the problem:

"Current rules evaluating the relationship between surface and groundwater arbitrarily limit the evaluation of hydraulically connected groundwater withdrawals on surface water availability (690-009 et seq.). As a result, where groundwater and surface water are hydraulically connected there are senior surface water right holders who are routinely regulated off while junior groundwater right holders are allowed to continue using water. These proposed rules rely on best available science to establish criteria ensuring that new permits will not further deplete already over appropriated surface water bodies, both in principle (Alley et al. 2002; Barlow and Leake 2012; Bredehoeft et al. 1982; Theis 1940; Woessner 2020; Winter et al. 1998), and in Oregon specifically

(Conlon et al. 2005; Gannett et al. 2007, 2012, 2017, and 2001; Gingerich et al. 2022; Graham et al. 2010; Herrera et al. 2014).

“Much of the water in streams during summer months comes from groundwater sources. As groundwater sources decline, less surface water becomes available in streams, rivers, and lakes to meet the needs of existing surface water users and to support healthy fish, aquatic habitat, and recreation. Additionally, the lack of a definition implementing the statutory policy directive to maintain reasonably stable water levels has led to excessive groundwater declines in some parts of the state (Scandella and Iverson 2021). Some parts of the state are experiencing dry wells and water scarcity that impact families, farmers, industry and recreation (Oregon Secretary of State 2023).”

We are unclear on how many of the state’s instream flow rights fit into this hierarchy of water rights due to the State’s disappointing legislative subjugation of them to appropriative water rights that pre-date their establishment. However, we look forward to further engaging in this process to better support related processes that elevate their primacy. We also point to the time immemorial Treaty-based water rights of the Klamath Tribes and the need to recognize the legal imperative to ensure their delivery prior to issuing any new groundwater permits within the Klamath Basin.

We also agree that at this point ANY future commercial groundwater pumping permits must be found to not negatively impact aquifer levels:

“After decades of groundwater declines (Scandella and Iverson 2021), the Oregon Water Resources Department (OWRD) is responding to the modern water realities experienced by Oregonians. To limit the long-term impact of unsustainable groundwater depletion around the state, OWRD is working to modify rules governing new groundwater right applications. With a forward-looking approach that considers the needs of future generations, OWRD is working to safeguard existing surface water and groundwater users and the livelihoods they support, while managing groundwater resources more sustainably.”

However, the long amount of time that has elapsed between the 1989 passage of Oregon’s Groundwater Quality Protection Act and today’s rulemaking process to implement key aspects of it puts many basins in a ‘too little too late’ scenario. The severity of the threat to our aquifers and interconnected groundwater is described in many reputable studies and publications, including those from OWRD and other state agencies and taskforces. As detailed on p. 5 of this [2018 Water Management Background Brief](#) from the state’s Legislative Policy and Research Office:

“Future water supply and demand are central to any discussion about water management in Oregon. In 2015, record-low snowpack and record-high temperatures resulted in drought declarations in 25 of Oregon’s 36 counties. As a result, streamflows hit record-lows to near-record lows in many parts of the state, reducing supplies for irrigation and leading some cities to implement water use restrictions. In response to this situation, Governor Brown issued Executive Order 15-09 in July 2015 directing state agencies to prepare for climate change and plan for long-term resilience to drought. The goal stated in the Executive Order is to reduce non-essential water consumption by 15 percent or more on average across all state-owned facilities on or before December 21, 2020. A second progress report on this effort was submitted to the Governor in July 2017. In December 2015, the WRD released an updated statewide water demand forecast which included estimates of water demand for agriculture, municipal, and industrial uses by 2050. The report anticipates that increases in population and changes in rainfall, snowpack, and growing seasons will likely lead to increased demand from agricultural, commercial, residential, and

industrial water users. This could result in Oregon needing an additional 1.3 million acre-feet of water annually, nearly 424 billion gallons, just to meet out-of-stream demands in 2050.”

OWRD’s own [fact sheet](#) states:

“Groundwater levels are declining in part of Oregon where the amount of water taken out of the system is more than what is replaced through natural water recharge cycles. Oregon’s groundwater resources are being used at an unsustainable rate. Climate change exacerbates these water conditions. Some Oregonians are experiencing water scarcity, water shortages, and wells that have gone dry. Groundwater use and depletion reduces surface water flows in streams, rivers, and lakes affecting fish, aquatic habitats and recreation. This issue impacts all Oregon families, farmers, cities and industries.

- In Oregon, ~1,220 water wells have gone dry across the state since June 2021.
- Streamflows have been reduced, impacting water availability and water quality.
- Municipalities are among those with required water use reductions.”

And yet, the proposed restrictions have too many off-ramps to truly succeed in achieving the goal of “Modernizing the approach to evaluating ‘is water available?’” Consider:

“The proposed rules focus on determining if groundwater is available to support new uses when issuing new groundwater rights. The rules:

- Define key terminology and criteria for issuing new water rights
- Determine water is available if groundwater is reasonably stable, does not interfere with surface water flows and the aquifer can produce the water at the requested amount
- Detail how applications would be denied if existing data did not show water is available

“This means fewer water right applications would be granted for new uses in areas of excessive groundwater declines or where new groundwater rights affect existing surface water rights.

“NOTE: The proposed rules will not change exempt groundwater use, existing water rights, groundwater applications that are already in the agency queue, and water right transfer processes.”

We understand that the irrigators and their powerful lobbyists (some of whom occupy that large house right across from your headquarters) have successfully wielded their political power to neuter the regulatory agencies’ abilities to actually regulate them for far too long. And we understand that outsized influence is largely why this process has been such a long time coming, BUT...In the interim, our aquifers have reached a crisis point due to unregulated pumping, largely by the livestock and livestock feed industry. While the members of the Oregon Water Justice Alliance are heartened to see the Oregon Water Resources Department taking steps to regulate and curtail future groundwater pumping proposals, the rulemaking process is in reality a small first step toward truly fixing the alarmingly growing problem of sustainable water use. We urge you to reconsider the above caveat of allowing commercial groundwater pumping applications that are already in the agency queue to move forward without assessing whether the aquifer can sustain them. When California passed a similar law in 2015, deep well drills in the Central Valley began running 24-7 in order to claim as much groundwater as possible before the law went into

effect. We were assured that this would not be the case in Oregon; however the mechanism to facilitate that remains unclear to us.

We strongly feel that the agency must also take an immediate hard look at the existing withdrawals that brought us to this state of dangerously depleted aquifers and curtail those that constitute ‘waste’ of our public trust waters. While we will be robustly engaged in future critical groundwater basin designation processes, we also urge you to pursue your public trust abilities to begin curtailing improperly permitted and/or enforced existing uses that constitute waste. We will be following up on this issue in more detail outside of this process.

Comments and concerns related to specific regulatory sections include:

Statutory Groundwater Terms - Divisions 8, 9, 300, and 400: Many of the term clarification recommendations below were similarly made in our previous comment letter, submitted 1.5.24. However, they appear to have been completely ignored despite a wealth of evidence as to why the detailed language is problematic. We reiterate our recommendations and concerns here, with an update based upon these changes (or rather lack thereof):

“Annual High Water Level” should indeed be more clearly defined, but not misused as a baseline. The definition of “Annual High Water Level” is useful, but it should not be inserted into other definitions when the effect is to: (1) reduce baseline groundwater levels, or (2) create ambiguity about baseline groundwater levels. The definition currently reads “the highest elevation (shallowest depth) static groundwater level that exists in a year.”

Amend Definition of “Customary Quantity”

We were disappointed to see that this statement still does not reference water waste. Please amend the definition of “Customary Quantity” to include the bold text below. This will address the fact that terms of appropriative water rights often do not prohibit or prevent wasteful water use, and in some cases even encourage it.

*“Customary Quantity” means the rate or annual amount of appropriation or diversion of water ordinarily used by an appropriator within the terms of that appropriator’s water right **and without waste as defined in Oregon statute.**”*

Reject Suggested Change to “Declined Excessively”

We are similarly disappointed to read that the latest draft still adds “Annual High Water Levels” to the definition of “Declined Excessively.” Specifically, we repeat our request that you restore the original version which reads “cumulative lowering of the water levels,” and reject “cumulative lowering of the Annual High Water Levels.” Many groundwater reservoirs have been depleted from years of groundwater pumping and inadequate recharge. Our recommendation above will ensure that such depleted reservoirs are included under the definition of “Declined Excessively.”

For example, a review of your agency’s well reports from the Klamath Basin indicates an average decrease of almost one foot per year at most of the sampled wells. This already depleted state should not be used as a permitting baseline under any circumstances.

“Declined Excessively” Section (c) - Protecting Instream Flows

In the draft rules, “Declined Excessively” includes lowering of groundwater levels in a manner that “Constitutes a decline determined to substantially interfere with a surface water source as defined in OAR 690-008-0001(8).” According to OAR 690-008-0001(8), ““Substantial or Undue Interference” means the spreading of the cone of depression of a well to intersect a surface water body or another well, or the

reduction of the groundwater gradient and flow as a result of pumping, which contributes to” a “reduction in surface water availability to an extent that” an “adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s) cannot be satisfied.”

To protect instream beneficial uses and users of water, please amend the definition of “declined excessively” to include instream flows harmed by long-term declines in groundwater levels, not just “spreading of the cone of depression.” Please also include language that protects instream uses and users where an “adopted minimum streamflow” does not yet exist.

“Declined Excessively” Section (d)

In this section, the definition of “Declined Excessively” includes “lowering the Annual High Water Level within a groundwater reservoir, or part thereof, greater than 50 feet below the highest known static water level.” As written, this section could create ever decreasing groundwater levels by setting a new baseline every year. To remedy this, please replace “Annual High Water Level” with a baseline that: (1) cannot be reduced annually, and (2) reflects historic, or “pre-development” groundwater levels. Moreover, please revisit “greater than 50 feet below the highest known static water level.” This number is arbitrary and could have wildly different impacts in different locations. This number should be replaced with the desired outcome such as protecting beneficial uses of interconnected surface water and protecting small domestic wells.

“Declined Excessively” Section (f)

In this section, the definition of “Declined Excessively” includes “a lowering of the Annual High Water Level greater than 15% of the greatest known saturated thickness of the ground water reservoir. The saturated thickness shall be calculated using pre-development water levels and the bottom of the ground water reservoir, or the economic pumping level, whichever is shallower.” Again, please replace “Annual High Water Level” with a baseline that: (1) cannot be reduced annually, and (2) reflects historic, or “pre-development” groundwater levels. It is unclear how “15% of the greatest known saturated thickness . . .” correlates to the metrics used in other definitions. Most other metrics are simpler, referring to a reduction in groundwater levels. Please revise this metric so it is consistent with metrics used in the other definitions.

Economic Pumping Level

In the draft rules, “Economic Pumping Level” is based on the per-acre cost of pumping water and the per-acre value drive from pumping. In Oregon, the cost of pumping groundwater is often obscured by taxpayer subsidies for electricity and equipment.

Please add the following language to the end of this definition in order to: (1) provide a level playing among groundwater users, and (2) to ensure that pumping subsidies do not harm small domestic water users and instream beneficial uses of water.

“When determining the cost of groundwater pumping, the impact of subsidies shall be excluded.”

Excessively Declining

As requested above, please clarify that “ongoing lowering of the Annual High Water Level” does not permit an ever decreasing baseline. Moreover, please expand this definition to include groundwater levels that “harm beneficial uses of interconnected surface water.”

Substantial or Undue Interference

To protect instream beneficial uses and users of water, please amend the definition of “interference” to include instream flows harmed by long-term declines in groundwater levels, not just “spreading of the cone of depression.” Groundwater levels can decrease every summer to levels that harm interconnected surface water, but still recover every winter.

Please also include language that protects instream uses and users where an “adopted minimum streamflow” does not yet exist. In most parts of Oregon, instream flow requirements have not been established that protect endangered species or Tribal beneficial uses of instream flows. To fulfill your stated commitment to racial equity, these instream needs should be protected.

Overdrawn

We are quite concerned that our request that you do not eliminate the minimal existing language that protects instream flows was not heeded. Indeed the words “adopted minimum streamflow” have been altogether deleted from the document (twice). Specifically, please restore the following language: “Failure to satisfy an adopted minimum streamflow or instream water right with an effective date senior to the causative ground water appropriation(s).” Please also include language that protects instream uses and users where an “adopted minimum streamflow” does not yet exist.

Please also expand the definition of “overdrawn” to include groundwater levels that decrease every summer to levels that harm interconnected surface water, but still recover every winter.

Reasonably Stable

Please restore the numeric requirements (aka “sideboards”) in the definition of “reasonably stable.” Staff said publicly that these requirements were eliminated in response to public comments. With respect, these comments came from water users to the detriment of stakeholders who rely on small domestic wells and beneficial uses of instream flows.

Oregon needs numeric statewide standards that define “reasonably stable.” Leaving this up to local groundwater managers will uphold historic inequities that harm river-dependent communities and low-income communities that depend on small domestic wells. This is out of alignment with the State’s commitment to racial equity.

Wasteful Use of Groundwater

Water rights and permits often do not define “waste” in a manner consistent with Oregon statutes. To remedy this, please add the bold text below to the definition of wasteful.

“Wasteful Use (of ground water)” means any artificial discharge or withdrawn of groundwater from an aquifer that is not put to a beneficial use described in a permit or water right **and Oregon statute**, including leakage from one aquifer to another aquifer within a well bore.”

Domestic Use Expanded

“The use of water, in addition to that allowed for domestic use, for watering up to 1/2-acre of lawn or *noncommercial* garden,” *italics added*). As explained in further detail in a prior letter and current comments from our colleague Christopher Hall from Water League, we are concerned that OWRD is inappropriately levying enforcement actions against ‘cottage farmers,’ whose <½ acre gardens proportionately use a miniscule amount of water compared to large scale irrigators, and who are seemingly less guilty of wasting water. All supporting evidence indicates that these very small gardens, many of which are irrigated with domestic wells, contribute a miniscule amount of aquifer strain in comparison to

large-scale agriculture and the (thankfully declining) illegal diversions for the cannabis industry. We strongly support clarifying the rules to better protect very small family farms.

Beneficial Use

The agency's definition lacks any reference to Native American people's beneficial uses. Please see "Racial Equity Impacts" section below for more information. In California, Tribal beneficial uses are defined to include both subsistence fishing and cultural uses. Oregon should adopt this definition as a baseline and act to protect these uses from excessive groundwater extraction.

Determination of Hydraulic Connection

Section 690-009-0040 should be amended in a manner consistent with the precautionary principle. Specifically, the rules should require OWRD to assume that groundwater and surface water are connected unless and until there is evidence to prove they are not connected. Proposed amendments to the rules attempt to assume that there is not a connection, and then place the burden on Oregon to prove that there is a connection.

Section 410: 690-410-0010 Groundwater Management

The current rules state: "(j) Adequate and safe supplies of groundwater for human and livestock consumption are given priority over other uses during times of shortage." We seriously question how livestock consumption could possibly be given priority over the survival of native species. However, we do not see any relevant changes in the proposed rules to address this prioritization, which 1. undermines the time immemorial water rights of the Klamath Tribes (and beneficial uses of instream flows for other river-dependent Tribes); and 2. is likely to result in 'take' of protected and endangered species. This is an oversight that needs to be addressed. This language directly undermines your stated commitment to racial equity by prioritizing water for livestock over traditional food sources for Oregon Indigenous people.

Additional comments and concerns:

Lack of proactive incorporation of climate change stressors into permitting decisions

At the May 2024 in-person hearing in Salem, we engaged in dialogue around the purely reactive nature of the proposed rule changes and their lack of attention to climate change's likely impact on the hydrological cycle. Indeed, the word 'climate' does not even appear in the proposed rules at all; the closest is a reference to a climatologist on the RAC. We reiterate our deep concern that the approach to deciding which groundwater basins are in sufficient decline to warrant a denial of new pumping permits fails to consider widely accepted climate modeling projections of worsening water storage capacity over a long timeframe throughout much of the state. For example, our reading of the rules indicates that, if an aquifer 'bounces back' from the precipice of collapse after a single big precipitation year, OWRD would likely start approving groundwater pumping applications for it again. And then when back-to-back mega-drought years strike again, those wells will have been established and could only be curtailed through a critical groundwater basin designation and a much more difficult curtailment process.

We once again posit that proactive planning for climate change - including precautionary action to protect our public trust water resources and mitigate the harm from lack of water availability- must be more actively incorporated into all of OWRD's water allocation planning and decision-making processes.

Economic Impact Analysis

We also agree that the groundwater crisis requires us to take action to rectify its decline regardless of economic impact, and that failure to act would cause significant economic harm on top of the cascading environmental

harms. However, we would like to emphasize the continuing lack of detailed attention given to non-consumptive uses and how a lack of water severely harms them and those who are employed in these fields, as detailed in your analysis:

“According to Pilz et al. (2023), approximately 48% of Oregon’s total economic output and 44% of the state’s employment rely on water-dependent businesses. **Notably, these estimates are conservative, because they do not include the economic contributions from recreation, commercial fishing, or power generation (Pilz et al. 2023).** Approximately 22% of all of Oregon’s water withdrawals come from groundwater; just over 80% of those groundwater withdrawals are for irrigation purposes (Dieter et al. 2018).”

However, the document then goes on to detail those economic realities. Freshwater-centered outdoor recreation generated \$63.2 billion in 2018 (likely even higher proportionately during Covid); and commercial fishing off of Oregon’s coast generated \$28.4 million in 2019, despite plummeting salmon populations. Commercial, irrigated agriculture only generates about \$7.3 billion annually. All other industry in the state (from manufacturing to service) generates about \$88.8 billion annually.

So, why are we still allowing an industry that generates less than 4% of the state’s GDR suck up 80% of the water that we divert? Food? Of course! We all need to eat. However, our cultural resistance to requiring those who use public trust resources like groundwater to engage in conservation of natural resources has taken us down a dead end road. The proposed rule states “growth of irrigated agriculture may need to be supported by water conservation actions that result in conserved water or, through transfers of existing water rights where new water rights are not available.” For far too long, water management and funding agencies have relied on ‘voluntary’ conservation measures that have consistently failed to bring about the needed results. The proposed rule will curb new uses that could tip us over the edge and into aquifer collapse, but we are nowhere near being done with addressing our fundamentally unjust water allocation processes. If irrigators want to use our public water, they need to be judicious with its use, and state agencies need to monitor and enforce conservation measures. We hope that the next crucial step in your agency’s transformation - the critical groundwater designation process, addresses it head-on.

Racial Equity Impacts - Treaty water rights

ORS 183.335(2)(a)(F), as amended by HB 2993, requires state agencies, when providing notice of a rulemaking, to provide a statement identifying how adoption, amendment or repeal or the proposed rules will affect racial equity in this state. We feel that the statement provided within this proposed rule is wholly inadequate, as detailed below. OWRD and this rulemaking process also seem subject to [House Bill 477](#), which updates a number of statutes related to environmental justice and the state’s Environmental Justice Council. It is unclear from the documentation provided whether its obligations have been fulfilled in regard to this law.

We largely agree that the proposed rules will be a net positive for lower-income residents, a demographic that also proportionately includes more people of color than other, wealthier income brackets in the state, many of whom rely on wells for their drinking water and other domestic uses. However, the assessment of how the proposed rule’s implementation would more specifically impact Tribes and other people of color is alarmingly lacking in substance and little more than a pro forma fulfillment of its legal requirement. It is appalling that the Department thought it worthy to publish that one RAC member said: “Because everyone relies on food and clothing, to the extent the rulemaking impacts agriculture, everyone should be impacted equally.” Such a blanket - and untrue - statement is fundamentally racist in its assumptions and unworthy of publication in a planning document that purports to be science-based. And yet, it is not inconsistent with the lack of action on racial equity for water. From its very beginnings, western water law was DESIGNED to take water from nature and Tribal peoples and empower white landowners to control it. We have a very, very long way to go in restoring equity and balance when it comes to water. The state of [Oregon’s 2021 DEI Action Plan](#) only mentions the word water twice

- in reference to costly water bills and the loss of Tribal water rights during the atrocious treaty terminations of 1959. And [Oregon's 2023-2027 Racial Equity Plan](#) only mentions it once, repeating the exact same language about the loss of Treaty water rights. Neither propose any actions to right these wrongs.

Many of the federally recognized Tribes and unrecognized Tribal cultures in our region rely on clean, abundant, and free-flowing waters not only for drinking water, food security and access to first foods but also for employment, culturally significant activities, and spiritual practices. Marshes, which are often heavily influenced by groundwater levels, are an important source of food (wocus) and traditional materials (tule reeds) and an important nursery for many aquatic species. Their decline disproportionately impacts Native American Tribal people, and a robust groundwater protection and recovery plan would be a significant positive impact.

Additionally, with 80+% of Oregon's agricultural products going out-of-state, any broadly applicable agricultural production impacts on Oregonians are minimal. However, the Latinx farmworker community may indeed experience disproportionate and specific impacts from groundwater decline and regulation, as [92% of Oregon's 120,000+ farmworkers identify as Latino](#). These farmworkers are also generally low-income and more likely to experience water insecurity in their homes.

Furthermore, as stated:

“The RAC discussed the issue of racial equity in the context of this rulemaking, noting that data were lacking to quantify impacts adequately, but agreed that a qualitative (*sic*) assessment was feasible.”

It appears that no actual qualitative assessment was seriously considered despite the state's purported commitment to racial equity. We will indeed continue to further engage with both OWRD and State leadership to help facilitate a firmer commitment to – and action to support – racial justice. While still apparently in draft form, ODFW's sister agency [DEQ has at least identified assessment mechanisms](#) for impact evaluation.

It is also disturbing that state agencies continue to postulate that sending a letter/invitation to a Tribal government P.O. Box constitutes consultation. There are very good reasons as to WHY Tribal leaders and communities balk at participating in public agency decision-making processes. Far too often, decision-makers and bureaucrats smile and nod when they do speak up, tic off a check-box on their diversity chart, and continue in the same direction as always. Why give credence to a government and its processes that were designed to marginalize - and even completely remove them - from the outset?

If OWRD is truly committed to understanding and upholding Tribal treaty rights to water and beneficial use, it must do much more than this pro forma process. It must engage with the Tribes in the manner that their treaties entitle them to - on a government-to-government level rather than as a member of the general public. Yes, two Tribes sent representatives to the RAC, but there is little evidence of their input significantly contributing to the draft before us; nor do they speak for all Tribal people living within the state of Oregon. I can only assume from the significant lack of Tribal peoples speaking at public information sessions and hearings that there was insufficient direct outreach within these water justice communities.

One concrete example of why some Tribal members within ORWJA are skeptical of the process is how OWRD handled the highly controversial 2019 transfer of groundwater pumping rights for agricultural use to groundwater rights for energy industry use via the Swan Lake Pumped Storage facility proposed for the lands and waters of the Klamath-Modoc people. Not only were these likely illegal transfers rubber-stamped by OWRD staff without

any assessment of how it might impact the Klamath Tribes' treaty water rights, no real effort was made to engage them despite their firmly stated opposition to the project. Sending a notice of availability to comment to the general tribal council address is not consultation. Furthermore, neither the Tribes nor any other members of the public were notified when the water right transfer applications were approved in 2019. We only learned about it a few months ago after making direct inquiries to the Department about their seemingly incomplete status as displayed on your website.

Municipal Water Supplies:

Multiple municipalities have expressed concerns about how this rule could affect their water security. We understand their fears, but also read the current iteration of the rules as having sufficient flexibility (perhaps even too much) and place-specific considerations to continue to allow for their sustainable use of groundwater. The human right to water for essential needs is something that a democratic society must recognize for all people. WCT and ORWJA support a reasonable path to water security for domestic uses. At the same time, we also believe that any growth plans must also take a science-based approach to assessing whether the water sources they rely on can support additional build-outs.

About Us

Water Climate Trust is a non-profit organization working in Oregon, and throughout the U.S. West, to restore freshwater ecosystems with Indigenous communities and other stakeholders who depend on them for food, jobs, health, recreation, and cultural survival. To this end, we work to improve water and climate policy and investments through grassroots organizing, advocacy, research, communications, and enforcement.

The Oregon Water Justice Alliance is a new collaborative working to protect instream uses of water for diverse stakeholders including Native American Tribes, the commercial and sport fishing communities, and the outdoor recreation industry. The Alliance was co-founded in 2023 by the non-profit groups Maqlaqs Geetkni, Maqlaqs Paddle, Ríos to Rivers, Water League, and Water Climate Trust.

Summary

The best time to initiate this process was in 1989 when Oregon's Groundwater Quality Protection Act was first passed - or even in 1950 when the state's first Groundwater Management bill was passed. The third best time is NOW. The strength of these 'rules' and their implementation is critical to the health of Oregon's aquifers and interconnected surface waters. Please implement the strongest version of them possible post haste so we can get on to the real work of looking at where the most water harm/waste is being done NOW and getting a handle on it before some of our aquifers collapse.

In sum, we understand that the proposed rules represent a sea change in how the state of Oregon regulates groundwater (i.e. with an eye toward long-term sustainability rather than whatever the ag industry wants) and are heartened to see the beginnings of a shift toward water sustainability and justice. However, we are concerned that 1) the delay in addressing the existing overallocations that got us into this mess to begin with has created broadly degraded aquifers with unhealthy levels that will be used as a baseline according to your revised definitions; and 2) that adopted changes made at the behest of the industry are likely to undermine your ability to achieve your stated goals. Indeed, we would posit that there should be a moratorium on all new commercial groundwater pumping permits until such time as the critical groundwater basin analysis and designation process for all of the basins in the state is complete. This would stop the infliction of new wounds and allow the agency to redirect internal capacity towards more rapidly implementing the critical groundwater basin designation process that the state insists is necessary to curtail existing wasteful groundwater pumping. Moreover, we also posit that the Public Trust and Beneficial Use doctrines in fact empower you to stop draining our aquifers without this lengthy process. Groundwater is a giant battery of water that your agency has allowed irrigators to drain for decades. The Public Trust Doctrine requires you to hold water in trust for the future. You seemingly acknowledge that in terms of this proposed rule for FUTURE uses but appear hesitant to apply them to stop the existing exsanguination.

We also hereby incorporate by reference the far more thorough and technically detailed comments of our ORWJA member organization Water League.

In closing, our organizations realize the great difficulty of the tasks that OWRD and its governing Commission must undertake to get our state onto a path of water sustainability. And we are encouraged by this rulemaking direction for FUTURE groundwater pumping permitting despite its flaws, which we hope you will rectify in the final published rule. AND we encourage you to not rest for a moment before you put even more effort into curtailing the most harmful of our existing irrigation permits. We also urge you to more robustly engage with the Tribes, whose instream flow rights (including the Klamath Tribes' time immemorial ones) are being violated by the wonton excess of a virtually rogue agricultural industry.

When it comes to water justice, we must work tirelessly to ensure that those who were denied a voice in the handing out of 'senior' water rights during the racist subjugation and 'settling' of Oregon are made whole in our forward-looking processes. For many Tribal peoples, that translates to ensuring instream rights for nature, and for the cultures that have depended on healthy waters and fisheries since time immemorial. Thank you for your work thus far. We understand that it is a difficult task to right regulatory paths that are go deeply ingrained into the West's culture. We hope that you can accept and evaluate our constructive criticism with an eye toward continually moving the arc of justice forward.

Sincerely,

Stephanie Tidwell, Engagement Director
[Water Climate Trust](#) & [Oregon Water Justice Alliance](#)

Konrad Fisher, Director
[Water Climate Trust](#)

Ashia Grae Wolf Wilson, Director
[Maqlaqs Paddle](#)

Delia Sanchez, Co-founder
Maqlaqs Geetkni

Weston Boyles, Executive Director
[Ríos to Rivers](#)

Christopher Hall, Executive Director
[Water League](#)

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Stephanie Tidwell (Water Climate Trust; Oregon Water Justice Alliance)

Thank you for taking out the long-delayed task of rulemaking to fully implement the state's 1989 groundwater legislation. My name is Stephanie Tidwell. I live in Eugene, OR and I'm here today speaking on behalf of Water Climate Trust and the new Oregon Water Justice Alliance. I know this has not been an easy process, and I know that it would be much easier if decision makers hadn't allowed lobbyists to delay its implementation for 35 years. I don't envy your job of playing catch up. I particularly don't envy that in the face of so many complaints about this being sprung on people. And so, I'm willing to take the hit of saying the uncomfortable truths out loud. During the interim between when groundwater legislation was initially passed, climate change went from being a theory to harsh reality. Many of our aquifers have hit a crisis mode. Our surface waters are an even greater crisis. They've been sucked dry for agriculture in some places, for municipalities, they have been poisoned, and they've been further desiccated by climate change fueled mega droughts. And yet, industries are still demanding the status quo and bemoaning common sense and truthfully, long overdue rules being finalized through what to me is a process that is coming too little too late. It's time for agencies to stop bending over backwards to placate industries that have run rampant over our environment. Don't get me wrong, I love good food and I love sustainable agriculture. I spent years trying to protect, in fact, how hard to get cheap whole grains and dry farmed tomatoes. I know how hard farming is and I respect the hard work that goes into putting food on our tables. Farm workers, migrant farm workers in particular, or amongst some of our most hard working and underappreciated people. What I don't love is water waste and the injustice that often comes with it. Irrigation uses, according to, you know, the state's own calculations, about 80 percent, 5% of all the water that gets pumped out of the ground. And our state and about 80% of Oregon's agricultural operations are devoted to livestock in some way, with many of those crops being very water intensive and 80% of agricultural products are also exported out of state. Meanwhile, 4.2 million of Oregonians account for only about 15% of groundwater use, 4% from domestic wells, 10% from municipal water supplies, and many of them, particularly, you know, Eastern and Central Oregon, you know, the Klamath Tribes and Chiloquin, the Warm Springs Tribes and are experiencing serious water scarcity issues, whether from actual groundwater depletion or from being poor due to horrific depression. Other cities are considering, you know, bans on future construction because they don't think they'll have sufficient water in the future. And so, this process, and indeed like water management decisions in general, could do a better job of prioritizing protecting our waters for the public trust, for essential domestic uses, for the human right to water over commercial consumption, for profit. When I hear balancing uses, I hear capitalist end times. And to me that term does not protect the public trust. You see where I'm going with this. I'm not pointing my finger at the Oregon water resources departments. The problems that we have here in Oregon with race and water and power go much deeper than that. You know, the written pronouncements from the state of Oregon around water justice and tribal water rights are starting to look better. But on the ground, we're not seeing much change. We're not seeing racially diverse voices in the room, and we're not seeing much in terms of where the power lies within the water. These proposed rules are a step in the right direction. If fully and robustly implemented, and if accounting for climate change and adapting and moving proactively with it, they could stop future wasteful groundwater exploitation. But let's be honest,

they do nothing to intervene in the current crisis that has been caused by existing uses. Yes, I understand that the critical groundwater basin designation process has also been held up by political maneuvers and that it is finally getting going and that it will take years. But some of these places don't have years left. Our salmon and our interconnected groundwaters don't have years left. We are starting to see what California already experienced with aquifers collapsing and compacting. And once those are gone, they're gone. And so, I'm here today not to submit our technical comments. Don't worry, we have plenty of those. But to ask everyone involved in this process to be bold and creative and courageous in finding and seizing ways to feed our communities and prosper together without depleting the very resources that we all rely on, not only for economic survival but for sustenance, for culture, for spiritual practice, and yes, for joy and rejuvenation. The irrigators have been given more than handful opportunity decades to retool and become more water efficient without being forced to do so through a pretty, I would say, moderate rule making process firmer, clearer and enforceable. Rules are absolutely required not only to restrict new pumping, but also indeed to curtail wasteful operations in these critical groundwater basins. And they cannot happen quickly enough. This is a critical piece of an admittedly very complicated puzzle in preventing salmon extinction in our interconnected surface waters.



June 12, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, STE A
Salem, OR 97301

Via email to: WRD_DL_rulecoordinator@water.oregon.gov

***SUBJECT: DESCHUTES REDBANDS SUPPORT OREGON WATER RESOURCES
DEPARTMENT'S GROUNDWATER ALLOCATION RULEMAKING***

Dear Ms. Hartt and Members of the Oregon Water Resources Commission:

The Deschutes Redbands Chapter of Trout Unlimited has more than 720 members throughout Central Oregon, many of whom advocate for coldwater fisheries and spend time restoring streams that are dependent on groundwater and springs. Please accept the following comments from our Chapter regarding the Oregon Water Resources Department (OWRD) groundwater allocation rulemaking:

The Deschutes Redbands Chapter of TU supports OWRD'S proposed groundwater allocation process and draft rules.¹

Groundwater and surface water are connected. Indeed, one can view this relationship in many parts of Central Oregon, where springs (i.e., groundwater) supply and sustain streams such as the Metolius River, Fall River, and Crooked River. Without stable groundwater levels, the lakes and rivers that we love—and the fish that inhabit them—face an uncertain and gloomy future.

For decades, OWRD has over-allocated permits to extract and use groundwater in Oregon (not including domestic wells, which are exempt from the permitting requirement and scope of these rules per ORS 537.545). In many places including Central Oregon, OWRD made allocation decisions based on incomplete information, such as the absence of well-monitoring data or detailed hydrologic data that could demonstrate whether or not water was “available” for the use. Simply put, OWRD's

¹ See Groundwater Allocation Rulemaking page at
<https://www.oregon.gov/owrd/programs/gwwl/gw/pages/groundwater-rulemaking.aspx>

practice for many years was to approve requests for new groundwater permits (and accompanying increases in groundwater pumping) without ensuring the new uses would be sustainable and not contribute to declining aquifer levels.

Examples of declining groundwater abound in the western United States. Oregon is no exception. OWRD's groundwater allocation rules would require the state to make an affirmative finding that groundwater is truly "available" on a sustainable basis prior to issuing new groundwater rights (which last in perpetuity after issuance). Given past practices at OWRD, development pressures in Central Oregon, and climate change, this is reasonable and timely. The new rules would not affect existing water rights or wells, and would only change practices at OWRD in making new permitting decisions moving forward.

Change is hard, especially when it has the appearance of affecting growth and local economies. Nevertheless, the Chapter feels that the groundwater allocation rulemaking is necessary. The Deschutes Chapter of TU urges you to support the rules— notwithstanding the pressures to oppose them—because the groundwater allocation rule revision will benefit Central Oregon's natural resources and residents over the long term.

This rule package is an important pivot-point in the State's regulation and management of groundwater in Oregon, but there is so much more to do. Moving forward, we would like to see OWRD improve and increase information-sharing with the public and water users on how to conserve our precious aquifers. Specifically, OWRD has an important role to play in educating Oregonians on the conservation measures that commercial and domestic well users can take to address groundwater issues that won't be addressed by this rule package. Funding, incentives, and other regulations to promote conservation are likely necessary in some places. Finally, well monitoring data will help us quantify the water reservoirs below us, allowing for informed permitting decisions; to this end we recommend initiating more comprehensive well monitoring, both commercial and domestic.

The groundwater allocation rule package is a bold step in the right direction. Thank you for considering our comments.

Sincerely,

A handwritten signature in blue ink, appearing to read "Steve Goldberg".

Steve Goldberg, President
Deschutes Redbands Chapter – Trout Unlimited
baetis1@me.com

HARTT Laura A * WRD

From: Steve Lanigan <lanoman@mac.com>
Sent: Friday, June 14, 2024 11:14 AM
To: WRD_DL_rule-coordinator
Subject: Groundwater rules comments

Some people who received this message don't often get email from lanoman@mac.com. [Learn why this is important](#)

I'm very concerned that the state is issuing new groundwater permits without knowing the ramifications of doing so. Livability for people and natural recourses depend on having adequate water. Please consider my comments as part of your proposed rule updates.

New allocation rules should address the following to prevent further groundwater level declines across the state.

- Prevent new groundwater permits from being issued when groundwater levels are not reasonably stable. It makes no sense to allocate permits without knowing the ramifications of doing so. That also means that "reasonably stable" has to be defined.
- Determine the amount and type of data needed to determine whether ground water levels are reasonably stable so this does not become a subjective determination.
- Require denial of a permit application if data is not available for determining stable groundwater levels
- Protect senior surface water rights (including in stream water rights by requiring a full accounting of the impacts of proposed pumping on hydraulically connected rivers and streams.

Thank you,

Steve Lanigan
4137 N Overlook Blvd
Portland OR 97217

April 2, 2024

Laura Hartt
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301



via email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Please Deny OWRD's Proposed Groundwater Allocation Rules

Dear Ms. Hartt,

As a Registered Geologist in Oregon with a well-established practice focused on hydrogeology and water rights, I am very concerned about the groundwater allocation rules proposed by the Oregon Water Resources Department. Although certain areas in Oregon have experienced groundwater declines negatively affecting water users, this is not the case for all areas in the state. The proposed rules will create an effective moratorium on new groundwater use in the State, even in areas that have no issues with groundwater over-use. This approach is extreme, does not balance economic use with sustainability, and will create an unnecessary cap on future growth and development in Oregon.

The Department needs to take a more targeted approach to groundwater management. Oregon already has basin plans for surface-water basins and some groundwater sources. The Department should develop groundwater budgets for each major hydrologic basin as authorized by HB 2018 (2021) and create regulations in the basin plans that address these hydrologic conditions. The Department can concurrently prioritize basins that are most at risk for groundwater over-drafting so the State and water users can avoid future negative consequences.

The Department has adequate authority to address current groundwater concerns while it studies the hydrogeologic systems and creates regulations unique to each basin. The Department can designate "serious water management problem areas" to prevent further demand where it is justified while the groundwater budgets and new rules are developed. Applications can continue to be denied in areas where groundwater is known to be over-drafted and/or new uses will injure existing water rights. The Department should use the tools it already has in a more effective way to better manage groundwater resources.

In summary, the Oregon Water Resources Commission **should reject** the proposed groundwater allocation rules and require the Department to study each hydrologic basin (as it is already required to do by law), and then develop regulations, **as needed on a basin-by-basin basis**, to address any identified groundwater issues. Thank you for your careful consideration of this important matter.

Sincerely,

SKOOKUM WATER ASSOCIATES INC.

Steven R. Bruce, RG, CWRE
Principal Hydrogeologist

cc (via email): Oregon Representative Ken Helm; Oregon Representative Mark Owens; Geoffrey Huntington, Senior Natural Resources Advisor to Governor Kotek; Tammy Denee, Oregon Cattlemen's Association; April Snell, Oregon Water Resources Congress.

HARTT Laura A * WRD

From: Sue <speyfishergirl@gmail.com>
Sent: Sunday, June 2, 2024 3:34 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rulemaking

Some people who received this message don't often get email from speyfishergirl@gmail.com. [Learn why this is important](#)

Dear Oregon Water Resources Department,

Thank you for this opportunity to comment on the proposed updates to your groundwater allocation rules. Updates to the groundwater permitting rules seem overdue.

It's vitally important that Oregon's groundwater allocation rules be updated to ensure that there is actually groundwater available and a reasonably stable supply before any new groundwater right is issued, that any new right will not impact existing groundwater and surface water rights (many groundwater sources are hydrologically connected to surface waters) and that there is a reasonable basis for concluding that there will be sufficient water to satisfy existing groundwater and surface water rights into the future.

Additionally, the rules should be updated to establish the amount and type of data needed to determine whether groundwater levels are reasonably stable — and require denial of a permit application until such data is available.

Finally, the rules need to protect all senior water rights including instream surface water rights by fully analyzing and accounting for the impacts of proposed groundwater pumping on hydraulically connected rivers and streams (i.e., the physical connection and interaction of streams and waterways throughout a river network). This will prevent further injury to senior surface water rights from issuance of new groundwater permits.

Through the proposed updates, the new rules will:

- result in more sustainable management of groundwater
- ensure better protection of streamflows and cold water inputs to rivers and streams from impacts of over-pumping hydrologically connected groundwater
- better prepare the state to manage and protect groundwater and surface water supplies from the challenges of climate change.

Sincerely,
Sue Safford
Portland, Oregon

HARTT Laura A * WRD

From: Susan L Smith <susanlsmithor@gmail.com>
Sent: Thursday, June 13, 2024 4:07 PM
To: HARTT Laura A * WRD
Subject: Comments on proposed groundwater allocation rule

Dear Commissioners,

I am Susan Lea Smith. I have taught, practiced and written about water law since 1980, when I became part of the second generation of lawyers litigating Arizona v. California.

Since joining the Willamette University law faculty in 1989, my focus has been on sustainability. I have had the pleasure of accompanying the Oregon Water Resources Commission on its decades-long journey to adapt Oregon's prior appropriation system to assure Oregon manages our water resources in an integrated and sustainable manner while respecting senior appropriative water rights.

In my opinion, the ground water allocation rulemaking is a perfect example of how to adapt Oregon water law to honor prior appropriative rights and assure that future generations have access to water resources.

When ground water levels are dropping so that existing wells have to be redrilled, we are failing to honor prior appropriative ground water rights AND are using ground water unsustainably. When an area is over appropriated to the point that appropriative surface water rights are being called, and we are giving out new ground water permits that will intercept ground water that should be supplying over appropriated streams, we are failing to honor senior surface water rights AND contributing to depletion of surface water resources to which tribes and farmers are entitled endangering both fish and farmers. These are the problems that the ground water allocation rulemaking seeks to solve. The proposed rule is necessary for integration of hydrologically connected groundwater and surface water as well as managing our water in a sustainable manner.

There are grave costs to allowing new ground water permits to be issued under such circumstances. Water consultants who profit from such permits and late-comer agricultural users may suggest that after all, a new permit is just a hunting license for water whose holder patiently waits their turn in line for water. But in the circumstances addressed by this proposed rule, there is no water. Instead, new ground water allocation permit holders seek to cut in line, relying on the difficulty enforcing the priority system against junior water right holders.

Furthermore, even if they couldn't cut in line, we are allowing new ground water permits holders to make investments based on unrealistic expectations about water availability, which discouraged these new owners from purchasing senior water rights that justify the investments they are, and their lenders, are making. They also discourage investments in water conservation by senior water right holders and the new ground water permittees. Fake new ground water rights also bring disrepute to the prior appropriation system.

One area where new ground water rights have been permitted is the Klamath Basin. Farmers distressed over the loss of their irrigation water have turned to ground water extraction to keep their historical acreage under cultivation. This practice injures the senior tribal water rights upon which the fish of the Klamath River basin depend, but there is virtually no prospect of effective enforcement against this illegal extraction. It also prevents farmers from making pragmatic adjustments of their cultivation practices, to avoid irrigation or dramatically reduce water use, especially in light of the changes that are occurring to our climate.

OWRD properly assured these farmers that this rule is not retroactive and will not affect already issued ground water permits. But eventually the folly of relying on diminishing ground water resources will become clear, even to the agriculture community in the basin. Allocating water beyond the recharge provided by nature leads to fish kills, well

failures, subsidence, and will exacerbate tensions and conflict, not solve the heartbreaking problem of Klamath farmers. Certainly, additional ground water permits should not be issued in the basin.

Some rightly argue that new water users find it difficult to purchase senior rights and this locks in inefficient economic uses of water. However, the fix for that problem lies in the Commission revisiting the water transfer regulations and seeking to encourage a viable water rights market in Oregon.

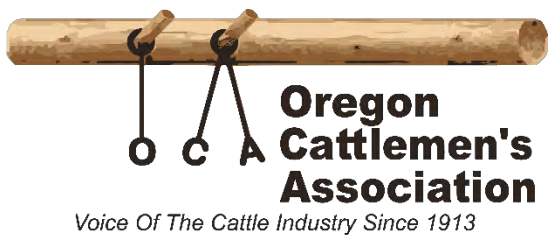
Similarly, some complain that domestic users are allowed to cut in line and use overly generous amounts of water. While that is true, OWRD estimates that is only 3% of our water resources. In my opinion, the Legislature should revisit the amount of domestic water allowed as well as the use of exempt water for sizable livestock herds. However, that is a complaint that should be made to the Legislature, not the Commission.

I should mention that I served on the Rulemaking Advisory Committee for the ground water allocation rulemaking. Based on personal observation, I can assure the Commission that staff did a fabulous job of responding to the concerns and interests expressed by all of the stakeholders. The proposed rule is infinitely better than the original draft.

Naysayers about the process or substance of the proposed rule simply have financial interests in protecting loopholes in the current water availability determination process. They really don't like the prior appropriation system or the idea of managing water resources sustainably, if it affects their pocketbook. Their criticisms reflect opposition to the Commission's policy decisions reflected in the rule. The Commission should expect them to litigate, but I believe they will not prevail.

This rule is a credit to the Commission's commitment to assure our water resources are managed sustainably using prior appropriative rights. I commend the Commission for proposing this rule and hope that it will not make any significant changes.

Best regards,
Susan Lea Smith



Oregon Cattlemen's Association
1320 Capitol Street NE, Suite 150
Salem, OR 97301
Phone – (503) 361-8941
Fax – (503) 361-8947
www.orcattle.com
Tammy L. Dennee, CMP, CAE - Executive Director
Mobile – (541) 980-6887

June 14, 2024

Via Email Only

Laura Hartt
Email: WRD_DL_rule-coordinator@water.oregon.gov

RE: Oregon Cattlemen's Association's Comments in Opposition to OWRD's Proposed Groundwater Allocation Rules

Dear Ms. Hartt,

Please accept these comments on behalf of the Oregon Cattlemen's Association ("OCA") in response to the Oregon Water Resources Department's ("OWRD's") proposed groundwater allocation rules. Founded in 1913, OCA serves as the voice of the cattle industry in Oregon. Our members are engaged in agriculture and ranching across the State, providing food and essential byproducts within Oregon and throughout the world. Water is of critical importance to OCA and its members for growing crops and raising livestock. For the reasons explained below, OCA is opposed to the proposed rules, and asks the Oregon Water Resources Commission to **reject** the proposed rules. OCA was a member of the Rules Advisory Committee ("RAC") for the proposed rules, and also voiced these concerns through oral and written comments during the RAC process.

First, the test for "reasonably stable" water levels under the proposed rules will inappropriately shift an insurmountable burden to property owners to conduct many years of expensive groundwater studies that OWRD has a responsibility to complete before proposing new groundwater allocation rules.

Under the proposed rules, OWRD must determine that groundwater levels are "reasonably stable" to approve a new application for use of groundwater. This proposition sounds sensible, but its application is haphazard and illogical. The rate of allowable decline chosen by OWRD is a one-size-fits-all approach that is arbitrary when applied to all aquifers in the State. Additionally, to determine the rate of decline at a specific location, the proposed rules require at least five years of data from "representative wells." If such data does not exist, OWRD puts a heavy burden on the applicant to conduct five years of expensive aquifer studies to then provide data to OWRD, with no guidelines, required procedures, or guarantees that OWRD will then accept the private study results. OWRD has been very unwilling to accept private studies from landowners in the past. OWRD has very few, and even no representative wells in certain areas of the State, meaning that the proposed rules will undoubtedly result in a tremendous burden on private landowners.

In 2021, the Oregon Legislature passed House Bill ("HB") 2018, under which the Legislature directed OWRD to work with the United States Geological Survey to study groundwater resources and establish groundwater budgets in all areas of the State. OWRD has not completed that process, and, as such, lacks the

requisite information to determine “reasonably stable” water levels in all areas of the State. The results of the HB 2018 studies will provide necessary information for any rulemaking to allocate the groundwater resources of the State. Thus, the proposed rules premature. The Oregon Water Resources Commission should pause the groundwater allocation rulemaking until the HB 2018 studies are complete, or until such studies, at a minimum, provide adequate scientific information from which to base new groundwater allocation rules.

Second, the revised definition of “potential for substantial interference” will result in new application denial in nearly all areas of the State. This revised injury test, when combined with the negative impacts from the test for “reasonably stable” water levels, will create a *de facto* moratorium on all new groundwater development in the State, without the need or justification to do so.

The most severe change under the proposed rules is the change to the “potential for substantial interference” test, which will result in denial of nearly all groundwater applications. “Substantial for potential interference” relates to the potential of a new groundwater use to impact existing water rights. The enacting statute specifically refers to “interference with existing rights to appropriate surface water.” ORS 537.525(9). The current test for substantial interference under the current rules is aimed at avoiding noticeable and measurable estimated interference with known, existing water rights.

The proposed rules broaden the “potential for substantial interference” test so that interference with existing water rights is no longer the test. Instead, the proposed test is whether there is a capability for the new groundwater use to cause *any theoretical impact to any surface water or groundwater source, at any time in the future, regardless of any actual impact on any existing water rights*. OWRD staff acknowledged in a RAC meeting that this provision will result in denial of nearly all groundwater applications in the State, other than a narrow subset in the Willamette Valley, which is the only place OWRD has found no hydraulic connection between groundwater and surface water.

Finally, OWRD has existing tools to address groundwater concerns without causing the vast harm that will result from the proposed rules.

Where there are existing areas of concern, OWRD has already designated areas where water allocations are paused pending further groundwater studies. Most recently, OWRD exercised this control in the Harney and Walla Walla basins. OWRD must act more quickly and decisively to avoid harm when warranted by the circumstances.

Additionally, OWRD has existing authority to deny specific applications when groundwater supplies cannot support the new use, or the proposed use will interfere with existing water rights. OWRD’s lack of understanding regarding groundwater resources has impacted its ability to make decisions based on such information, which HB 2018 was intended to correct. OWRD may continue to exercise its current authority while the HB 2018 studies and any other necessary studies are completed. Thereafter, once scientific information regarding each basin and sub-basin is developed, OWRD can establish basin plan rules that are specific to the demands and opportunities in each basin.

Oregon needs measured and reasonable groundwater allocation, informed by scientific study of groundwater aquifers. OWRD’s one-size-fits-all, permit-moratorium approach will create poor water policy, and will result in immense harm to this State and its residents. OWRD’s proposal is a static, rigid mandate, which will result in an end to groundwater appropriation, regardless of whether groundwater resources in certain areas can support further sustainable development.

For these reasons, OCA asks the Commission to reject the proposed groundwater allocation rules. OCA further asks the Commission to direct OWRD to complete the HB 2018 studies, and any further groundwater studies needed, to enact rules in each groundwater basin that address the demands and complexities therein. OCA looks forward to participation in future groundwater allocation rulemaking efforts, which should be supported by adequate science, and address local conditions.

Sincerely,

OREGON CATTLEMEN'S ASSOCIATION

A handwritten signature in dark ink, appearing to read 'McElligott', with a stylized, flowing script.

Matt McElligott, President
Chair

A handwritten signature in dark ink, appearing to read 'Sarah Liljefelt', with a cursive, flowing script.

Sarah Liljefelt, Water Committee

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Tiffany Price (N/A)

This whole process is very new to me and my husband. We just purchased moving from a small farm that is served by municipal water onto a larger piece of property with a well. We were surprised to learn about these processes. The previous owners of our property had a state licensed legal grow operation. We are not. We are wanting to grow food for locals and especially for low income families. And when we learned about the enforcement of this law for these laws and how that can impact small farmers, it just brought up a lot of concern. Not that the enforcement of the law or that the revisions to the rules are inherently bad by any means or wrong. I know that I've been working on environmental protection work my, you know, for my entire adult life, and we are very much careful caretakers of our land. But our main concern is the not knowing how to connect with resources and support for understanding all of these guidelines. You know, so we moved into a property that had both a well and previously used grow operation. But, but when I look there was no water rights and so there was an assumption on our part that the water that was on our land was usable for growing produce and we have not been able to connect with information about that. So, I am going to send in a public comment. I know in some ways this isn't directly related to the rulemaking process, but really it's, it just seems difficult to find information. And there is a lot of support for new small farmers and for local food and getting fresh fruits and vegetables into the households of low income families. But some of these processes are difficult to navigate if it's not something that you've done. So that's all I wanted to mention. And like I said, I'll send in some public comments.

May 30, 2024

Comments Submitted for Groundwater Rulemaking

To: Ms. Laura Hartt
Water Policy Analyst/Rules Coordinator, Policy Section
Oregon Water Resources Department

From: Mr. and Mrs. Tim Gilmer
Small farm owners, Oregon City-Canby area

Dear Ms. Hartt,

I am a 79-year-old small farm owner who purchased 27 acres of EFU property in Clackamas County in 1980. The property has a long agricultural history dating back to at least 1881, when a pioneer family bought this parcel from the original 1866 land-grant owners. An old barn built in the 1880s is still usable and in relatively good shape. The existing two-story farmhouse was built in 1913 after the original house burned down. It had been farmed as a dairy, flax farm, corn, strawberries, and small cattle operation prior to my purchasing the property. It has a surface water right to a creek that borders the property with a priority date in 1957.

In 1981 my wife and I bought heifers, cow-calf pairs and a bull in building a small herd. In 1982 we started a U-Pick operation on about $\frac{3}{4}$ acre near the barn. Not knowing that a permit was needed to use the existing well, I irrigated with drip irrigation, mostly on tomatoes. We expanded to deliver produce to restaurants in the Portland metro area starting in 1983. We were among a small number of pioneers in the farm-to-table movement in the Portland metro area. We raised fresh vegetables on about 6 acres and delivered them to, at one time, as many as 30 different accounts. Besides drip-irrigating from the well, we also pumped from the creek, using sprinklers for watering lettuce and pastures. We sold a prize bull at the Cow Palace. We were young and active and busy, enjoying the lifestyle of an efficient small farm operation, using a combination of pumping water from Parrott Creek and the existing well.

In 1990 we made the change to organic farming, since this was especially important to our customer base. We were certified organic by OTCO from 1996 to 2020. As you no doubt know, organic farming is best irrigated with groundwater, since surface creeks and ponds, etc., are subject to pesticide contamination from neighboring farm runoff and animal feces. So I cut back on irrigating from the creek in favor of using clean and safe water. I used the creek water for seasonal pasture, and the well for food crops. Organic farming was especially important since our produce was delivered directly to restaurants and markets and U-Pick customers, and we also had a toddler, workers, and ourselves to consider. At some point we sold our herd and concentrated entirely on raising organic produce. In 2010 our farm was featured on a PBS award-winning educational program, "Chefs A'Field."

In 2017 I became ill and gave up farming actively in favor of leasing the farm acreage to others. In 2018, 2019 and 2020 we leased to a hemp farmer who grew organically on 9 acres, all drip-irrigated. He was registered with OTCO and the ODA as a hemp grower and followed all the rules. In 2021 we leased to a different hemp grower who placed 40 California-style greenhouses on a 6-acre pasture. Once again the entire operation was irrigated with drip irrigation. I encouraged the growers to pump from the creek into holding tanks in addition to the well.

In 2022, that hemp operator left, and we leased to a trio of new growers who wanted to grow hops. They established a small hopyard of 3 acres with plans to build out to 9 acres. Once again, drip irrigation was the sole source of irrigation.

*

In April of this year the hops-grower renters read an article about Oregon Water Resources' plans to enforce strict permitting on water wells used for commercial purposes. Up to this point, neither they nor I had been aware that a separate permit was needed for groundwater. When I purchased the farm, I was told it had water rights. The owner at that time had an underground water line that begins with the well and covers between 5-10 acres of the property. To me, since I had purchased a property that was strictly EFU, I assumed that I had a right to use whatever water sources existed on the property for agricultural purposes.

Now I am being told that the only way I can go forward with small-scale commercial farming (suitable for drip irrigating organic crops) is to get a permit for the well, which an employee at OWRD has informed me will take 2 years, maybe more, cost thousands of dollars, and may not even be approved. I looked into transferring a percentage of the surface right to the existing well but was discouraged by a hydrogeologist who thought it would not qualify according to current rules.

As a consequence of this, the hops farmers have decided to call it quits. They will lose more than \$100,000 of their investment, and my wife and I will lose several years of annual rent that is important to us, our daughter and four grandsons. Plus, the value of the farm will diminish. The farm rent is second only to our combined social security pensions. The loss of the hops lease — a 5-10-year agreement — could mean we have to sell the property and move.

As I stated earlier, I am 79. My wife is 75. In 2016 we had to move our daughter and her family to the farm and provide a manufactured home, water, septic and electricity from our life savings. This was done under Clackamas County's Temporary Dwelling for Care program, since I am wheelchair-bound, sleep in a hospital bed, and need more help than my wife can provide. Our daughter's oldest child, our grandson, 15, now lives with us. His three younger brothers live on the farm with our daughter and her husband in the manufactured home. When I die, or if my wife and I have to sell and move, the temporary dwelling must be removed from the property. All eight of us will be displaced.

*

If there are no exemptions or waivers that recognize the right to farm a property with a 150-year history of farming, and which has been farmed for more than 40 years with water-conserving measures, then what does that say about the future of small family farms? I have been aware of the importance of water conservation for most of my life, since I was born and raised in California's southern San Joaquin Valley, near Bakersfield, which had annual rainfall of 2-3 inches/yr and declining groundwater. I agree that Oregon needs better water conservation rules and enforcement. But a one-size-fits-all approach to achieve this is not only unfair; it is also unwise. Small farms are critical to the survival of rural towns and metropolitan areas. Organic growing is good for the land, and using groundwater for drip-irrigated organic crops, or any crops, is sound water policy.

At one time we had beavers living on our property in the creek area. Their activity slowed the creek down and created pools in the hot summer season when water levels were low. We all know how beneficial beavers are when we protect our important trees with circular fencing. However, neighbors upstream started trapping, and now the beavers are no more. But they could be re-introduced to conserve riparian habitat, and I am willing to do that, with help. In some parts of the state, recharging aquifers could help substantially. Near arid Bakersfield, I have seen positive results from the use of settling ponds.

The most wasteful use of our water resources happens within city limits, not on farms. Businesses and homeowners routinely use automated sprinkler systems that are tied to brainless timers rather than a person with common sense. We do a great job of routinely watering sidewalks, parking lots and pavement, sometimes even during periods of rain. Homeowners compete with each other to have the greenest pesticide-fed, weed-free lawns, while farmers are forced to cut back on water use that produces critical food and fiber.

I propose that waivers be granted to longtime owners and small farmers who willingly take action to support riparian conservation and use sound water-conserving methods such as drip and low-flow irrigation. An expansion of dedicated grant funding would go a long way to support this approach. Not only will this save water, but it will also preserve an important lifestyle and a system of local food production that enhances quality of life and has minimal impact on global warming. Please take into consideration all kinds of farming and water use, especially with regard to small farms, which already operate at an economic disadvantage. Make rules that are fair to all, sensible, and that work with natural ways of mitigation, not solely strict policy.

I trust you will not throw the baby out with the bath water.

Sincerely,

Tim and Sam (wife) Gilmer
22636 S Central Point Road
Oregon City, Oregon 97045

HARTT Laura A * WRD

From: anguscattleman@hotmail.com
Sent: Wednesday, April 17, 2024 6:13 PM
To: WRD_DL_rule-coordinator
Subject: Ground water rules hearing

Some people who received this message don't often get email from anguscattleman@hotmail.com. [Learn why this is important](#)

See my written testimony below. The embedded link in the 31 page document didn't work.

Begin forwarded message:

From: anguscattleman@hotmail.com
Date: April 17, 2024 at 2:01:19 PM PDT
To: coordinator@water.oregon.gov
Subject: Ground water rules hearing

Hello,

I received the email from Dana Kurtz the facilitator of Upper Grande Ronde Basin Placed Based water, which contained the 31 pages of OWRD proposed rules.

The language on page four (4) that implies surface water is connected to ground water is a concern. I'm aware of "models" that indicate this, but was once told that all models are flawed, some just more so than others. Where's the actual scientific boots on the ground data that unequivocally supports this theory?

If this language is allowed to continue then the water situation is only going to worsen for Oregon. OWRD has been mismanaging water use for decades and now they are scrambling for a "fix" that can only be corrected with **large capacity reservoirs** everywhere.

Regulating the groundwater by saying it's connected to surface water without accounting for natural recharge is also a flaw. It's a shame when agencies won't listen to the most knowledgeable people with decades of real world experience. There was a local accredited water individual who no longer attends our place based meetings who's voice of reason was dismissed by ODFW and OWRD. It's a shame that the voices of local people who have spent a lifetime studying the water in our Basin aren't being taken seriously enough by the agencies.

This is proposed rule is not good for Oregon, its residents, wildlife (not just fish!), and the stewards of the land, air, and water; AGRICULTURE. Scrap this proposal, talk with local experts who have a lifetime of observations, and regroup. With their input on this matter you will find the solution for all.

Tim Wallender
La Grande, Oregon

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Tommy Hough (Washington County)

My name is Tommy Hough. I'm a resident of Washington County. I'm a fan of rivers and our outdoors. It's part of the reason that my family and I live in Oregon, and I do serve as the Communications manager with WaterWatch of Oregon. Very pleased to be here. I'm very happy to speak in support of the rule proposals. In fact, we've been hearing a lot from our members around the states. They're very excited, They want to see these rules enacted as do we. And the reason we're here today is because the state is at last addressing the shortcomings in the state's rules for groundwater allocation That has led to an over issuance of groundwater permits and result in a major groundwater level declines around the state. And these declines have harmed rivers and streams and springs and species that rely upon cold, clean groundwater. Declining groundwater levels have also harmed existing surface water rights, as well as impacted well owners who rely upon groundwater for drinking water and for household use. Regardless of which basin one may be in, we need to be especially judicious with our groundwater, and these rules move Oregon onto a much more sustainable path. And this state is wise to pursue a course that will prevent new groundwater rights from being issued when it lacks the data to determine whether it has already over appropriated groundwater in a particular area and whether a proposed new use is even within the capacity of that area's groundwater resource. This is sensible, responsible policy that will benefit all Oregonians and our environment. Thank you very much. Thank you for the work you've been doing.

HARTT Laura A * WRD

From: Troy Jen Rossetti <Rossetti_TJ@msn.com>
Sent: Wednesday, March 20, 2024 6:36 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Availability for Allocation Rulemaking

Some people who received this message don't often get email from rossetti_tj@msn.com. [Learn why this is important](#)

Water is a necessity for farms and ranches.

Water is a necessity for nurseries.

Water is a necessity for wildlife.

Water is a necessity for home gardening.

Water is a necessity for people to live.

Water used by property owners on their own property or through a legal lease or purchasing of property should not have to be "granted" or "request approval" for use of surface water or Groundwater.

Water is not a commodity to use for control and power over the citizens in Oregon.

Thank you for your time.



OREGON HOUSE OF REPRESENTATIVES

Representative Vikki Breese-Iverson, HD59

June 13, 2024

Transmitted electronically

Laura.a.hartt@water.oregon.gov

WRD_DL_rule-coordinator@water.oregon.gov

Laura Hartt
Oregon Water Resources Department
725 Summer Street N.E., Suite A
Salem, Oregon 97301

Dear Ms. Hartt,

I am writing to encourage the Department to withdraw its proposed administrative rules addressing the allocation of our state's groundwater resources at the current time.

Initially, I believe one of the most predominant shortcomings of the proposed rules is to suggest we may be able to develop and promulgate a single set of administrative rules for application in a uniform manner throughout the state. This policy assumption fails to take into consideration the very significant differences between the various basins of the state, and moreover, the potential differences between individual geographical areas within our designated water basins.

I have the opportunity to frequently travel between my home in Central Oregon and the Willamette Valley. One of the most outstanding differences between these two locations is the amount of precipitation – in-short there is a much greater degree of precipitation on the west side of the Cascade Range than I am accustomed to in Central Oregon. Inherently, the hydrological conditions are significantly different between these two regions of the state. Similarly, there are many differences between the other various regions of the state.

The possible adoption of proposed rules, as well as the overarching policy direction, appears diametrically counter to the Department's traditional basin planning efforts, coupled with the Department's efforts in recent years to promote place-based planning activities. It appears there exists an inherent contradiction herein.

Throughout the development of the proposed rules, one continuing concern has been the question regarding the application of the rules; will the rules be applied to existing uses and users of our groundwater resources, or is the intent to extend the rules to proposed new uses of groundwater? I understand the Department has attempted to clarify this issue by indicating the proposed rules are to be extended to proposed new uses of groundwater, as opposed to existing uses.

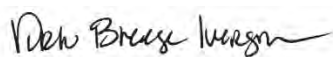
To address this concern regarding potential application of the proposed rules, I understand it has been suggested the Department establish a new and distinct division within its administrative rules to clearly define the rules will extend to proposed new uses of groundwater resources. In the event the proposed rules are advanced, I strongly recommend the establishment of a new division within the existing administrative rule framework, specifically delineating the new rules will extend to new groundwater uses as of a designated date.

While numerous specific provisions deserve further clarification, I believe the rules as proposed, fail to address the very significant differences that will exist between proposed future groundwater withdrawals. Appropriate regulation must be applied to the immediate impacts of a proposed use within a distinct location.

Once again, to suggest a comprehensive set of regulatory rules may be applied statewide on a uniform basis, clearly fails to address the different circumstances surrounding a proposed new use. Appropriate regulations must be more site specific in nature, as opposed to the automatic statewide default.

In summary, I again encourage the Department to refrain from advancing the groundwater allocation rules as presently proposed.

Sincerely,

A handwritten signature in black ink, appearing to read "Vikki Breese Iverson". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Vikki Breese Iverson
State Representative
House District 59

Oral Comments – Hybrid (Salem/Zoom) (May 21, 2024)

Wade Nkrumah (Portland)

Hello and thank you for the opportunity to spend to speak tonight. Also, I appreciate the work that you are doing on this issue and pushing it forward. Wade Nkrumah Portland OR. I have lived in Portland since 1985 moving from the Lone Star State of Texas. I support the I support the Water Oregon Water Resources Department's proposed Groundwater Allocation Rule revisions because the new rules will result in more sustainable management of groundwater. The new rules will ensure better protection of stream flows and cold water inputs to rivers and streams from impacts of over pumping. Hydrologically connected groundwater is of the utmost importance. Challenges associated with the impacts of climate change make it even more important for the state to stop over issuing groundwater permits. Finally, improvement as to how Oregon issues new groundwater permits is long overdue. I look forward to the adoption of the proposed rules.

HARTT Laura A * WRD

From: Y Lind <yancy.lind@gmail.com>
Sent: Monday, May 6, 2024 1:50 PM
To: WRD_DL_rule-coordinator
Subject: Groundwater Allocation Rulemaking Comments

Some people who received this message don't often get email from yancy.lind@gmail.com. [Learn why this is important](#)

Hello,

Please accept the comments below regarding your current rule making on groundwater allocation. I will get right to the point. The proposed rules are a long overdue but welcome step in the right direction. It is simply common sense that permits should only be granted if there is a “reasonably sustainable” aquifer.

Unfortunately the proposed groundwater rules will not address the causes of current declining groundwater levels, they will simply slow the rate of future decline. Current overallocation of the resource will not be addressed. Declining aquifer recharge due to global warming will not be addressed. We will still be rearranging deck chairs on the Titanic, even if the ship sinks more slowly.

OWRD needs to implement the new rule and keep going. A truly stable aquifer needs less pumping and more recharging. More aggressive water conservation, water transfers or reallocation between irrigation districts, artificial aquifer recharge, water reuse, charging for water, etc., all need to be considered. These tactics, and others, are being used in other states, why not here? The new rule also needs to be applied to exempt wells. I remain dumbfounded that domestic wells, like mine in rural Deschutes County, do not require a permit or any metering or monitoring. I could run water all day long, every day and no one would know.

I am aware that the primary argument against the proposed rule in Central Oregon comes from cities who state they need more water to keep growing. I would argue that they need to conserve a lot more. Most water in cities is used for landscaping. We live in the high desert, our yards should look like it.

At the comment meeting in Bend, local cities and the Deschutes River Conservancy argued that Central Oregon is special, and we should be able to create our own rules for water through collaboration and place based planning. I disagree. I am an active, engaged member of the Deschutes Basin Water Collaborative, a place based planning process that is an outgrowth of the Basin Study Work Group where I was also a participant. I honestly hope these efforts will yield results but they have been going on for years. Excellent data has been gathered but progress on creating collaborative solutions has been painfully slow. The various stakeholders in the Deschutes Basin Water Collaborative continue to primarily represent their own interests.

To the extent that progress has been made on surface water issues it is due to the requirements established by OWRD or the Deschutes Basin Habitat Conservation Plan. OWRD's Deschutes Basin Groundwater Mitigation Program forced new, non-exempt, groundwater users to "mitigate" the impact of their withdrawals on surface flows. This program did put a small amount of water back into the Middle Deschutes around 20 years ago, but consistent, guaranteed increases have not occurred. Don't be misled when people say that the Mitigation Program has increased flows in the Middle Deschutes by 8x or some similar nonsense. When you start with a very small number and multiply it by 8, 10, whatever, it's still a small number. In the past few weeks the Middle Deschutes has been flowing as low as 65 cfs, which is an ecological disaster.

Further, progress made in restoring flows in the Upper Deschutes and the requirement to increase flows in the future is mandated by the Habitat Conservation Plan. Local irrigators must do this to continue to divert irrigation water. Understanding how to do this, and helping implement it, has been collaborative, but the decision to require it was not.

Placed based planning is a worthwhile endeavor, but it is something that should be done within the structure of agency, legislative, and federal rules. Real progress requires a carrot and a stick. We should be using our planning efforts to understand how we can work within the rules, refine, and implement them.

My final comment is that contrary to statements made in Bend, your proposed rules will not simply transfer growth from cities to rural areas like where I live. We have land use and planning rules that can control growth outside urban growth boundaries. Requiring new domestic wells to obtain groundwater permits under the new rules would be a big help.

Please adopt the proposed groundwater allocation rules and work on new rules that will help stabilize and even increase aquifers. We will learn how to live with these rules.

Thank you.

Yancy Lind

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Bend, OR, 97707

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June 11, 2024

To: Oregon Water Resources Commission

Submitted by: Zach Freed, Sustainable Water Program Director

Comments on Agenda Item K: **Groundwater Allocation Rulemaking Update**

Chair Quaempts and Members of the Commission,

Thank you for the opportunity to comment on the proposed rule changes to Division 8, 9, 300, and 410. **The Nature Conservancy urges you to adopt the proposed Groundwater Allocation Rules to prevent further over-allocation of Oregon's aquifers.**

The Nature Conservancy (TNC) is a science-based, non-partisan organization committed to conserving the lands and waters on which all life depends. In Oregon, TNC has over 80,000 supporters and members in every county. Based in communities around the state, we manage lands and waters in varied ecosystems and partner with ranchers, farmers, fishers, forest and environmental interests on some of the most challenging conservation issues facing people and nature.

We support the proposed rules. We believe they meet the Oregon Water Resources Department's rulemaking objective to **"be more sustainable and protective of existing water right holders."** There is abundant evidence that the existing allocation rules lead to aquifer depletion, streamflow reduction in over-appropriated rivers, and reduced access to drinking water for rural communities that rely on domestic wells. Oregon is already experiencing the impacts of over-allocation on declining groundwater levels, demonstrated by multiple statewide analyses^[1,2,3] and place-based studies in the Willamette⁴, Deschutes⁵, Klamath⁶, and Harney⁷ basins. A recent report by the Oregon Secretary of State⁸ noted the impact of dry wells and water scarcity on families, farmers, industry, and recreation.

¹ Saito, L., Freed, Z., Byer, S., & Schindel, M. 2022. The vulnerability of springs and phreatophyte communities to groundwater level declines in Oregon and Nevada, 2002-2021. *Frontiers in Environmental Science* 10:1007114.

² Scandella, B., & Iverson, J. 2021. Oregon groundwater resource concerns assessment. Oregon Water Resources Department, Salem, OR.

³ New York Times. 2023. Uncharted Waters: America is Using Up Its Groundwater Like There is No Tomorrow. Available at: <https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html>

⁴ Conlon, T.D., et al. 2005. Ground-Water Hydrology of the Willamette Basin, Oregon. USGS SIR 2005-5168.

⁵ Gannett, M.W., et al. 2001. Ground-Water Hydrology of the Upper Deschutes Basin, Oregon. USGS SIR 2000-4162.

⁶ Gannett, M.W., et al. 2007. Ground-Water Hydrology of the Upper Klamath Basin, Oregon and California. USGS SIR 2007-5050.

⁷ Gingerich, S.B., et al. 2022. Groundwater resources of the Harney Basin, southeastern Oregon. USGS SIR 2021-5103.

⁸ Oregon Secretary of State. 2023. Advisory Report: State leadership must take action to protect water security for all Oregonians. Report 2023-04.

The proposed approach to defining “reasonably stable” water levels is consistent with the most modern science on groundwater sustainability^{9,10}. Unlike outdated methods—such as “water budget” approaches with inaccurate volumetric estimates of recharge and discharge—the proposed rules use groundwater level trends as the key indicator of sustainability. While groundwater levels may fluctuate for other reasons (e.g., reducing recharge due to canal lining), the proposed rules allow for discretion by the Department to account for those fluctuations using the best available data¹¹.

The proposed rules are well-aligned with Oregon’s Integrated Water Resources Strategy, which identifies sustainable groundwater management a statewide priority and suggests Recommended Action 11.E: Develop Additional Groundwater Protections¹². Although the existing and proposed rules governing groundwater allocations are statewide in scope, there are processes already in place to help address regionally-specific groundwater concerns. To address concerns from stakeholders, the proposed rules allow for basin-specific definitions to be developed, as long as the basin-specific definitions consider impacts to wells, ecosystems, and long-sustainability of the resources¹¹. These common-sense considerations will ensure that basin-specific definitions are consistent with priorities in Oregon’s Integrated Water Resources Strategy and aligned with the mission of Oregon Water Resources Department “**to ensure the long-term sustainability of Oregon’s ecosystems, economy, and quality of life.**” The proposed rules are also compatible with current and future Place-Based Integrated Water Planning processes. That includes the pilot Place-Based Integrated Water Planning collaborative in the Harney Basin intended to address the consequences of groundwater over-allocation.

The Nature Conservancy supports the proposed rules because they meet the stated objective of the rulemaking: protecting existing water rights and sustainably managing Oregon’s finite water resources. We urge the Commission to adopt the proposed rules to avoid further over-allocation of Oregon’s aquifers.

Thank you for considering The Nature Conservancy’s comments.

⁹ Gleeson, T., et al. 2020. Global groundwater sustainability, resources, and systems in the Anthropocene. *Ann. Rev. Earth Sci.* 48: 431-463.

¹⁰ Cuthbert, M.O., et al. 2023. Defining renewable groundwater use and its relevance to sustainable groundwater management. *Water Resources Research* 59(9).

¹¹ Proposed rule: 690-008-0010(9)(d)

¹² Mucken, A., and Bateman, B. 2017. Oregon’s 2017 Integrated Water Resources Strategy. Oregon Water Resources Department. Salem, OR.

June 11, 2024

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The proposed rules are well-aligned with Oregon’s Integrated Water Resources Strategy, which identifies sustainable groundwater management a statewide priority and suggests Recommended Action 11.E: Develop Additional Groundwater Protections¹². Although the existing and proposed rules governing groundwater allocations are statewide in scope, there are processes already in place to help address regionally-specific groundwater concerns. To address concerns from stakeholders, the proposed rules allow for basin-specific definitions to be developed, as long as the basin-specific definitions consider impacts to wells, ecosystems, and long-sustainability of the resources¹¹. These common-sense considerations will ensure that basin-specific definitions are consistent with priorities in Oregon’s Integrated Water Resources Strategy and aligned with the mission of Oregon Water Resources Department “**to ensure the long-term sustainability of Oregon’s ecosystems, economy, and quality of life.**” The proposed rules are also compatible with current and future Place-Based Integrated Water Planning processes. That includes the pilot Place-Based Integrated Water Planning collaborative in the Harney Basin intended to address the consequences of groundwater over-allocation.

The Nature Conservancy supports the proposed rules because they meet the stated objective of the rulemaking: protecting existing water rights and sustainably managing Oregon’s finite water resources. We urge the Commission to adopt the proposed rules to avoid further over-allocation of Oregon’s aquifers.

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¹¹ Proposed rule: 690-008-0010(9)(d)

¹² Mucken, A., and Bateman, B. 2017. Oregon’s 2017 Integrated Water Resources Strategy. Oregon Water Resources Department. Salem, OR.

DATE: June 13, 2024

VIA EMAIL: laura.a.hartt@water.oregon.gov



TO: Oregon Water Resources Department

FROM: Oregon Water Partnership

RE: Support for proposed groundwater allocation rules

Laura,

Oregon Water Partnership urges you to adopt the proposed Groundwater Allocation Rules (Divisions 8, 9, 300, and 410) to prevent further over-allocation of aquifers throughout the state.

Oregon Water Partnership is a diverse group of statewide conservation organizations with a common goal: to advocate for balanced water policies that ensure cold clean water to sustain healthy communities, livelihoods, and ecosystems. Our priorities are to build resilience for Oregon's water future, bring water data into the 21st century, support smart water management, and protect and restore our waters. We collectively have tens of thousands of members in Oregon communities across the state, and our organizations work collaboratively with cities, counties, Tribes, farmers, ranchers, and forest owners to restore habitat and improve watershed function.

Over-extraction of groundwater is a substantial threat to Oregon's aquifers and rivers, and the communities and economies reliant upon them. Declining groundwater levels threaten water accessibility and reliability for agricultural production, drinking water security for rural communities, and existence of important recreational and cultural resources. Unsustainable groundwater use due to over-allocation of groundwater rights is already happening in many parts of the state, from the coast to the high desert. Chronic well level declines in Oregon have been identified in state agency reports¹, peer-reviewed literature², and an investigative report in The New York Times.³ Unsustainable groundwater use affects hydrologically connected surface water⁴, which can injure senior surface water rights supplied by streams and rivers. More than 36,000 miles of streams, nearly half of all wetlands, and almost two-thirds of all lakes in Oregon rely on groundwater to persist⁵. These are some of Oregon's most charismatic, biodiverse, and climate-resilient habitats, and they are threatened by the over-allocation of groundwater rights.

Oregon is facing a future with more frequent, intense, and widespread drought⁶;



¹ Scandella, B., & Iverson, J. 2021. Oregon groundwater resource concerns assessment. Oregon Water Resources Department, Salem, OR.

² Saito, L., Freed, Z., Byer, S., & Schindel, M. 2022. The vulnerability of springs and phreatophyte communities to groundwater level declines in Oregon and Nevada, 2002-2021. *Frontiers in Environmental Science* 10:1007114.

³ New York Times. 2023. Uncharted Waters: America is Using Up Its Groundwater Like There is No Tomorrow. Available at: <https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html>

⁴ Barlow, P.M., & Leake, S.A. 2012. Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow. U.S. Geological Survey Circular 1376, 84p.

⁵ Freed, Z., Schindel, M., Ruffing, C., & Scott, S. 2022. Oregon Atlas of Groundwater-Dependent Ecosystems. The Nature Conservancy, Portland, OR.

⁶ Ahmadalipour, A., Moradkhani, H., & Svoboda, M. 2016. Centennial drought outlook over CONUS using NASA-NEX downscaled climate ensemble. *International Journal of Climatology* 37:2477-2491.

increased evapotranspiration⁷; and a shift in winter precipitation from snow to rain⁸—all of which will affect groundwater supply and demand. These climate trends intensify the need for the Oregon Water Resources Department (OWRD) to follow a rigorous, science-based process when evaluating applications for new groundwater rights. Oregonians are already suffering the consequences of past allocation decisions⁹, and allocations made today will affect aquifer sustainability for decades.

The existing groundwater allocation rules are not sufficiently protective of the resource, do not align with statutory directives governing groundwater allocation, and have resulted in unsustainable groundwater use—leading, for example, to the ongoing groundwater crisis in the Harney Basin. The existing rules also fail to fully account for reductions in surface water resulting from groundwater allocation decisions. Changes to the existing groundwater allocation policy are long overdue. Oregon Water Partnership appreciates the extensive public outreach and stakeholder engagement that OWRD staff have undertaken in working on this critical issue, including holding facilitated public meetings starting in September 2022, convening a diverse and representative rules advisory committee through September 2023, and a series of public hearings in April and May of 2024.

Oregon Water Partnership also appreciates the significant progress that OWRD has made in recent years in characterizing the state’s groundwater resources, such as cooperative studies in the Harney and Walla Walla basins, the installation of new observation wells to augment the existing statewide network of more than 1200 wells, and the 2021 Oregon Groundwater Resource Concerns Assessment. These efforts, combined with ongoing and future projects like the Statewide Recharge Project, continue to provide evidence indicating that groundwater has been overallocated throughout much of the state (Fig. 1).

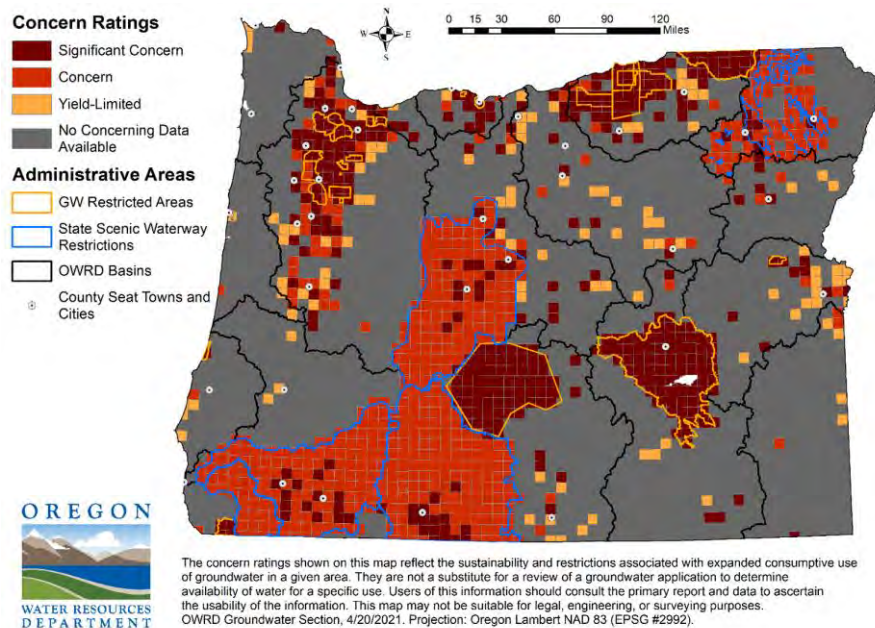


Figure 1: Map of concern ratings for groundwater in Oregon from the 2021 Oregon Groundwater Resource Concerns Assessment. The Assessment noted that concern ratings often underestimate likely long-term impacts on surface water from increased groundwater development.

In particular, the Groundwater Resources Concerns Assessment found that over 80% of applications for groundwater permits since 2010 are in areas of concern or significant concern, and about 80% of those applications were either approved or proposed for approval. This growing body of evidence compels more

⁷ Oregon Water Resources Department. 2015. Oregon Statewide Long-Term Water Demand Forecast. Salem, OR. 76p.

⁸ Nolin, A.W., & Daly, C. 2006. Mapping “at risk” snow in the Pacific Northwest. *Journal of Hydrometeorology* 7:1164-1171.

⁹ Oregon Public Broadcasting. 2022. Race to the Bottom: How Big Business Took Over Oregon’s First Protected Aquifer. Available at: <https://www.ijpr.org/environment-energy-and-transportation/2022-03-19/race-to-the-bottom-how-big-business-took-over-oregons-first-protected-aquifer>

sustainable and protective resource management.

Oregon Water Partnership supports the draft proposed rules because they meet the stated objective of the rulemaking: updating OWRD's rules for evaluating and issuing new groundwater rights to protect existing water rights and manage Oregon's finite water resources sustainably. They are science-based and utilize the precautionary principle by only allocating new groundwater rights when sufficient evidence exists that the resource can sustainably support that use. We urge the Commission to adopt these draft rules in a timely manner to avoid further over-allocation of Oregon's aquifers. The draft proposed rules align the state's groundwater allocation policy with statute and will help the Oregon Water Resources Department achieve its mission to "**ensure the long-term sustainability** of Oregon's ecosystems, economy, and quality of life¹⁰."

Thank you for considering Oregon Water Partnership's comments and please reach out to the organizational contacts below if you have any questions.

Oregon Water Partnership

Zach Freed, The Nature Conservancy in Oregon, zach.freed@tnc.org

Kimberley Priestley, WaterWatch of Oregon, kjp@waterwatch.org

Karen Lewotsky, Oregon Environmental Council, karenl@oeonline.org

Caylin Barter, Wild Salmon Center, cbarter@wildsalmoncenter.org

James Fraser, Trout Unlimited, james.fraser@tu.org

Dylan Kruse, Sustainable Northwest, dkruse@sustainablenorthwest.org

Rachel O'Connor, Environmental Defense Fund, roconnor@edf.org

¹⁰ Oregon Water Resources Department. 2019. Strategic Plan 2019-2024. Salem, OR.

HARTT Laura A * WRD

From: Zoe Fenton <zlfenton@gmail.com>
Sent: Friday, June 7, 2024 10:08 PM
To: WRD_DL_rule-coordinator
Subject: Opposed

Some people who received this message don't often get email from zlfenton@gmail.com. [Learn why this is important](#)

I am writing as a lifelong Oregon resident, in strong opposition to this idea. It's already far too hard to receive water rights in this state, and making that even harder is the opposite of what we should be doing as a general rule. If there are specific regions facing challenges, then let that be handled as it should be, on a local level, rather than creating excess bureaucracy for everyone else.

Water rights petitions can already take years, which is plain unacceptable as it is; and to add to this process is downright illogical.

If we as a state suffer from not enough groundwater, then rather than spend money paying people to review and likely deny excessive licensure, spend that money on enriching the state's water resources instead!

I've seen Many documented accounts thanks to the internet of how backwards and counterintuitive Oregon's water rights laws are, particularly when applied to small farms, which we should be enabling as a highest priority. Our current regulations are especially challenging to farms aiming to INCREASE their groundwater. The fiscal/human resources necessary in order to for example create a series of catchment ponds on one's property is frankly asanign. The state could devote resources to Encouraging land owners to take actions which increase the local groundwater supply, and to doing the same on state owned land, rather than further taxing their citizens' limited resources towards an aim that doesn't address the root problem.

Seriously guys, you're supposed to be our best and brightest, and to do what's best for the people of this state. And this is not it.

Sincerely,

Zoe Fenton