

Example Rule Language

This document is intended to provide examples of language for consideration by the RAC when drafting classification language and attempting to allow for certain types of new uses whether through prioritization of certain types of use or by offsetting those new uses with the voluntary cancellation of an existing right. Example language and the challenges of each approach will be discussed in the third RAC meeting.

Example from Harney Basin GHVGAC:

Below is an example from the current Greater Harney Valley Groundwater Area of Concern (GHVGAC) rules in OAR 690-512.

690-512-0020 Groundwater use in the Greater Harney Valley Groundwater Area of Concern

(4) Voluntary Cancellations for Groundwater Availability. Notwithstanding OAR 690-300-0010(57) and except for exempt groundwater uses, for the purposes of processing applications pursuant to ORS 537.621 and OAR 690-310-0130, an applicant who agrees to application of these rules to a completed pending application may request the Department find that groundwater is available for the proposed use(s) in the GHVGAC consistent with this subsection. In reviewing an application for a permit to appropriate groundwater, the Department may find that groundwater is available if:

- (a) The proposed use does not have the potential for substantial interference as determined pursuant to OAR 690-009; and,
- (b) The total rate and duty of the proposed groundwater use is offset by the contemporaneous and voluntary cancellation or partial cancellation of an existing primary groundwater certificate or primary permit within the GHVGAC as provided in subsection (c) of this section; and,
- (c) The primary groundwater certificate or primary groundwater permit that is voluntarily cancelled or partially cancelled is not subject to forfeiture or cancellation for non-use and is equal or greater in rate, duty and acreage as compared to the rate, duty and acreage of the new appropriation sought; and,
- (d) The application was pending and the groundwater right being cancelled was subject to transfer, permit amendment, or has a pending application for an extension of time that is subsequently approved, as of April 15, 2016; and the applicant has provided confirmed offset water to the Department by April 15, 2019.
- (e) Notwithstanding subsection (2) of this section, if groundwater is available for a proposed new use consistent with this subsection and if the use is the type of use described in OAR 690-512-0010(1), the proposed use will be considered a classified use.

(5) Any primary permits or primary certificates that are voluntarily cancelled or partially cancelled within the GHVGAC that have not been specifically identified as offset for an application pending before the

Department under section (4) will be made available for offset for pending applications under section (4) on the basis of priority determined by the tentative priority date.

Example from Deschutes Basin Mitigation Program:

The below language is taken from the Deschutes Basin mitigation program rules.

690-505-0610 Deschutes Basin Groundwater Mitigation Rules: Mitigation Obligation and Mitigation Standards)

(8) Notwithstanding section (1) of this rule, if the impact of use under a ground water permit application is completely offset by a proposed voluntary cancellation of an existing ground water use subject to transfer, such that impact on surface waters from the new ground water use is the same as, or less than, impact on surface waters from the existing ground water use subject to transfer, the ground water permit application may be approved without additional mitigation once the proposed voluntary cancellation is complete.

Example from Butter Creek Critical Groundwater Area:

The below example from the Butter Creek CGWA provides an exception to the CGWA rules specifically for schools.

690-507-0635 Butter Creek CGWA: Water Users Exempt from Division Requirements

Any school located in the Butter Creek Critical Groundwater Area using water from the basalt reservoir for watering lawns, grounds and fields not exceeding ten acres in area shall meet the requirements of OAR 690-507-0640(2) to (5) and 690-507-0645. All other water users exempt under the provisions of ORS 537.545(a), (b), (d), (e), and (f) are not subject to the provisions of OAR 690, Division 507.

Example from Stage Gulch Critical Groundwater Area:

The below example from the Stage Gulch CGWA creates a preference for municipal water use regardless of priority date when distributing water within the CGWA.

690-507-0810 Stage Gulch CGWA: Distribution of Sustainable Annual Yield

(1) The method for distributing the sustainable annual yield from the basalt groundwater reservoir within each managed subarea in the Stage Gulch Critical Groundwater Area is as follows:

(a) Except as provided in section (5) of this rule, a water user who intends to pump water for any authorized use except municipal use during any year shall make a request to the Department in Salem by July 1st of the preceding year on forms provided by the Department;

(b) The Department shall assume that municipal water users intend to pump a quantity of water equivalent to the average pumped for the previous three (3) years, unless the municipal water user informs the Department otherwise by July 1st;

(c) Except as provided in section (5) of this rule, the distribution of groundwater for any authorized use except municipal use shall be based on the priority dates of the water rights within the individual subarea;

(d) In determining the amount of groundwater each water user is allocated to pump during the next calendar year or irrigation season, the Department may consider:

(A) Requests for allocations received;

(B) The sustainable annual yield;

(C) The limits of the groundwater rights;

(D) The relative dates of priority, with preference given without regard to priority date for municipal use;

(E) Historical usage;

(F) Whether or not a water user is physically capable of pumping and putting to a beneficial use the quantity requested; and

(G) Any other factors deemed appropriate by the Department.