

Frequently Asked Questions

Proposed Rules for Protecting Groundwater in the Harney Basin (Division 512)



What are “rules”?

Rules are regulations, standards or statements used by agencies to interpret and implement laws or statutes enacted by the legislature. Agencies also may use rules to set policy or describe procedures and best practices. The Oregon Water Resources Department proposes rules, and the Water Resources Commission adopts them.

What rules are being updated?

The Department is seeking public comment on proposed rules relating to the groundwater allocation and use within the Harney Basin, which is a portion of the Malheur Lake Administrative Basin. If adopted, the new rules will update Oregon Administrative Rules (OAR) Chapter 690, Division 512.

What is “groundwater”? What is a “groundwater reservoir”?

Groundwater is water that exists beneath the Earth's surface stored in the spaces and cracks within rocks and sediments. Groundwater moves slowly underground, and in some areas reaches the Earth's surface, feeding springs, streams, and wetlands year-round. A groundwater reservoir is a designated body of standing or moving groundwater.

What benefits does groundwater provide?

Groundwater provides many benefits. Groundwater may be used by domestic wells (providing water used for household drinking, cleaning, bathing, and gardening), water supplies for cities and communities, for crop irrigation, livestock watering, industry, and power generation. Groundwater also sustains springs and streams, which support aquatic, riparian, and wetland habitat for fish and wildlife.

Why are new Division 512 rules needed?

Since the 1990s, use of groundwater for agricultural irrigation within the Harney Basin has increased substantially, contributing to significant declines in groundwater levels. Some portions of the Harney Basin Groundwater Reservoir have experienced declines of over 100 feet. If no action is taken to stabilize groundwater levels:

- Groundwater for agricultural irrigation may become more limited or more costly to access.
- More domestic wells may go dry. The Department has received increased numbers of reports of dry wells in recent years.
- Groundwater input to springs, streams, and wetlands will decline further, impairing those ecosystems and their beneficial uses.

The Department's current rules for managing groundwater in the Harney Basin are inadequate for addressing groundwater level declines in order to avoid these and other severe impacts.

Who will the new rules affect? Will new groundwater rights be available in the Harney Basin?

All current groundwater right holders and applicants for future groundwater rights within the Harney Basin will be affected. To help stabilize the groundwater reservoir, many groundwater right holders will be required to reduce water use over time, especially the most junior water right holders. All

groundwater right holders will be required to meter, record, and report water use under the proposed rules.

The Department does not anticipate new groundwater rights will be issued within the Basin. New groundwater uses will be limited to uses which are exempt from permitting requirements and new non-consumptive geothermal uses. Those who wish to use water in quantities greater than what the exempt use statute (ORS 537.545) allows would need to acquire an existing water right through the transfer process.

What are “exempt uses”? Will these uses be impacted by the new rules?

Exempt groundwater uses are those not requiring a permit, registration, or certificate as defined in statute (ORS 537.545). Examples include domestic wells and livestock watering. Exempt uses will not be impacted by the new rules.

When will the new rules go into effect?

The new rules will go into effect after the Commission adopts the rules, and the adopted rules have been filed with the Oregon Secretary of State’s Office. The Department anticipates presenting the new rules to the Commission for consideration by December 2025. However, the schedule of groundwater use reductions will not begin until 2028.

How will the new rules work?

To stabilize groundwater levels within the Harney Basin Groundwater Reservoir, the Department proposes to implement **three** groundwater management tools authorized by Oregon statute:

- (1) Critical Groundwater Area (ORS 537.730 – 537.742)
- (2) Serious Water Management Problem Area (ORS 540.435)
- (3) Classification (ORS 536.340)

See the tool descriptions below.

What are the likely economic impacts, positive and negative, of the new rules?

If adopted, the new rules are likely to impact the local agricultural economy. The main agricultural products in Harney County are livestock and crops, which account for 63 percent and 37 percent of the County’s agricultural sales, respectively. The Department hired an independent consultant to evaluate the potential economic impacts on agriculture. After a 30-year period, approximately 160 jobs and \$22M in economic output might be lost as a result of the new rules.

However, without the new rules, the Harney Basin will continue to experience groundwater level declines which will cause more domestic wells to go dry and may cost 200 well owners around \$5M to either deepen or abandon and replace faulty wells. Under the new rules, the Department projects fewer than half as many wells will go dry; i.e., 98 domestic wells, thereby cutting those costs in half.

The Harney Basin’s economy also relies on the Malheur National Wildlife Refuge. This 187,000-acre refuge is located along the Pacific Flyway, attracting approximately 6 million migratory birds annually. In the absence of new rules, the Refuge’s springs, streams and wetlands may not receive enough groundwater discharge to sustain them. Each year, it is estimated that more than 60,000 people visit the refuge, with bird watching and fishing alone contributing approximately \$3.4 million to the local economy annually.

Finally, the new rules have implications for existing water rights; without the new rules, future groundwater availability for all but the most senior of water rights holders is in doubt, jeopardizing current and future investments.

Critical Groundwater Area (CGWA)

What is a “Critical Groundwater Area (CGWA)”?

A CGWA is groundwater reservoir designated by the Commission, identifying an area of the state where a groundwater reservoir needs active management to prevent harm from overuse or contamination. A CGWA allows the Commission to restrict current and future water use through a rulemaking process followed by a contested case hearing and final order.

What is a “CGWA subarea”?

A CGWA subarea is a portion of a CGWA groundwater reservoir that shares similar hydrogeologic properties and conditions including groundwater level elevations, seasonal and annual water level trends, and response to natural and human stresses. Dividing a CGWA into subareas allows for grouping of wells that similarly impact the local portion of the groundwater reservoir and where reductions in groundwater pumpage, through voluntary or regulatory action, will have a timely, measurable, efficient, and similar groundwater response within that subarea.

What is the Harney Basin CGWA?

The Division 512 rules establish the Harney Basin CGWA, which lies within the Harney Basin Groundwater Reservoir (OAR 690-512-0020(7), Exhibit 5). See Division 512 Administrative Boundaries (Map), available at owrd.info/Division512.

What are the Harney Basin CGWA subareas?

The proposed Division 512 rules divide the Harney Basin CGWA into seven subareas: Dog Mountain, Lower Blitzen, Northeast Crane, Silver Creek, Silvies, Upper Blitzen, and Weaver Springs (OAR 690-512-0041(6), Exhibit 6). See Division 512 Administrative Boundaries (Map), available at owrd.info/Division512.

What is an “acre-foot” of water?

An acre-foot is the amount of water required to cover one acre of land to a depth of one foot, approximately 325,850 gallons.

What is “Target Groundwater Level Trend”?

The target groundwater level trend is a rate of groundwater level change over time chosen by the Department as an indicator of groundwater level stability over time. For the Harney Basin CGWA, the target groundwater level trend is zero feet of groundwater level decline by 2058, based on the prior six years’ worth of data within each subarea.

What is “Permissible Total Withdrawal (PTW)”?

PTW is the total volume of groundwater allowed to be pumped annually within a subarea of the Harney Basin CGWA, measured in acre-feet. To set each subarea’s PTW, the Department used a scientific model to estimate how much pumping can occur by 2058 within that subarea and achieve the target groundwater level trend (i.e., zero feet of decline over a six-year period, 2052-2059). (OAR 690-512-0010(5)). Each subarea has a different PTW.

How do the new rules help achieve the target groundwater level trend within each Harney Basin CGWA subarea?

The new rules use a three-step approach to implement groundwater use reductions within each Harney Basin CGWA subarea to achieve the target groundwater level trend in each subarea by 2058:

- Determine an initial allotment for all permitted groundwater use within each subarea (OAR 690-512-0060).
- Set a schedule for permitted groundwater use reductions to meet each subarea's PTW (OAR 690-512-0070).
- Set adaptive management checkpoints to review progress towards achieving the target groundwater level trend for each subarea and adjust scheduled reductions as needed (OAR 690-512-0080).

What is "duty"?

Duty is the maximum volume of water (in acre-feet per acre) listed on a water right that may be used for irrigation annually.

What is "rate"?

Rate is the maximum flow of water (in cubic feet per second, i.e., CFS) a water right holder may pump at any time during irrigation.

What are "beneficial uses"?

Beneficial use without waste within the capacity of the resource is the basis, measure, and extent of the right to appropriate groundwater (ORS 537.525(3)). Within the Harney Basin CGWA, beneficial uses may include irrigation, stock watering, domestic wells, municipal water supply, power generation, industrial use, aquatic habitat, and recreation. (OAR 690-400-0010(3)).

What are junior and senior water rights?

Oregon water law is based on the Prior Appropriation Doctrine, a water rights principle used primarily in the western United States, where water is allocated based on "first in time, first in right." Under the doctrine, the first person to divert water from a source and put it to beneficial use has the senior water right. Anyone who comes later has a junior water right and can only use water when it does not infringe on the rights of senior users.

What is an "initial allotment"? How does the Department determine initial allotments for groundwater right holders in each CGWA subarea?

An initial allotment is the maximum amount of water each groundwater right can use annually. The maximum amount cannot exceed the total volume authorized on the water right. In determining the maximum amount, the Department considers both the current beneficial use from 2020 through 2024 and the full amount authorized by the water right. To allow for growth and economic development, municipalities are allotted 110% of the highest annual groundwater use reported from 2020 through 2024.

What is a "contested case"? What happens during the contested case process?

When the volume of groundwater rights and the actual water use occurring exceeds the PTW in a CGWA, reductions in groundwater use will need to occur. Prior to reducing use by groundwater rights holders, the Department will hold a hearing, known as a "contested case," as defined in statute (ORS 183.310(2)) and conducted according to statute and rule (ORS 183.413 - 183.497; OAR 690-002).

During the contested case process, groundwater rights holders will have their allowable use reduced to their initial allotment. The initial allotment will be based on the historic, beneficial use of water under that right.

Then subarea groundwater use will be assigned from the PTW to the most senior water rights until all of the groundwater volume within each subarea's PTW has been assigned. Any rights not receiving an assignment of groundwater from the PTW will be scheduled for regulatory curtailment. The schedule for reduction will be specified for each subarea in rule and will be based on prior appropriation. This means that reductions will proceed in order by priority date from the newest priority date to the oldest priority date.

What is "water use reduction"? How does the Department implement water use reductions over time?

Current groundwater use exceeds the PTWs set for each subarea. Therefore, the difference between the PTW and current groundwater use within each subarea represents excessive groundwater use that needs reducing before the target groundwater level trend is likely to be met. Under the proposed rules, full implementation of the PTW within each subarea should lead to groundwater level stability by 2058.

The schedule for reducing groundwater use varies by subarea, based on the best available science and economics. The Department is proposing rules that balance the needs for immediate action to stabilize groundwater levels, minimize negative impacts to domestic well owners, and protect groundwater-dependent ecosystems while reducing economic impacts and allowing time for local economic adjustment. Subareas that have experienced greater groundwater level declines and have greater physical influence over adjacent subareas have more aggressive timetables for reductions in use. Under the proposed rules, groundwater rights holders in the Weaver Springs subarea are required to implement 75% of the required groundwater use reductions immediately (i.e., in 2028) and the remaining 25% of the required reductions by 2034.

In contrast, the remaining subareas will be required to implement 40% of the required reductions immediately (i.e., in 2028), 30% of the required reductions by 2034, 15% of the required reductions by 2040, 10% of the required reductions by 2046, and the final 5% of the required reductions by 2058. Although less aggressive than the schedule for Weaver Springs reductions, this schedule will require 70% of the needed reductions within the first six years, i.e., by 2034.

What is an "adaptive management checkpoint"? How are checkpoints used to review progress towards achieving the target groundwater level trend?

An "adaptive management checkpoint" is a point in the future when the Department evaluates the change in groundwater levels starting from year 2028 to determine if scheduled water use reductions need adjustment to achieve groundwater level stability by the year 2058. The six-year check in period aligns with typical alfalfa crop rotation schedules to provide some certainty regarding future water availability for irrigation. This period is also a reasonable timeframe for detecting groundwater level responses to changes in groundwater use.

How does the Department evaluate whether groundwater use reductions are working to achieve the target groundwater level trend?

For each subarea, the Department uses a model to predict how groundwater levels should respond to the scheduled reductions in groundwater use over time. During each adaptive management checkpoint, the Department compares the change in groundwater levels in a given subarea with the expected response for that subarea to assess whether the subarea is on track to meet the 2058 target groundwater level trend. For those subareas on track, no adjustments to scheduled reductions are needed. For those subareas lagging behind, the Department will increase reductions in groundwater use beyond the scheduled reductions by prescribed amounts (either by 50% or 100%). Finally, for those subareas that are ahead in terms of achieving their 2058 groundwater level stability goal, the Department will cut groundwater use reductions required by a prescribed amount (either in half or completely). This process is repeated at every six-year checkpoint until 2058.

What happens in 2058? What if the PTWs is fully implemented but the target groundwater level trends is not achieved?

In 2058, the Department will evaluate management success within each subarea by determining whether the groundwater levels since the prior checkpoint (i.e., 2052) have exhibited zero feet of decline. If groundwater levels are still declining after full implementation of the PTW, the Department may need to do another rulemaking to reduce pumping further to stabilize groundwater levels. However, if the groundwater level within a sub-area has shown either zero feet of decline or increasing groundwater levels over the prior six-year period, then no further curtailment may be needed.

Serious Water Management Problem Area (SWMPA)

What is a “Serious Water Management Problem Area”?

A SWMPA is a management tool that allows the Commission to set a boundary within which groundwater users are required to measure and report use annually to the Department. This requirement applies to both current and future groundwater uses.

What is the Harney Basin SWMPA boundary?

The SWMPA boundary encompasses the portion of the Harney Basin within the Malheur Lake Administrative Basin within Harney and Grant Counties (OAR 690-512-0020(3), Exhibit 3). This boundary is the same as the boundary for Classification. See Division 512 Administrative Boundaries (Map), available at owrd.info/Division512.

What is a “point of appropriation (POA)”?

A POA refers to a well listed on a water right from which groundwater is pumped for beneficial use.

What are the requirements for groundwater users within the proposed SWMPA?

By March 1, 2028, all groundwater rights holders, well owners, and well operators must install and maintain a totalizing flow meter (i.e., a meter that measures both the flow rate and volume of groundwater produced by a well) on each well listed as a POA on a valid water right within the SWMPA boundary. Once installed, all flow meters must be maintained in good working order and be accessible to Department staff as required by statute (ORS 537.780). Groundwater users must keep a record of the volume of water appropriated each month and must submit an annual report of water

use measurements to the Department by December 31 each year. Exempt users are not required to meter and report.

The Department administers a statewide cost-share program for installing flow meters that reimburses groundwater users up to 75% of the total cost of parts and installation, with a 25% match from the user. The application is available at <https://owrd.info/metercostshare>.

What happens if groundwater users do not comply?

If groundwater users do not comply with metering, recording, and reporting requirements the local watermaster will regulate off the user until the user is in compliance with the rules.

Classification

What is “Classification”?

Classification is a management tool that allows the Commission to classify the type and amount of future groundwater use allowed in a specified area of the state.

What is the proposed Division 512 classification boundary?

The classification boundary includes the portion of the Harney Basin within the Malheur Lake Administrative Basin within Harney and Grant Counties. (OAR 690-512-0020(4), Exhibit 4). This boundary is the same as the boundary for the SWMPA. See Division 512 Administrative Boundaries (Map), available at owrd.info/Division512.

What new uses are allowed within the Harney Basin classification boundary?

New exempt uses that do not require a groundwater right permit as outlined in statute (ORS 537.545) and non-consumptive geothermal uses will be allowed in the Harney Basin classification boundary.

Public Input

How has the Department involved the public in the rulemaking process?

In April 2023, the Department convened a Rules Advisory Committee (RAC), consisting of irrigators, ranchers, domestic well owners, Tribes, local governments, and conservation groups, who provided input on the proposed rules. The RAC met fifteen times between April 2023 and May 2025. These meetings were open to the public with opportunities for providing comments. The Department also convened several discussion groups attended by members of the Harney Basin community and hosted several informational sessions on various technical topics relating to the rulemaking. To access video recordings and materials relating to these meetings, please visit at owrd.info/Division512.

How can I provide comments or participate in the rulemaking?

Comments can be submitted by email, postal mail, or orally at a public hearing. The Department is hosting nine public hearings, seven of which are preceded by an informational session. The informational sessions will provide a brief overview of the rulemaking and offer an opportunity for the public to ask questions. Oral public comments will be accepted only during the public hearings and not during the informational sessions. The public is encouraged to attend an informational session and provide comments either during the public hearing that follows, during a separate hearing, or in writing. Written comments will be accepted during the public comment period, beginning June 2, 2025. All written comments must be received by 5 p.m. on August 13, 2025.

Written Comments

By Email: WRD_DL_rule-coordinator@water.oregon.gov

By Mail: Kelly Meinz – Rulemaking Coordinator
Oregon Water Resources Department 725 Summer St. N.E. Suite A
Salem, OR 97301-1271

Information Sessions and Public Hearing Dates, Times, and Locations

Monday, June 23, 2025

Information Session: 5:30 - 6:30 p.m. Public Hearing: 7:00 – 8:00 p.m.
The Pine Room, 543 W Monroe Street, Burns, OR 97720

Tuesday, June 24, 2025

Information Session: 10:00 – 11:00 a.m. Public Hearing: 11:15 a.m. – 12:15 p.m.
Crane Store and Cafe, Gas and RV Camping, 57466 OR-78, Crane, OR 97732

Information Session: 5:30 - 6:30 p.m. Public Hearing: 7:00 – 8:00 p.m.
Hotel Diamond, 49130 Main Street, Diamond, OR 97722

Wednesday, June 25, 2025

Information Session: 10:00 – 11:00 a.m. Public Hearing: 11:15 a.m. – 12:15 p.m.
Suntex Elementary School, 68178 Silver Creek Road, Riley, OR 97758

Information Session: 5:30-6:30 p.m. Public Hearing: 7:00 – 8:00 p.m.
Double O School, 66077 Double O Road, Hines, OR 97738

Thursday, June 26, 2025

Information Session: 5:30 - 6:30 p.m. Public Hearing: 7:00 – 8:00 p.m.
Seneca Elementary School, 101 Park Avenue, Seneca, OR 97873

Monday, August 4, 2025

Public Hearing: 5:00 – 6:30 p.m.
Seneca Elementary School, 101 Park Avenue, Seneca, OR 97873

Tuesday, August 5, 2025 (hybrid)

Public Hearing: 10:00 a.m. – 12:00 p.m.
In person: Harney County Community Center, 478 N. Broadway Avenue, Burns, OR 97720
Phone: 1-719-359-4580 Conference ID: 99291255260
Zoom Registration: <https://zoom.us/meeting/register/w-wpZJZbQciS3itLkIkjyw/#/registration>

Public Hearing: 5:00 – 7:00 p.m.
In person: Harney County Community Center, 478 N. Broadway Avenue, Burns, OR 97720
Phone: 1-719-359-4580 Conference ID: 99980891371
Zoom Registration: https://zoom.us/meeting/register/xsyEGOrHTG-S2TX1_7oUaQ#/registration

Phone participants: Please contact WRD_DL_rule-coordinator@water.oregon.gov or 971-718-7087
no later than noon (12:00 p.m.) on August 4 to receive the passcode(s) for the number(s) provided.

Questions or Meeting Accommodations

If you have questions or need to request accommodations in advance of one of the scheduled meetings, please contact WRD_DL_rule-coordinator@water.oregon.gov or **971-718-7087**.