



Oregon

Tina Kotek, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

www.Oregon.gov/OWRD

Groundwater Allocation Rules Advisory Committee Hybrid Meeting #4 (8:30 am – noon, June 21, 2023) Meeting Summary

This is a summary of the Groundwater Allocation Advisory Committee (RAC) Meeting held in person (Salem office, Oregon Water Resources Department) and virtually (Zoom platform), on June 21, 2023, from approximately 8:30 to Noon. For more information, see the Meeting Agenda, Meeting Presentation, Draft Rules, and other Meeting Materials, available online at <https://www.oregon.gov/owrd/programs/GWWL/GW/Pages/Groundwater-Rulemaking.aspx>

Rules Advisory Committee (RAC) members in attendance:

Adam Sussman, Central Oregon Cities Organization (COCO), GSI Water Solutions

April Snell, Oregon Water Resources Congress (online)

Bill Jaeger, Applied Economics, OSU

Casey McClellan, Seven Hills Winery (online)

Cheyenne Holliday, Verde (online)

Dave Wildman, Anderson Perry & Associates (online)

Gen Hubert, Deschutes River Conservancy

Greg Kupillas, Pacific Hydro-Geology, Inc. (online)

Jeff Stone, Oregon Association of Nurseries

Karen Lewotsky, Oregon Environmental Council

Kelly Warren, Confederated Tribes of the Umatilla Indian Reservation (online)

Lauren Poor, Oregon Farm Bureau (online)

Lisa Brown, WaterWatch

Misty Buckley, Homeowner, Klamath County (online)

Phil Brown, Northwest Groundwater Services (online)

Robyn Cook, GSI Water Solutions (online)

Sarah Liljefelt, Oregon Cattlemen's Association (online)

Scott White, Klamath Drainage District (online)

Susan Lea Smith, Willamette University Law School

Tammy Wood, Oregon Lakes Association

Zach Freed, The Nature Conservancy

RAC members not in attendance:

Brad Parrish, Klamath Tribes
Derrick DeGroot, Klamath County Commission/AOC
Margaret Durner, Citizen At Large
Kelly Simmelink, Jefferson County Commission
Laura Masterson, 47th Ave Farms
Michael Martin, League of Oregon Cities
Nick Siler, Atmospheric Science, OSU
Obie Strickler, Grown Rogue
Tyler Hufford, Rancher

Others in attendance:

Oregon Water Resources Department (OWRD) staff: Annette Liebe, Justin Iverson, Laura Hartt, Ben Scandella, Travis Brown, Kelly Meinz, Amanda Mather, Darrick Boschmann, Emily McKain, Ivan Gall, Jeana Eastman, Jeffrey Pierceall, Jerry Grondin, Joseph Kemper, Ned Gates, and Tim Seymour.

Members of the public: Glenn Barrett (Water for Life), Danette Faucera (Oregon Department of Fish and Wildlife), Cole Hendrickson (Oregon Department of Environmental Quality), Representative Emily McIntire (District 56), Rachel O'Connor (Environmental Defense Fund), and Nolan Smith (Carollo Law Group).

Welcome & Agenda

OWRD staff welcomed participants, led a round of introductions, and reviewed the agenda.

RAC Meetings 2 & 3

OWRD staff noted that RAC comments following the second and third RAC meetings were distributed to RAC members and posted online. OWRD staff then asked if RAC members had any comments, questions, or concerns regarding the RAC 3 Draft Meeting Summary. One RAC member expressed appreciation for the compilation and timely receipt of the meeting summaries.

Proposed Groundwater Allocation Process – Figure

Staff introduced an overview flow chart diagram that maps out how the Division 300 definition of “water is available” splits into component determinations and how each of those determinations are made.

Revised Draft Rules – Overview

Staff reviewed the objective of this rulemaking process.

Revised Draft Rules – Division 300

690-300-0010(57) “Water is Available”

Staff reviewed the components of the proposed definition of “Water is Available”. Those components are “reasonably stable groundwater levels”, “Impairment, Substantial Interference, Undue Interference”, and whether the proposed use is within the “Capacity of the Resource.”

One RAC member asked if staff had considered consolidating all referenced definitions into Division 300. Staff responded that they had considered that and chose not to, in part to preserve the intent of the preamble referring to other Divisions where the definitions are used, and in part because Division 8 specifically includes terms referenced in statute. She noted the straightforward structure of the Divisions except for Division 9. Staff responded that both Divisions 9 and 400 point to Division 8, because they rely on the statutory terms.

Another RAC member asked who reviews the rules. Staff responded that an interagency team meets with staff periodically to review the draft language. He clarified that his question related to subsequent review of applications for groundwater rights by other agencies. Staff responded by referring to the diagram in the handout (“Proposed (Ground)Water Availability”), which shows how “Potential for Substantial Interference” (PSI) would trigger further public interest review by other agencies under Division 33, including impacts to state protected species.

One RAC member asked about the interaction between OWRD rules concerning “water is available” and federal requirements such as biological opinions prepared under the Endangered Species Act (ESA) which may have minimum flow requirements. Staff responded that these rules do not interact with the federal ESA; however, state protected species are addressed under the public interest review per Division 33. A RAC member responded that it may be helpful to frame the issue in terms of two “buckets”, namely the connection to surface water through Division 9 and the groundwater and storage issue. If the former applies, then public interest reviews with respect to instream flows get triggered. Another RAC member responded that with respect incorporating federal concerns into state rules, it is difficult to determine where the endpoint of a federal evaluation is. She gave the example of litigation around ESA biological opinions. She then counseled against referencing federal rules.

One RAC member stated his appreciation for the Department’s attempting to listen to his concern about unintended consequences to the Deschutes Basin Mitigation Program in the proposed rules. He commented that while RAC members and OWRD staff may be close to agreement on language, he remains concerned regarding 690-300-0010(57)(f), because it references the definition of “Capacity of the Resource” (Division 400) which in turn points to the definition of “Overdrawn” (Division 8). The result is that these definitions are now incorporated by reference into the Division 505 rules and should not be. According to him, because OWRD has changed the definition pathways, the proposed rules conflict with rules that were specifically designed to bypass evaluation of surface water impacts as part of the Deschutes Basin Mitigation Program. Staff responded they will continue to assess the nexus between the proposed draft rule language and Division 505.

A RAC member noted the contrast between “Reasonably Stable Groundwater Levels” and the water budget approach still referenced in the retained definition of “Capacity of the Resource.” For example, if the water levels have declined more than 25 feet, but it’s within capacity of the resource, would water be available? The RAC member further wondered why both tests were necessary. Staff responded that all the components must be true in order for water to be available. In the Deschutes, recharge exceeds groundwater appropriations at the basin scale, but the recharge is not evenly distributed, and groundwater level declines in some areas present reason for concern about further groundwater appropriation. Staff elaborated that they would review the definition of “Capacity of the Resource” to ensure that it did not cause unintended consequences.

The RAC member shared his concern that the Department may continue to say, “I don’t know” in cases where data are insufficient to evaluate the water budget test in “Capacity of the Resource.” Staff responded that the Department’s approach to evaluating capacity of the resource will be different after the implementation of the proposed rules. RAC members continued to discuss how the proposed rule changes interact with the Deschutes Mitigation Program.

One RAC member noted that “Capacity of the Resource” is intended to be forward looking, yet it may be impossible to know the capacity of the resource in the future. He stated it was important to know what future commitments look like in the context of climate change, including increased evapotranspiration, and what that will mean for agricultural groundwater use. Staff responded that there will be more room for discussion around “Capacity of the Resource.”

Revised Draft Rules - Division 8

Staff noted how the left-side column of the diagram explaining “Water is Available” refers to several definitions in Division 8 that are proposed for modification, as described below.

690-008-0001(1) “Annual high water level”

Staff reviewed how a definition of “Annual high water level” was added to support existing and proposed definitions.

One RAC member noted that the second sentence around “may be assumed” may not be appropriate under the Administrative Procedures Act. She suggested retaining the first sentence and that the remainder of the definition would be more appropriate in an internal management memorandum. A RAC member asked whether “may be assumed” could be replaced with “estimated.” Another RAC member stated that the sentence was unsuitably vague and suggested deleting the last two sentences.

Staff agreed to evaluate whether the last two sentences were appropriate to remove or modify.

690-008-0001(2) “Aquifer”

Staff described how definition of “Aquifer” was retained to match the Division 200 rules. The RAC members had no comments.

690-008-0001(5) “Declined Excessively”

Staff described how the proposed rules consolidate components related to interference with surface water with a reference to “Impairment, Substantial Interference, or Undue Interference”. Staff also noted a minor typo correction.

9:20 Break for 15 minutes while staff resolved an internet outage.

One RAC member noted that the description of saturated thickness in 690-008-0001(5)(f) does not work in all cases, e.g., where we have fractured rock or basalt aquifers. He stated that he understood the purpose of the wording as it is but asked whether “greatest known saturated thickness” warranted its own definition. Staff noted the concern and confirmed that the staff report supporting the original rulemaking suggested that the intent was that any one of the components (i.e., (a)-(f)) of “declined excessively” should be sufficient to trigger the definition; therefore, the percent of saturated thickness component is triggered only when 15 percent of total saturated thickness was less than 50 feet and would apply to thin aquifers. Staff reminded the RAC that they would consider any suggested rule language recommendations.

690-008-0001(8) “Impairment,” “impair,” “substantial interference,” “substantially interfere,” “undue interference,” or “unduly interfere”

Staff noted a minor change to clarify language and planned to further combine “ground water” into “groundwater.”

A RAC member noted that this definition is applied in allocation and suggested that the requirement for a well to fully penetrate an aquifer (690-008-0010(8)(c)) is inconsistent with the need for reasonably stable groundwater levels. Staff clarified that “reasonably stable” is based on spring high water levels and that the interference definition and requirement for fully penetrating wells is meant to address seasonal drawdown from pumping.

A RAC member responded that the “race to the bottom” in basalt aquifers tends to result in situations where, unless the Department can define where the bottom of an aquifer is, deepening of wells into successively deeper aquifers that should be considered as separate aquifers. The end-result is a commingling of multiple basalt aquifers through successive development [without subsequent sealing of upper water-bearing zones in deepened wells]. Staff acknowledged the comment and noted that the issue was outside the scope of this rulemaking so would be considered during future rulemaking.

A RAC member asked about depletion of a surface water source that has an instream flow unmet during any month of the year. She noted that the definition suggests that we only are concerned with depletion of a surface water source if the enumerated conditions already exist. She then asked why the Department does not consider whether an instream right would *become* unmet with the additional use. Staff noted that language in 690-009-0040(5) should prevent issuance of a permit when instream water rights are unmet. Staff further noted that, if there is Potential for Substantial Interference (PSI) and surface water is not available, then there is substantial interference. If surface water is available [considering instream rights] but could not tolerate the

expected depletion from an additional right, then staff believed that an additional right would not be allocated, but staff committed to confirming that with appropriate staff.

A RAC member commented that the standard of “is already over-appropriated during any period of the year” (690-008-0001(8)(a)(A)) will cover nearly all of the state. He further noted that “regulated off due to insufficient supply” (690-008-0001(8)(a)(D)) applies to a lot of rights. Therefore, the RAC member anticipates that most applications for new groundwater rights will be denied. He then asked whether, if someone wanted to apply for an off-season water right during a period when surface water was available in the stream but maybe not during summer months, would that mean denial of the water right. The current proposed rule language suggests that water would not be available in that case. Staff asked if the RAC member was requesting a modification of the proposed rules to allow for an off-season permit.

Another RAC member responded that delayed impacts of groundwater pumping mean that off-season pumping can still deplete streamflow after pumping stops.

Another RAC member noted his support for the proposed language because it protects against chronic impacts to groundwater. He strongly urged caution about considering allocating groundwater rights with stream depletion impacts. He responded to earlier RAC comments concerning minimum perennial streamflows (690-008-0001(8)(a)(E)) and suggested amending the language with “or would be unmet if the additional water were allocated” to account for the case of a marginal addition that undercut the minimum perennial streamflow. Staff acknowledged the input.

690-008-0001(9) “Overdraw”

Staff noted that the proposed definition has largely reverted to its original definition, with the minor addition of “Overdrawing”.

One RAC member noted that the word “adopted” occurs before “minimum streamflow” in the definition of “overdraw” or “overdrawing” (690-008-0001(9)(b)(B)) but not before “minimum perennial streamflow” in the definition of “Impairment,” “impair,” “substantial interference,” “substantially interfere,” “undue interference” or “unduly interfere” (690-008-0001(8)(a)(E)). She asked whether “adopted” should appear in both places. Staff stated they would review the language.

690-008-0001(10) “Reasonably Stable Groundwater Levels”

Staff reviewed several revisions to the proposed definition with RAC discussion as follows.

A RAC member noted the goal of removing the “not enough information” box on the groundwater review form and asked what the agency was doing to be able to decisively answer the question, noting House Bill 2018 (2021). Staff responded that HB2018 added funds to either convert existing wells to observation wells or drill new observation wells. That work continues. Staff noted that the clause “as measured at one of more or representative wells in a ground water reservoir or part thereof” allows the Department to look at all available well data. The requirement for data spanning at least 5 years (690-008-0001(10)(a)(A)) should give ample

notice to applicants regarding what is required to establish reasonably stable groundwater levels. The RAC member responded that rules are not clear as to what an applicant can do to provide adequate data. She suggested that if the responsibility is on the applicants, the rules should state that.

A RAC member commented that the proposed rules do not make sense for the Deschutes Basin, where adequate information exists. He noted that some of that information includes knowledge that water levels were artificially elevated in the 1950s because of canal leakage, which has influenced the highest known water level. He also noted the Deschutes Basin aquifer is 1000 feet thick and we have not yet drilled to the bottom of the aquifer. He further noted that in the Redmond area, water levels have already declined 38 feet, which is more than 25 feet but less than 4% of the saturated thickness of the aquifer. According to the RAC member, under the proposed definition, we would be preserving over 96% of the saturated thickness of the Deschutes aquifer. He proposes an alternative that would work statewide, using “or” instead of “and” between 690-008-00001(10)(a)(A) and (B) . According to the RAC member, OWRD has multiple requirements under the statute, including consideration of both reasonably stable groundwater levels and maximum economic development.

Staff responded that the Commission’s directive was to revise the rules to be more sustainable, which means more protective than the existing definition of “declined excessively,” which includes the 50 feet from highest measured.

The RAC member noted that the definition for “declined excessively” was derived with the Umatilla Basin basalt aquifers in mind and suggested that it is important not to be stuck in the past. In other words, if we are going to modernize the Department’s rules, we should focus on that.

Staff further noted the desire to avoid issuing a groundwater right that would be likely be curtailed later through a Critical Groundwater Area.

The RAC member suggested that the rulemaking was about modernizing consideration of impacts to surface water as well as how we think about storage. He noted that for the Deschutes Basin, which will likely be the only one that gets past Division 9, we already have a program that protects surface water flows.

A RAC member noted that aquifer recharge projects may be impacted by the proposed rules and urged caution. He suggested that AR/ASR projects are needed to be able to manage the water system sustainably and support economic need.

One RAC member cautioned against distinguishing between sources of recharge, whether through canal leakage or AR/ASR, because if recharge is changing, it means a likely imbalance and pulling of water from storage. This RAC member further noted that from an ecosystem perspective, even small changes in groundwater levels can have an impact on groundwater dependent ecosystems and stream flows. Therefore, although 25 feet feels arbitrary, ecological impacts can be felt well below that even for a small percentage of saturated thickness decline.

The RAC member offered some scientific references in support of this statement. Another RAC member asked in response how the rules might impact storage of winter flows for later release as augmented ecological flows. The RAC member responded that they are two distinct topics and offered to follow up with more discussion.

A RAC member suggested the importance of considering domestic wells in setting a maximum allowable groundwater level decline in the context of economics. She pointed to problems in the Harney Basin as an example of the importance of getting it right.

A RAC member asked about the possibility of having a more statistically robust definition of decline that considered confidence intervals. He was questioning what would allow the definition to withstand peer review. He also asked how a representative well would be determined, how many are needed to make that determination, and what happens when a representative well is not available. Staff responded that OWRD relies on the professional judgement of hydrogeologists reviewing the application, considering all available data submitted or available.

Another RAC member asked how the proposed rules would interact with attempts to support ASR/AR projects. Staff responded that the rules for ASR/AR rules are outside of the rules under consideration and noted that ASR and AR projects have been implemented in Critical Groundwater Areas, where groundwater is not available for further appropriation.

A RAC member stated that in Central Oregon, when a well goes dry it is a terrible thing and expensive to fix. He also pointed out that many domestic wells were drilled in the 1980s, when water levels were higher for various reasons and that those wells were drilled only just deep enough to reach water. According to the RAC member, case law and 2020 legal memorandum suggest that OWRD is required not to “hold the rest of the aquifer hostage” because wells were not drilled deep enough. He suggested that it is important to know why it happened and use that information to make policy going forward.

A RAC member suggested that these rules are affected by ASR/AR projects and that a high-level exemption may be required to make water levels impacted by ASR/AR projects ineligible as the basis against which total declines should be judged. Another RAC member asked for clarification, whether she was describing a case where water levels are intentionally increased for storage, compared with the previous discussion of canal leakage that may have raised water levels unintentionally. She responded that it would be better to avoid discussing intention but suggested that the desire to encourage recharge projects motivates positively exempting them from these rules. Another RAC member respectfully disagreed, noting that changes in practice reach a new equilibrium and suggested that declines in the Deschutes due to canal lining should not trigger water becoming unavailable.

Staff agreed to review how the rules would be impacted by ASR and AR projects. Staff summarized the issue as determining how much additional allocation and groundwater level declines to allow. Staff urged RAC members to consider timing of impacts.

A RAC member suggested that two key issues are the timing and magnitude of impacts. Another RAC member responded, noting a fundamental mismatch between timescales, because water rights are allocated in perpetuity, with only a short timescale used for evaluating likely impacts. She further noted that this mismatch requires looking as far forward as reasonably possible when evaluating impacts. Staff responded that the 25-foot limit on cumulative declines is intended to capture declines beyond those observed in typical climate cycles.

A RAC member stated that the policy questions are difficult and that we all want to find the right balance between sustainable use / economic development and environmental / ecological protection. He further commented that where we find that balance depends on one's philosophy, noting that individuals make value judgements based on their own perspectives, and the Department should seek to balance those perspectives. This RAC member expressed concern that the Department is not balancing those perspectives and that the rulemaking process is going too fast. The RAC member urged the Department to consider other options. Staff solicited specific suggestions. Another RAC member responded that the existing rules have been in place for a long time and were not based on science, e.g., the 1-year limitation [on evaluation of impacts to surface water sources] that allowed injury to senior water rights. This RAC member noted problems in the Harney basin about which we have known since 2014. She suggested that the pace is appropriate and that this process should have happened 10-20 years ago, noting that groundwater is over-appropriated in a lot of places. The RAC member replied that the RAC should be cautious considering the perpetual nature of water rights.

A RAC member commented that continued groundwater allocation happens in the context of known harm to existing water rights holders who have made investments. Those investments will be lost if continued allocation allows that harm. She offered the example of Willamette University, which had invested in Zena Forest, but their well has gone dry in part due to agricultural pumping; consequently, the University stands to lose that investment. The RAC member suggested that we not see restrictions on additional groundwater appropriation as cutting off economic development if we are sacrificing existing investments. Another RAC member concurred that the prior appropriation system mandates protecting existing water rights and their economic value. The RAC member wondered how the Department will ensure that water is protected for senior water rights. The RAC member noted that increased evapotranspiration due to climate change would likely mean increased demands by senior agricultural water rights holders. The RAC member suggested that protecting senior water rights holders should carry more weight than interests of further economic development.

690-008-0001(12) "Substantial Thermal Interference"

Staff noted minor change to replace the term "surface water body" with "surface water source," which is the term most used in other definitions. RAC members had no comment on the proposed change.

Revised Draft Rules – Division 9

Staff oriented the RAC to the central column of the overview diagram for "Water is Available" related to Division 9.

A RAC member noted that the diagram suggests that “Water is Available” if there is no PSI. Staff responded that hydraulic connection typically means PSI under the proposed rules due to the long term of water rights. Staff pointed out that “hydraulically connected” is a scientific term and “PSI” is a policy term, and staff propose to keep both terms because PSI is referenced in other rules outside the scope of this rule process. E.g., “hydraulic connection” is referenced in the rules for State Scenic Waterways. The groundwater section review will not get to “no” in a water availability determination based on impacts to surface water, because water rights staff evaluate the portions of the diagram inside the red box. Prof. Smith suggested combining “hydraulic connection” and “PSI” into one box in the chart for clarity.

Another RAC member responded that under the proposed rules, staff could save time by evaluating hydraulic connection and PSI, and then sending a review to Water Rights staff, rather than spending hours evaluating reasonably stable groundwater levels. One RAC member noted that the Petition for Judicial Review and Contested Case processes could motivate completing the full review rather than only a portion; Staff concurred, adding that transparency is another motivating consideration.

690-009-0010(1) “Basis for Regulatory Authority, Purpose, and Applicability”

Staff presented a replacement of “ground water” with “groundwater.” RAC members had no comments on the proposed change.

690-009-0020(4) “Potential for Substantial Interference”

Staff presented a deletion of the term “that substantial evidence exists to determine” that had been previously proposed by RAC members. RAC members responded affirmatively to the deletion.

690-009-0040 “Determination of Hydraulic Connection/PSI”

Staff presented the deletion of the term “substantial evidence indicates” and an unnecessary rule reference.

A RAC member asked if the RAC would consider a hypothetical where a given well is several miles from the nearest surface water source and the cone of depression intersects several surface water sources. Staff responded that they had not considered multiple streams in rule and expect that there will need to be an internal policy directive describing a consistent process to handle those cases. Staff also noted that the proposed rules indicate that pumping can cause substantial interference with a surface water source that is already over-appropriated if there is any surface water depletion, with no minimum.

She then asked for a definition of “de minimis impacts.” Staff responded that a de minimis impact is one so small it may not matter; however, with an over-appropriated surface water source, there are senior users who are already impacted, so any additional rights, no matter how small, cannot be viewed as de minimis in a prior appropriation system. In other words, even a small impact is too much when senior users are already being regulated off, because small individual impacts accumulate over time to create potentially significant additional adverse cumulative impacts. The RAC member appreciated the clarification and agreed that the

cumulative impact of multiple “de minimis” impacts could be significant. She suggested that the Department’s intent may not be clear from the proposed rule language.

A RAC member asked whether, by deleting “substantial evidence indicates”, whether we are removing the historical standard of “preponderance of evidence”. Staff responded that no, “preponderance of evidence” is an evidentiary standard that exists outside of the currently considered rules.

A RAC member asked whether determination of whether existing users are receiving their customary quantity of water was based on WARS. Staff responded that the 5 components listed in “Impairment / Substantial Interference / Undue Interference” for the standard for whether the potential for substantial interference (PSI) is in fact Substantial Interference. The RAC member commented that the WARS system is outdated and expressed concern that the available flows shown in WARS are based on assumptions of existing uses that grossly overestimate what those uses are. The RAC member suggested that it is worth re-evaluating WARS because the data are not reliable. Staff responded that the Department is working on updating WARS.

A RAC member asked for clarification that the rules do not apply to exempt uses, and staff confirmed. The RAC member asked whether it was appropriate to consider regulation of exempt uses under these rules. Staff responded that they would review written comments with respect to regulation and noted that Department regulation of exempt uses would require formation of a Critical Groundwater Area.

Divisions 400 & 410

690-410-0070(2)(b) “Water Allocation” Principles

Staff reviewed how the proposed rules replace avoiding over-appropriation of groundwater with water being available and a groundwater source not being overdrawn (not over-appropriated). The RAC members had no comments.

Notice of Proposed Rulemaking – Draft Statements

OWRD staff led discussions regarding the statements of Need, Racial Equity Impacts, and Fiscal and Economic Impacts, which are a required component of the Notice of Proposed Rulemaking.

Statement of Need

For purposes of discussion, OWRD staff presented a general draft statement of the rulemaking need.

Some RAC members noted that the proposed statement’s first sentence, “Preservation of the public welfare, safety, and health, as required by the Ground Water Act of 1955, depends in part upon a positive finding that water is available,” appears to suggest that water needs to be available to preserve the public welfare. Staff clarified that the intent was that the sentence should refer specifically to the further allocation of additional groundwater rights.

A RAC member offered the following language instead: “The prior allocation system is designed to assure that all water in Oregon is used to its best use. In many parts of the state, all of the

available water is already appropriated, and we want to avoid creating rights that cannot be exercised. So, for new applications, we need to be careful about issuing new rights and make certain that they are issued only in a manner that is more sustainable and protective.” Staff asked if striking the first sentence would improve the statement. She responded that it would not and that we should acknowledge that in many parts of the state water all of the water is used. Another RAC member objected to the concept that “we’ve used all the water,” to which the other RAC member noted that her statement was restricted to “many parts of the state.” Another RAC member also objected to the suggestion that water was over-appropriated and asked that the RAC avoid unwarranted policy statements.

One RAC member responded that in addition to stating that water is fully appropriated, the need statement also should acknowledge the impacts of climate change on future water demands for both agricultural and forest lands. He suggested that the need should include a recognition that buffer is needed to account for expected expanded use under existing water rights. He noted that a specific timeframe for evaluation has not been stated. He pointed to the insurance companies in California as an example, where companies had previously based assessments of wildfire risk on historical data but now are incorporating future wildfire risk. He suggested that a similar change in perspective should be reflected in the needs statement, or we risk ignoring something fundamental.

Racial Equity Impacts

For purposes of generating discussion, staff presented an outline of potential racial equity impacts associated with the proposed rulemaking. The outline considered potential impacts with respect to the two-prong objective of protecting existing water rights holders and managing water resources more sustainably.

One RAC member suggested that if we include exempt users among the stakeholders, then the proposed rules may improve racial equity. She also noted that the protection of existing users through the proposed rulemaking may work to lessen racial equity, except for instances involving certain Tribes (e.g., Klamath Tribes) because they represent some of the most senior users in the state. She further noted that protection of indigenous rights such as those belonging to the Klamath Tribes is of paramount importance.

Another RAC member commented that addressing the issue of racial equity impacts requires data to determine who is impacted. Specifically, he asked where water rights holders live and where are the exempt wells that are likely to go dry, noting that many domestic well users may be renters. OWRD staff responded that a qualitative analysis should be sufficient, especially given the well-known history of water rights in Oregon, and that several studies have looked at this issue. OWRD staff offered to post some recent white papers on the topic of water justice in Oregon on the rulemaking website.

Due to lack of time, staff suspended the discussion and noted that the next RAC meeting would return to the topic.

Fiscal & Economic Impacts

Due to the lack of time, this agenda item was reserved for the next RAC meeting.

RAC Roundtable Discussion

During this agenda item, all RAC members were given an opportunity to comment on any issue of interest or concern. Comments offered were as follows:

- A RAC member suggested that the Department is moving in the right direction, which is more science based. She commented that whether these rules would shut off new groundwater allocations should not enter the discussion, because the rules should be based on science to protect existing users and more sustainable resource use. She noted that climate change has come up several times and asked if consideration of climate impacts is in the rules or if the objective statement is a limitation on the process.
- A RAC member expressed his appreciation of the ongoing discussion and noted that his organization supports the proposed rules. He stated he was looking forward to discussing economic impacts, including the costs of reducing impacts stemming from over-allocation as well as impacts to domestic wells. He said that he expects the RAC could develop a case for the economic benefit of limiting future allocation.
- A RAC member noted he appreciated the discussion. He also stated that that a science-based, engineering approach means relying heavily on data, some of which may not be available. He expressed concern about implementation of rules without data to support them and hoped that evaluation of fiscal impacts would include consideration of increased funding for OWRD to collect necessary data.
- A RAC member stated that her organization supports the approach of the Department. She noted the 1955 Ground Water Act was forward-looking, laying out standards like “reasonably stable groundwater levels” and “capacity of the resource,” and the proposed rules help us live up to those standards.
- A RAC member commented that one of his previous comments was not addressed, i.e., concerning the meaning of “over the full term of the authorized used.” He stated that for the purposes of allowing the OWRD groundwater staff to be able to make decisions quickly, more prescriptive rules are preferred. He suggested that the current approach move away from that philosophy, because the rules are too open-ended. He urged inclusion of a time limit for “full term.” He also noted areas with declines are often due to well construction problems that have created commingling wells.
- A RAC member expressed her appreciation of the discussion and the science-based look at sustainable use. She noted comments about how climate change impacts on future water availability were not yet appropriately addressed. She also commented on the reality of trading current economic uses for future ones.

- A RAC member expressed his appreciation of the discussion and agreement with the overall objective. He also stated that he looks forward to the next RAC where all the components will be tied together.
- A RAC member expressed her appreciation of how thoughtful the Department is being in responding to comments from the RAC and trying to incorporate RAC feedback them into the rules.
- A RAC member expressed her appreciation of the depth of the discussion during the meeting. She noted an issue that has created some “heartburn” for her, i.e., emphasis on how “non-consumptive instream benefits are enjoyed by all,” which seemingly ignores food and clothing benefits also enjoyed by all and derived from consumptive uses (e.g., agriculture). She recommended rewording to reflect that consumptive uses also benefit Oregonians.
- A RAC member reflected on the potential for distractions in the RAC process. He acknowledged the importance of considering unknowns, such climate. He noted that instead of relying on melting snowpack, now we have precipitation in the form of rain. He suggested the need to consider how that climate response impacts all users. He expressed appreciation of the work to date and noted that many things discussed also gave him “heartburn.”
- A RAC member noted that exempt uses will continue to dip into the available water supply, which will impact existing water rights. Staff clarified that the rules under consideration will not regulate exempt users but also acknowledged the impact of their continued use. She also noted that water does not respect state boundaries, so if people in the Klamath basin are being regulated in Oregon but not in California, things seem inequitable.
- A RAC member expressed general support for the direction of the Department and his appreciation for the attention the RAC has given to the issue of aquifer recharge (AR)/aquifer storage and recovery (ASR). He acknowledged that the impacts of the rulemaking may appear drastic to some but noted his experience working in Washington also revealed challenges. He noted that the courts in Washington took the decisions away from the Department of Ecology. Based on that experience, he offered two observations: (1) continuing to issue water rights will not be supported in the long run, and (2) Washington’s cessation of issuing new water rights did not destroy the Washington economy. He noted that Washington opened a new office to explore options including funding for storage projects. He suggested that something similar may be coming to Oregon, where we may see a shift from “we support additional storage projects” to “we are going to be an active partner in getting money to build these projects.” Staff noted that the Commission approved four feasibility study grants, three of which were for AR/ASR projects.

- Another RAC member added that there seems to be more work to do on “reasonably stable groundwater level” to making them applicable to a range of aquifers.
- A RAC member expressed her appreciation of the staff’s work on this rulemaking. Regarding regulations, she stated that she did not think the existing rules were the problem. Instead, she stated that the problem is that the Department does not have accurate studies of groundwater or connection between groundwater and surface water. She further stated that the new rules are not more scientifically based, relying on arbitrary numbers. She stated that the new rules are going to suffer from a lack of groundwater data. She suggested that the only thing the Department is changing is the default answer in the case where we lack data. She further suggested that it is the state’s responsibility to find out the answer rather than just say “no.” She commented that the underlying basis for these rules is not correct and that they were kicking the can down the road. She also commented that the Department needs to do studies to allow allocation responsibly.
- A RAC member restated his position that the Deschutes Basin is special and that we need to be thoughtful about how these rules affect the Basin. He noted many USGS peer-reviewed studies have contributed to our understanding of the issues around recharge, use, and discharge. He also noted that much discussion during the meeting focused on protecting existing users. He suggested that when discussing protection of existing users in the Deschutes, it needs to be done in an informed way. He also recommended a white paper authored by the Central Oregon Cities Organization, which discusses impacts to groundwater levels. He asked staff to share that white paper with the RAC. Staff agreed.

Public Comment (at 11:30, following consideration of the Statement of Need and Racial Equity Impacts)

OWRD staff asked if any members of the public would like to offer oral comments. None did.

Oregon House Representative Emily McIntire posted a series of questions in the chat:

- Each basin and region are different- how do you plan to address those differences in this rule making?
- How will you work with community leaders to understand each area and its needs both environmentally and physiologically?
- How do these rules or rule making apply to areas going through the adjudication process?
- Why now?
- Is this more about the environment and climate... as opposed people and balance?

Staff responded that the rulemaking is intended to address statewide rules and offered to follow up individually.

Wrap- Up and Next Steps

OWRD staff summarized the likely agenda for the next RAC meeting on August 2, requesting input on all materials received to date by July 7th. One RAC member asked why feedback was due as early as July 7th. Staff responded that the deadline was necessary to allow staff ample time to consider all comments and incorporate them prior to final internal review of the draft rules