



Groundwater Allocation Rules Advisory Committee Hybrid Meeting #5 (8:30 am – noon, August 2, 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 August 2, 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
Casey McClellan, Seven Hills Winery
Cheyenne Holliday, Verde (online)
Dave Wildman, Anderson Perry & Associates (online)
Gen Hubert, Deschutes River Conservancy
Greg Kupillas, Pacific Hydro-Geology, Inc.
Jeff Stone, Oregon Association of Nurseries
Karen Lewotsky, Oregon Environmental Council (online)
Kelly Warren, Confederated Tribes of the Umatilla Indian Reservation (online)
Ken Yates (proxy for April Snell, Oregon Water Resources Congress) (online)
Lauren Poor, Oregon Farm Bureau (online)
Lisa Brown, WaterWatch
Michael Martin, League of Oregon Cities (online)
Nick Siler, Atmospheric Science, OSU (online)
Phil Brown, Northwest Groundwater Services (online)
Robyn Cook, GSI Water Solutions (online)
Scott White, Klamath Drainage District (online)
Susan Lea Smith, Willamette University Law School (online)
Tammy Wood, Oregon Lakes Association
Zach Freed, The Nature Conservancy

RAC members not in attendance:

April Snell, Oregon Water Resources Congress
Bill Jaeger, Applied Economics, OSU
Brad Parrish, Klamath Tribes



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Tina Kotek, Governor

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Derrick DeGroot, Klamath County Commission/AOC

Kelly Simmelink, Jefferson County Commission

Laura Masterson, 47th Ave Farms

Margaret Durner, Citizen At Large

Misty Buckley, Homeowner, Klamath County

Obie Strickler, Grown Rogue

Sarah Liljefelt, Oregon Cattlemen's Association

Tyler Hufford, Rancher

Others in attendance:

Oregon Water Resources Department (OWRD) staff: Annette Liebe, Justin Iverson, Laura Hartt, Kelly Meinz, Ben Scandella, Travis Brown, Jeana Eastman, Darrick Boschmann, Jerry Grondin, Jeffrey Pierceall, Tim Seymour, Grayson Fish, James Hootsmans, Jeffrey Pierceall, Jessi Talbott.

Members of the public: Alan Amoth (Corvallis resident), Danette Faucera (Oregon Department of Fish and Wildlife), Cole Hendrickson (Oregon Department of Environmental Quality), Glenn Barrett (Water for Life), Jason McClaughry (Oregon Department of Geology and Mineral Industries), Jesse Ratcliffe (Oregon Department of Justice), John Short (Water Rights Services, LLC), Leslie Clark (Central Oregon Irrigation District), Nolan Smith (Carollo Law Group), and Rex Barber (Big Falls Ranch).

Welcome & Agenda

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

RAC 4 Draft Meeting Summary

OWRD staff asked if RAC members had any comments, questions, or corrections regarding the RAC 4 Draft Meeting Summary. One RAC member asked whether OWRD staff felt they could complete the rulemaking objective within the current timeline and number of RAC meetings remaining. Staff replied affirmatively, noting one RAC meeting remains and a 90-day comment period including public hearings should afford RAC members sufficient time to provide input.

Revised Draft Rules – Overview

OWRD staff reviewed the objective of this rulemaking process, offering the following definition of “groundwater sustainability”:

“Groundwater sustainability is maintaining long-term, dynamically stable storage [water levels] and flows [from recharge to discharge areas] of high-quality groundwater ...” Gleeson et al (2020).



One RAC member noted that hydrogeologists do not agree on a single definition of “sustainability.” He further noted that per Alley and Leake (2004), sustainability, like safe yield, is a value-laden concept and in the eye of the beholder. Another RAC member asked if he had a suggestion concerning the standard for sustainability. The RAC member responded that he has made many suggestions.

A RAC member commented that he sees a lot of areas in the Willamette Valley that exhibit a pattern of dynamic stability. He also stated that one of the problems he has with the proposed rules is that they rely on a simplified model (i.e., the Water Availability Reporting System or WARS) to conclude water availability for surface water, which will result in the denial of most applications. Consequently, he still has many questions about how WARS generates data.

A RAC member stated that she liked the proposed definition of sustainability, particularly the emphasis on its dynamic nature. She found the definition to be clear and simple, as well as appropriate for the timescale under consideration.

A RAC member commented on the figure accompanying the definition, noting that it depicts one of the two objectives of the rulemaking, namely sustainable management, and not the other objective, namely protection of existing water rights including surface water rights. Staff responded that while the figure does focus on stable water levels, the definition in Gleeson et al. (2020) addresses both objectives because it refers to dynamically stable flows. In other words, the definition encompasses both storage and flow and therefore also encompasses protection of existing water right holders.

A RAC member commented that OWRD has cited ORS 537.525 as the statutory basis for defining reasonably stable water levels and capacity of the resource, but ORS 537.525(5) also requires assuring adequate and safe supplies of groundwater for human consumption while conserving maximum supplies for other uses.

Revised Draft Rules – Division 300

690-300-0010(57) “Water is Available”

Staff reviewed the definition of “Water is Available,” noting one edit made since the prior RAC meeting, i.e., deletion of “impair” from the definition.

A RAC member expressed concern that removal of “impair” from the proposed definition would not adequately protect streamflows. Staff responded that “substantial interference” is the basis for assessing impacts to surface water when allocating new groundwater uses; removing “impair” focuses the proposed definition on the operative language. Another RAC member asked if staff



could clarify the distinction between “impair” and “substantially interfere.” Staff responded that they could not clearly explain that distinction, which was a reason for removing “impair” from the proposed definition.

A RAC member requested a definition of “surface water source” that would explicitly include lakes, rivers, and wetlands.

Revised Draft Rules – Division 8

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

Staff reviewed how the definition of “Annual high water level,” noting that “static” was added to the first sentence of the definition and that the last two sentences were deleted in response to RAC input. RAC members had no further comments.

690-008-0001(2) “Aquifer”

Staff reviewed the definition of “Aquifer,” noting the addition of language to address local variability.

A RAC member noted the use of both “aquifer” and “groundwater reservoir” throughout the rules and asked for clarification on their different meanings. She suggested the Department review the use of the two terms throughout the rules to ensure each are used as intended. OWRD staff responded that “groundwater reservoir” appears in statute and accounts for administrative boundaries (e.g., Division 512 referencing Critical Groundwater Areas). Staff further explained that the term “aquifer” occurs throughout the rules as a more colloquial and functional term. Another RAC member similarly questioned the use of “aquifer” and “groundwater reservoir,” suggesting that “aquifer” might be the preferred term. Staff agreed to review the rules to affirm proper use of the respective terms.

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

Staff reviewed the definition of “Declined Excessively,” noting the addition of “annual high” and “static” to water levels where appropriate, as well as pertinent Division 8 rule references.

A RAC member noted that the reference in 690-008-0001(5)(c) to 690-008-0001(8) needed to be updated to 690-008-0001(10) to reflect the revised numbering for the definition of “Substantial interference.” Staff noted the correction and the need to review the rule reference throughout to ensure the numbering is correct.

690-008-0001(10)(a) “Substantial interference,” “substantially interfere,” “undue interference,” or “unduly interfere”



Staff reviewed the definition, noting the deletion of “Impairment,” and “impair” because the focus of the proposed rules is on “substantial interference,” so “impairment” and/or “impair” do not add meaning. Staff also noted the added reference to Division 9 definitions (“Potential for Substantial Interference”) as well as clarification with respect to evaluating impacts to senior water rights holders.

One RAC member noted that she had provided some simpler language and asked the RAC members to look at it.

Another RAC member commented that the proposed changes seem to be major ones, noting that “contributive groundwater appropriation” is a new, undefined term. Instead, she suggested using terms already defined. She also noted that the text is not clear that the “extraction” language applies to applications for new groundwater rights and not existing rights. She further noted that the language is unclear with respect to transfers, indicating that transfers that injure junior users would not be allowed. A RAC member asked whether it was true that transfers could not injure junior users.

A RAC member questioned whether the proposed language would require additional analysis of whether groundwater pumping is affecting the source of a senior surface water right. Staff responded that the intent of the proposed language is to recognize prior appropriation and that, for a new proposed use, the proposed language wouldn’t require any additional analysis apart from what is already incorporated into WARS. Another RAC member offered a hypothetical where a new groundwater use would impact an over-appropriated surface water source at a point downstream of a senior surface water right and questioned whether that scenario would require additional analysis. Staff responded that, so long as the senior surface water right was within the Water Availability Basin (WAB) being impacted, WARS would account for the senior surface water right. A RAC member commented that the rule language should explicitly indicate the role of WARS.

A RAC member asked whether the proposed language in subparagraph (a)(D), “...is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior water rights...”, was meant to include even very infrequent regulation, for instance once in 50 years. Staff responded that the proposed language was meant to function similarly to the current regulation assessment conducted as part of the Watermaster Review for a new water right, wherein the Watermaster may note if a particular surface water source is typically regulated back to a certain priority date.

Staff reviewed the reference to the definition of economic pumping level (OAR 690-008-0001(6)) in OAR 690-008-0001(10)(b) and reiterated that no changes were proposed for the subparagraph (c) definition of injury to ground water appropriators.



A RAC member questioned whether the last sentence of subparagraph (c), "...in aquifers where flow is predominantly through fractures, full penetration may not be required as a condition of substantial or undue interference.", applies to Columbia River Basalts in Umatilla County's Walla Walla Basin. Staff confirmed that, where multiple aquifers are present in the Columbia River Basalts, full penetration of the entire Columbia River Basalt Group would not be required to make a finding of injury.

690-008-0001(8) "Overdraw"

Staff reviewed the proposed definition, noting that the previous definition and its reference in the proposed language for OAR 690-400-0010(4) "Capacity of the Resource" created potential conflicts with the Deschutes Mitigation Program's management of the potential for substantial interference (PSI) in OAR 690-505-09630(1). The proposed definition is limited to the comparison of authorized groundwater use and best available estimates of recharge.

A RAC member noted that the legislation authorizing the Deschutes Mitigation Program sunsets in January 2029 and strongly advised against drafting rules to specifically accommodate that Program. The RAC member also advised that the policy statement in OAR 690-410-0070(1) be reconsidered given the proposed definition of "Overdraw," as the policy statement may no longer be sufficiently protective regarding interference with surface water. Another RAC member responded that he anticipates the Deschutes Basin Mitigation Program will be renewed prior to its sunset date. Staff acknowledged that consistency with existing basin program rules, including the Deschutes Basin Mitigation Program, remains a priority of the rulemaking.

A RAC member noted that use of the word "issue" in the proposed definition may not allow for consideration of exempt uses.

A RAC member urged the department to clarify definitions for terms that appear to be used interchangeably, e.b., "overdrawn" and "over-appropriated." The RAC member also noted that he struggled to follow some of the rules and suggested more revisions to clarify them.

Another RAC member requested that the statutory uses of "overdraw" be reviewed to ensure the proposed, simplified definition adequately captures all concerns of those statutes.

A RAC member requested that the flowchart used to help RAC members navigate the proposed rules be preserved and made available as a supplement to the rules. Staff noted that the current version of the flowchart is available on the Groundwater Allocation Rulemaking website. Staff also promised to make an updated version of the flowchart available as soon as possible and to confer



with the Department of Justice on how best to incorporate the flowchart in the administrative record of the rulemaking.

690-008-0001(9) “Reasonably Stable Groundwater Levels”

Staff reviewed the proposed definition, noting that the Department had received comments advocating for more stringent and more lenient definitions. Staff stated that numerous hydrographs throughout the state were reviewed in developing the proposed definition with the goal of accounting for dynamically stable groundwater level fluctuations due to approximately decadal climate cycles while still being able to cease issuing new groundwater permits before a groundwater reservoir would meet the definition of OAR 690-008-0001(5) “Declined Excessively” or -0001(7) “Excessively Declining” which would then trigger establishing a critical area. Staff also noted that the proposed definition clarifies the data requirements for implementation and allows for the presumption of reasonably stable water levels in groundwater reservoirs where no groundwater use has occurred. Finally, staff noted that the proposed definition allows for local modification of subparagraph (a) of the definition through the basin program rulemaking process but precludes modification that would allow for “reasonably stable” water levels that were less stringent than “declined excessively” or “excessively declining.”

Several RAC members expressed concern about making statistically valid determinations based on only 2 measurements. One of those RAC members suggested language be added to clarify that 2 measurements are the minimum necessary to make a determination but that all available data would be considered in making a determination.

One RAC member asked whether the proposed definition assumes there is a measurement available in the year being evaluated, which could be problematic with a new application as a well may not yet have been constructed. Staff clarified that if there is a measurement available in the year being evaluated, then at least 1 measurement is necessary from at least 5 years prior to that measurement; if the applicant has not yet constructed a well, measurements from nearby existing wells could be used and/or collected to support a new application.

A RAC member expressed concern that the proposed language in subparagraph (c) could have unintended consequences for other rules not related to allocation. The RAC member supported OWRD requiring an affirmative determination that “water is available” before issuing new groundwater rights, but he noted that the proposed language in subparagraph (c) seems to diverge from that approach as water would be assumed to be available in an undeveloped reservoir.

A RAC member expressed his strong belief that the proposed definition does not make sense for the Deschutes Basin. The RAC member also cited the proposed language in subparagraph (e) as an



example of undesirable looping of the rules, noting that “declined excessively” is also considered in the proposed definition of “capacity of the resource.”

A RAC member liked that the proposed definition seems to offer enough flexibility to deal with the uncertain effects of climate change.

A RAC member noted several instances in the proposed Division 8 rules where “groundwater” was still written as 2 words (“ground water”).

Revised Draft Rules – Division 9

Staff reviewed changes to the proposed language in Division 9 for clarity.

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

OWRD staff noted a slight language modification to the introductory text. RAC members had no comments on the proposed change.

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

OWRD staff noted removal of “impairment,” consistent with its removal elsewhere in the proposed rules. RAC members had not additional comments on the deleted language.

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

Staff noted language modification to (1)(a) intended to clarify that OWRD will accept information from the public when making hydraulic connection and potential for substantial interference determinations. Staff also noted removal of “impair” from (5), consistent with its removal elsewhere in the proposed rules.

Staff acknowledged RAC member proposals to define a timescale over which impacts to surface water would be evaluated but chose to retain the proposed language presented in previous RAC meetings. Staff clarified that the intention of the rules is to assess the full impact of a new proposed use over the full term of that use. Where short-term use is proposed, such as road construction, then OWRD will assess impact over the term of that use plus any persisting stream depletion. Where a proposed use would be a permanent right, the full impact would be assessed over the full term of that use, which is essentially forever.

One RAC member asked why there should be an option to consider a short-term use given the cost of constructing a well; he questioned why someone would make the investment knowing it was temporary. Staff responded that issuance of a permit for a new groundwater use would be dependent on water availability in WARS over the projected period of impact. The RAC member further commented that the use of “...may mean...” in (5) seemed vague.



A RAC member questioned what duration would be used in a model to assess a new use, given that a permanent water right would have an infinite duration, but infinity is not a viable input for a model. Staff responded that, for a permanent right, the assessment would be based on the conclusions of Theis (1940); in an aquifer that is hydraulically connected to surface water, eventually the entirety of pumping comes from surface water depletion given infinite pumping duration. In an aquifer that isn't hydraulically connected to surface water, the entirety of pumping would come from aquifer storage, which is addressed by "reasonably stable groundwater levels." The RAC member asked whether impact to multiple streams could be parsed. Staff responded that depletion could be apportioned to different streams where numerical groundwater flow models are available, which currently includes the Willamette, Deschutes, and Klamath Basins and will soon include the Harney Basin. The RAC member asked whether those models are at an appropriate scale for such assessment. Staff responded that appropriate scale depends on management objectives; at present, OWRD is working at the scale of the Water Availability Basins (WABs). Another RAC member noted that the assessment of impact to multiple streams doesn't seem to be explicit in the proposed rules and asked if the process of that assessment could be included in the flowchart.

A RAC member asked if the proposed rules recognize seasonal pumping impacts. Staff responded that the proposed rules do recognize seasonal impacts, but the stream depletion from pumping often does not stop before the next season's pumping starts; therefore, the stream depletion from seasonal pumping will be approximately the same as the stream depletion from the annualized average pumping rate over the long term.

690-009-0050 "Ground Water Controls"

Staff reiterated the intention not to change the function of rule -0050, and that the proposed modifications are only intended to preserve necessary language currently in other parts of Division 9.

A RAC member noted that he had not seen groundwater regulated under these rules in his more than 20 years working in water rights. The RAC member asked how staff see these rules applying in the future. Staff responded that a court ruling determined that designation of a critical groundwater area is the appropriate mechanism by which to regulate groundwater to protect surface water in the future, but rule -0050 is currently used for regulation of groundwater rights in the Umatilla Basin. Staff confirmed that OWRD's intention is not to regulate individual groundwater users to protect surface water, but the RAC member suggested that intention could be more clearly indicated in the proposed rules. The RAC member speculated that some people may be uncomfortable with the Department preserving this authority even if it doesn't intend to use it. Staff noted that the current and proposed rules already allow for regulation of existing groundwater rights more than 1 mile from surface water only through the designation of a critical groundwater area.



Other RAC members noted that the proposed rule doesn't change OWRD's current authority to regulate groundwater to protect surface water and that withdrawing that authority would be outside the scope of the rulemaking which is focused on allocation of new groundwater rights.

A RAC member suggested more clearly defining the "edge of the surface water source," citing other state agencies that typically define it as based on the ordinary high water level.

Divisions 400

690-400-0010(4) "Capacity of the Resource"

Staff reviewed proposed changes to the definition, noting that the proposed language is intended to capture terms and statutory concerns that are not otherwise incorporated in the definition of OAR 690-300-0010(57) "Water is Available." Staff noted that "overdraw" was still included in the proposed definition of "Capacity of the Resource," but that the proposed definition of "overdraw" is narrower than in the current, adopted rules. Staff clarified that the intention is to allow OWRD to deny a permit for a proposed use if data exists indicating that one or more of the conditions included in the proposed definition of "Capacity of the Resource" is likely to occur, but that OWRD wouldn't deny a permit just because it couldn't definitively determine if one of the conditions was or was not likely.

A RAC member noted that "impair" had been removed from other proposed rules but was retained in the proposed definition of "Capacity of the Resource." She asked if "significant impairment" was defined elsewhere in the rules. Staff responded that "Capacity of the Resource" also affects surface water allocation; staff did not want to change the function of surface water allocation rules as part of this rulemaking which is focused on allocation of new groundwater rights.

A RAC member criticized the references to other definitions or parts of definitions in the proposed language as confusing. The RAC member suggested explicitly stating the criteria to be assessed rather than citing other definitions.

A RAC member suggested creating a new rule division that would explicitly describe the process for issuing a new groundwater permit. She criticized the surface water portion of the definition as too narrow because water rights don't represent the public use in many parts of the state. The RAC member also considered subparagraph (c) of the proposed definition as critical because it captures groundwater discharge to streams.

A RAC member asked whether "function or character of the resource" is defined. Staff responded that it is not defined.



A RAC member criticized the use of “negative impact” in the proposed language as judgmental and unnecessary.

A RAC member criticized the proposed rules as not sufficiently forward-looking. Staff responded that, with the proposed definition of “reasonably stable groundwater levels,” the forward-looking function of “capacity of the resource” isn’t as critical. Another RAC member noted that the use of “best available science” in the proposed language doesn’t bound the timeframe that could be considered. He wondered if the assessment could consider best available science that indicates future climate conditions will cause less capacity to be available.

A RAC member suggested that the proposed language only specifies what OWRD knows to be beyond the capacity of the resource, but otherwise does not further limit what OWRD can consider in assessing the capacity of the resource.

A RAC member noted that ORS 537.525(3) refers to the “capacity of available sources,” not “capacity of the resource,” suggesting there may be some nuance between those terms.

690-400-0010(11) “Over-Appropriation”

OWRD staff noted that no new changes were made to these rules since the last RAC meeting. RAC members had no further comments.

Division 410

690-410-0060 (2) Conservation and Efficient Water Use

OWRD staff noted that no new changes were made to these rules since the last RAC meeting. RAC members had no further comments.

690-410-0070 “Water Allocation” Principles

OWRD staff noted that no new changes were made to these rules since the last RAC meeting. One RAC member repeated his concern that the rules were somewhat confusing because they reference rules in other Divisions.

Rulemaking Need

OWRD staff reviewed the need for the rulemaking which will be included in the Notice of Proposed Rulemaking, emphasizing the protection of existing water right holders, sustainable management of groundwater and surface water resources, statutory obligation to preserve the public welfare, and direction from the Commission to modernize the allocation process.



One RAC member suggested that greater emphasis be placed on the Department's statutory obligation to employ a balanced approach when managing groundwater resources.

Another RAC member suggested that we need acknowledge the need to be more forward looking with groundwater management because projections indicate that water availability will go down over time. A RAC member responded that it would be beneficial to engage in further conversation with other RAC members with expertise in climate uncertainty. Another RAC member responded that climate variability with respect to soil moisture and crop production is still a very active area of research and there isn't a scientific consensus at this time to predict if more, or less, water will be available in the future.

Racial Equity Impacts

OWRD staff reviewed RAC comments received regarding the racial equity impacts of the proposed rulemaking. Staff emphasized that they would be using a three-prong approach for collecting and assessing input on such impacts, namely RAC comments, an OWRD qualitative assessment, and an open invitation to the public to provide additional information during the public comment period associated with the proposed rulemaking. With respect to RAC comments received to date, staff responded to a request to provide more information concerning racial inequity in the context of prior appropriation while also noting comments alluding to potential Tribal benefits as senior water rights holders and potential benefits for all Oregonians due to a robust agricultural economy. One RAC member also suggested looking more closely at potential case studies such as the Klamath or Lower Umatilla Basin for more information concerning racial equity.

One RAC member asked what the Department foresaw as far as impacts to groundwater availability as more Tribes seek certification of treaty rights. Staff responded that they did not wish to generalize, noting that each Tribe may have unique circumstances and views water rights in their own way. The RAC member noted a lot of Tribal related activity within the Umatilla and suggested it would be good to be able to plan in the event Tribes are able to exercise future water rights.

Economic Impacts

OWRD staff reviewed RAC comments received concerning potential economic impacts of the proposed rules. Several RAC comments emphasized the importance of agriculture to the state's economy. Other comments noted the economic benefits derived from protecting surface water flows from over appropriation of groundwater, including fishing, recreation, tourism, and water quality. RAC members also commented on the need to consider the cost of not adopting new rules, i.e., inaction, which could lead to costly outcomes due to the need for remediation in response to over appropriation.

One RAC member commented that he would like the economic impacts discussion to include added costs to the agriculture sector due to more difficulty in developing new ground water rights, even



among senior users. OWRD staff responded that the information provided only reflects comments received to date and that the Department welcomes any information RAC members or members of the public have concerning economic impacts to agriculture and other users. Staff did note that the proposed rules should offer more certainty which should alleviate some concerns over adverse economic impacts associated with ill-informed future investments. Staff also noted the recent completion of the Business Case for Oregon Water Investments and offered to forward the link to the RAC members following the meeting. A RAC member responded that he was aware of the effort and encouraged other RAC members to review the information.

Another RAC member commented that there is a need to address the “trickle down” impacts that occur when a municipality does not have enough water for future development, which may lead to an inability to provide affordable housing. A RAC member responded that some senior water users such as municipalities are being impacted by current management practices and should be considered. Another RAC member suggested considering the cost of having to deepen domestic wells if we fail to act, noting that we could examine how much it costs for an average Well Abandonment, Repair and Replacement Fund (WARRF) applicant to remediate.

Public Comment

OWRD staff asked if any members of the public wished to offer comments. Glen Barrett (Water for Life) noted that the proposed rules will affect existing water rights holders despite suggestions by the staff to the contrary.

Tentative Timeline, Wrap-Up, and Next Steps

OWRD staff reminded the RAC that the next meeting was scheduled for September 13, to be held in the large conference room on the first floor. Staff reviewed the tentative timeline for the rulemaking, including anticipated the public comment period and hearing dates as well as Commission adoption. Staff also outlined the likely agenda for the next RAC meeting and requested input on all materials received to date by 5 p.m. on August 11th.

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:

- Several RAC members indicated they would follow up with written comments on either the proposed rules or economic impacts.
- Several RAC members expressed appreciation for the efforts to the OWRD staff as well as the open dialogue among RAC members.
- Some RAC members expressed support for the general approach the Department is taking with respect to the rules.



- Other RAC members asked if the rules could be simplified and made clearer. Some RAC members suggested creating a new Division that would outline the process for issuing new groundwater rights.
- One RAC member asked what could be done to incentivize conservation and efficiency in agricultural irrigation. He noted some progress in the nursery industry with respect to the use of holding ponds and reuse.
- One RAC members expressed appreciation for the emphasis on protecting senior water rights holders.
- One RAC member commented that future climate uncertainty means he would caution against basing decisions on model projections using time scales of 5 to 20 years. He expressed concern that there is potential for overallocation if decisions are made during an unusually wet periods, which may occur less frequently than every 20 years and therefore not be predicted.
- One RAC member noted the disconnect between land use planning and water availability, particularly in the Deschutes Basin. She also noted that while exempt uses are not really impacted by this rulemaking, she has concerns because mitigation rules may get bypassed by drilling clusters of exempt wells in a small area.
- One RAC member expressed concern that under the proposed rules, the issuance of new groundwater permits would be primarily dependent on the water availability – as determined by the Water Availability Reporting System (WARS) – in hydraulically connected streams. He questioned the reliability of WARS, specifically its estimate of how much water is being used, given that many water right holders in the Willamette Valley use substantially less than their full annual duty. He questioned why OWRD doesn't estimate cumulative use for all streams the way it does for Scenic Waterways, and he suggested using actual water use data to assess water availability. Additionally, the RAC member acknowledged OWRD staff's response to comments which stated that OWRD does not have the statutory authority to issue 5-year Limited Licenses for irrigation; he instead noted that OWRD does issue Limited Licenses for irrigation.
- One RAC member noted that the rulemaking process has really highlighted the need for data to guide decisionmaking, regardless of stakeholder interest. He also stated that while he felt the rules could be more protective of the resource, they were a step in the right direction as far as preventing further damage to the resource.
- One RAC member again requested we think more about the impact of Tribal activities with respect to water rights on our rulemaking effort. He also repeated his request that the language proposed in 690-008-0001(9)(c) ("Reasonably Stable Groundwater Levels" definition) remain intact.

The meeting adjourned at approximately 11:50 a.m.