

**DRAFT NOTICE OF PROPOSED RULEMAKING
OREGON ADMINISTRATIVE RULES CHAPTER 690
DIVISIONS 8, 9, 300, 410**

NEED FOR THE RULE(S)

A compilation of best available information shows that groundwater concerns related to declining water levels exist in areas throughout the state. *See* Scandella and Iverson, 2021, Oregon Groundwater Resource Concerns Assessment. Generally accepted hydrological principles recognize that groundwater and surface water sources are hydraulically connected in many places in Oregon, meaning that groundwater pumping may adversely impact already over-allocated surface water sources and the senior water right holders that rely on them. In response to these concerns, the Oregon Water Resources Commission has requested the Oregon Water Resources Department (OWRD) update its rules for issuing new groundwater rights in a manner that manages water resources sustainably while protecting existing groundwater and surface water rights. *See* Oregon Water Resources Commission, 2021, Minutes for December 3, 2021, OWRD Commission Meeting.

The Ground Water Act of 1955 outlines the state’s policy for issuing new groundwater rights, prioritizing the preservation of the public welfare, safety and health (ORS 537.621 and 537.525). The Act presumes that a new groundwater allocation will preserve the public welfare, safety and health if four criteria are met: (1) the proposed use is allowed in the applicable basin program; (2) water is available; (3) other water rights will not be injured; and (4) the proposed use complies with the rules of the Oregon Water Resources Commission (ORS 537.621), and if the policy objectives within ORS 537.525 are met. This rulemaking focuses on number (2), water is available, because the Commission asked OWRD to propose new rules authorizing issuance of new groundwater rights only after OWRD makes an affirmative finding that water is available for further appropriation.

These rules propose redefining the criteria for making a finding of groundwater availability based on (1) the presence of reasonably stable water levels (ORS 537.525(7)), (2) avoidance of substantial interference with existing rights to appropriate surface water (ORS 537.525(9)), and (3) a finding that the proposed groundwater pumping rate is likely to be obtainable given the expected yield of the proposed well(s) (ORS 537.525(10)).

Implementation of the Ground Water Act of 1955 and the definition of “water is available” in Division 300 further relies on rules in Divisions 8 (Statutory Ground Water Terms, last updated 1990), 9 (Ground Water Interference with Surface Water, last updated 1988), and 410 (Statewide Water Resource Management, last updated 1992). Some of the definitions, policies, and principles are outdated and require revisions to align with best available scientific understanding, management objectives prescribed by the Act, and the Commission’s policy objectives.