

OREGON



WATER RESOURCES
DEPARTMENT

Division 10 RAC Meeting Number 2

Oregon Water Resources Department Rules
Advisory Committee Meeting

January 10th 2023

Ground Rules

- Treat others respectfully
- You are here to express your viewpoint
- Remain muted when not speaking if you are online
- Use the “raise hand” feature to indicate you would like to speak if you are online

RAC Role

- Attend and participate in meetings
- Provide input/advice and help Department consider various perspectives

Department Role

- Facilitate meetings
- Foster collaboration and consensus building

Meeting Agenda

8:00 – 8:10 AM	Welcome & Introductions
8:10 – 8:50 AM	Presentation
8:50 – 9:00 AM	Break
9:00- 10:20 AM	Draft Rule Review
10:20 – 10:30 AM	Break
10:30 – 11:30 AM	Draft Rule Review
11:30 – 12:00 AM	Public Comment

The background features a stylized landscape. The top portion shows brown mountains with white snow-capped peaks under a light blue sky with a large white cloud. The middle section is a solid blue band. The bottom section shows rolling green hills with light tan outlines.

CGWA Rule Writing Process



CGWA Rule Writing Process

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

The groundwater supply is nearly overdrawn

Pattern of substantial interference
on senior water rights holders

Groundwater is declining excessively

Patterns of interference on
regulated geothermal resources

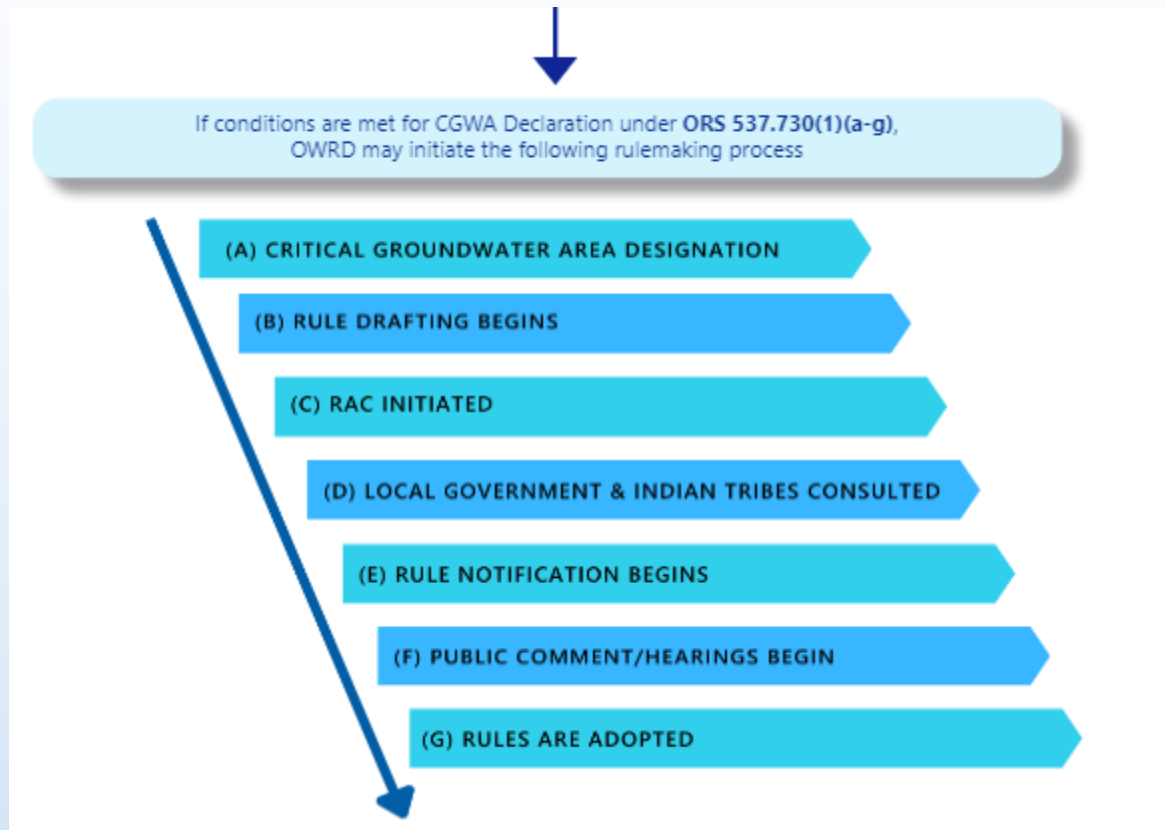
Pattern of substantial interference
between wells

Groundwater temperature is, or has been,
extensively altered

Groundwater pollution
is impacting public health



CGWA Rule Writing Process



The background features a stylized landscape. The top portion shows a range of mountains in shades of brown and tan, with white snow-capped peaks. A large, white, fluffy cloud is positioned in the upper right. Below the mountains is a solid blue horizontal band. At the bottom, there are rolling green hills with light tan outlines, suggesting a valley or a path.

Review of Changes Made to the Rules

- No Change



690-010-0110(2)

Old Version

- (2) “Groundwater reservoir” means a designated body of standing or moving groundwater having exterior boundaries which may be ascertained or reasonably inferred. Boundaries may be established by (a) physically by coincidence with natural features such as groundwater reservoir boundaries, hydrological barriers, or recharge or discharge boundaries, or (b) Administratively by surrounding an affected area when that area does not coincide with an area bounded by natural features.

New Version

- (2)(a) For the purpose of definition above, reasonably inferred means a fair, proper, and moderate conclusion reached by considering all of the facts and deducing a logical conclusion from them.



690-010-0110(3)

Old Version

- (3) “Water right” as used in ORS 537.730(1)(d)(A) means certificated and permitted water rights, and determined claims, the source of which is surface water, including springs, streams, and rivers. A “surface water diversion” as provided in OAR 690-008-0001(4) is a “water right” as defined in this rule.

New Version

- (3) “Water right” as used in ORS 537.730(1)(d)(A) means certificated and permitted water rights, **inchoate transfers** and determined claims, the source of which is surface water, including springs, streams, **lakes, reservoirs**, and rivers. A “surface water diversion” as provided in OAR 690-008-0001(4) is a “water right” as defined in this rule.



690-010-0120(1)

Old Version

- (1)The Commission may adopt rules to designate an area of the state a critical groundwater area if any of the requirements under ORS 537.730(1)(a)–(g) are met.

New Version

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

690-010-0120(2)

Old Version

- (2) For purposes of the determination under ORS 537.730(1)(d)(B), restrictions imposed on surface water appropriations include restrictions imposed on instream water rights.

New Version

- (2) For purposes of the determination under ORS 537.730(1)(d)(B), 'restrictions imposed on surface water appropriations' include instream water rights and other types of legally protected surface water flows.



690-010-0130(2)

Old Version

- No direct comparison.

New Version

- Add a new section (2)
- (2) A rule adopted by the Water Resource Commission shall;
 - (a) Define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located either in whole or in part within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.
 - (b) Contain a provision requiring a periodic review of conditions in the critical ground water area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground water area designation and shall occur no less frequently than once every 10 years

690-010-0130(3)

Old Version

- 2) In addition to the requirements under section (1), prior to Commission adoption of a rule designating a critical groundwater area, the Department shall:
- (e) Consult with the affected local government and Indian tribe pursuant to the process described in OAR 690-010-0140; and
- (b) Ensure there is substantial evidence in the rulemaking record to:

New Version

- **(3)** In addition to the requirements under section (1), prior to Commission adoption of a rule designating a critical groundwater area, the Department shall:
- (a) Consult with the affected local government and to the process described in OAR 690-010-0140; and;
- **(b) Consult with any federally recognized tribes with in the proposed Critical Ground Water Area**



690-010-0130(6)

Old Version

- New section

New Version

- Added a new Section (6)
- (6) The Department will also notify each well constructor licensed under ORS 537.747 with the proposed critical groundwater area under 537.730(3)(b).



Old Version

- Name: Consultation with Affected Local Government and Indian Tribes.

New Version

- New Name: **Land Use Planning** Consultation with Affected Local Government and Indian Tribes.



690-010-0140(2)

Old Version

- (2) To facilitate consultation, the Department shall provide the following information to the affected local government and affected Indian tribe:

New Version

- (2) To facilitate consultation, the Department shall provide the following information to the affected local government:



690-010-0140(2)(f)

Old Version

- New section

New Version

- (2)(f) A copy of the proposed rules.



690-010-0140(3)

Old Version

- New section

New Version

- (3) The department shall also consult with any federally recognized tribes with in the proposed Critical Ground Water Area.



690-010-0150(2)

Old Version

- (2) A critical groundwater area rule may include any one or more of the corrective control provisions under ORS 537.735(3)(a)–(f).

New Version

- (2)(a) – (f) Add the corrective control provisions under ORS 537.735(3)(a) – (f)

690-010-0150(3)

Old Version

- (3) The Department shall file a copy of any rules designating a critical ground water area with the Secretary of State as provided in ORS 183.355 and with the county clerk of each county within which any part of a critical groundwater area lies as provided in ORS 537.740.

New Version

- (3) The Department shall file a copy of any rules designating a critical ground water area with the Secretary of State as provided in ORS 183.355 and with the county clerk of each county within which any part of a critical groundwater area lies **and the county clerk shall record the designation in the deed records of the county.**



690-010-0150(4)

Old Version

- (4) The Department shall conduct a periodic review of critical groundwater area rules pursuant to the requirements under ORS 537.735(1)(b).

New Version

- (4) The Department shall conduct a periodic review of **conditions within the** critical groundwater **area no less than once every 10 years to evaluate the continuing need for the critical groundwater area.**

690-010-0160(1)

Old Version

- (1) At any time after the Commission adopts a rule designating a critical groundwater area, and prior to issuing a Notice of Proposed Corrective Actions, the Department may identify corrective control provisions as specified in ORS 537.742(2)(a)–(f) that the Department believes may resolve the problems that resulted in the designation of a critical groundwater area.

New Version

- (1) At any time after the Commission adopts a rule designating a critical groundwater area, and prior to issuing a Notice of Proposed Corrective Actions, the Department may propose corrective control provisions as specified in ORS 537.742(2)(a)–(f) that the Department believes will resolve the problems that resulted in the designation of a critical groundwater area. The proposed corrective actions can be:
- Added the corrective actions from ORS 537.742(2)(a)-(f)

690-010-0160(2)

Old Version

- (2) If the Department intends to initiate a contested case proceeding to implement the corrective control measure(s) it identifies, the Department shall provide initial notification of its proposed corrective action(s) in accordance with this rule.

New Version

- (2) If the Department intends to initiate a contested case proceeding to implement the corrective control provision(s) it **proposes**, the Department shall provide initial notification of its proposed corrective action(s) in accordance with this rule.



Contested Case Process



Contested Case Process

OWRD may initiate the contested case process at any time after rule adoption. OWRD will identify the corrective control actions under ORS 537.742(a)-(f) that they believe will correct the problem. Those actions can be:

Apportioning the permissible total withdrawal among valid groundwater rights users

Preferences to withdrawals of groundwater for residences and livestock

Reducing the permissible withdrawal among appropriators of wells

Allowable permissible withdrawal for appropriators with multiple wells

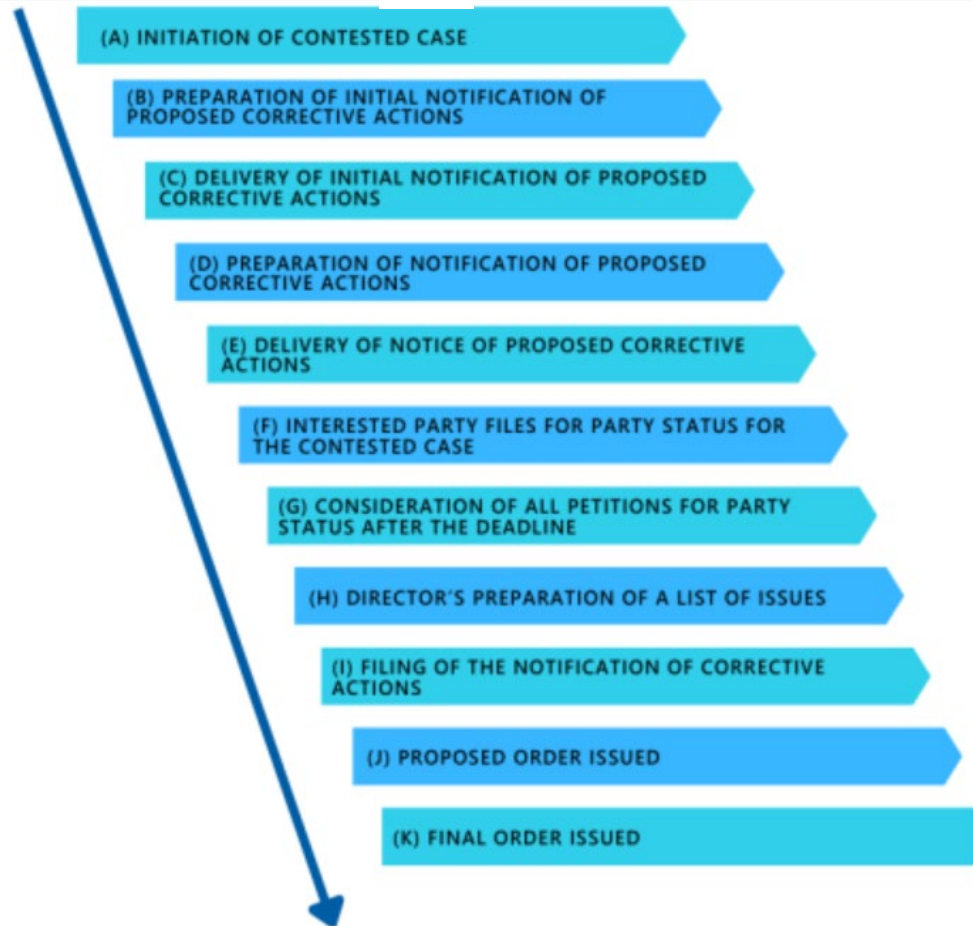
Abatement of a well causing pollution to the groundwater supply

A provision requiring and specifying a system of rotation of use of groundwater





Contested Case Process



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Overview of the Rules for Today

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690-010-0170 – Notice of Proposed Corrective Actions

- **This new rule describes the notice process and requirements for Notice of Proposed Corrective Actions.**

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690-010-0180 – Requests for Party Status

- **This new rule describes the process and requirements for requests for party standing to a contested case hearing on a Notice of Proposed Corrective Action.**

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690-010-0190 – Scope of Contested Case Hearing

- **This new rule describes the scope of a contested case hearing on a Notice of Proposed Action.**

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690-010-0200 – Conduct of Contested Case

- **This new rule describes the process and requirements of a contested case proceeding on a Notice of Proposed Corrective Action.**

O R E G O N



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D E P A R T M E N T

690-010-0210 – Exceptions to Proposed Order

- **This new rule describes the process and requirements for filing exceptions to proposed orders and the Commission's review and response to such exceptions.**

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690-010-0220 – Final Order Imposing Corrective Actions

- **This new rule describes the requirements for a final order issued at the conclusion of a contested case hearing.**

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690-010-02300 – Procedure for Making Changes to Existing Critical Groundwater Area

- **This new rule describes the procedures for making changes to rules for existing Critical Groundwater Areas.**

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