



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

TO: Division 512 Rules Advisory Committee

FR: Oregon Water Resources Department Division 512 Rulemaking Team

DT: July 24, 2024

RE: DRAFT Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Same Groundwater Reservoir

Background

This memorandum outlines criteria the Oregon Water Resources Department (Department) has determined to be consistent with ORS 537.745 and provides guidance to the Oregon Water Resources Commission (Commission) for consideration when approving voluntary agreements among groundwater users from the same groundwater reservoir.

Outstanding Issues/Questions

In developing this guidance document, the Department has *noted the following outstanding issues and questions*:

- What is the impact of the sale of a property that is within the voluntary agreement (VA)?
- Can someone other than the landowner participate in a voluntary agreement? For instance, the person leasing property with groundwater rights.
- How does WRD calculate actual use by groundwater users?
- How does WRD calculate the portion of the Permissible Total Withdrawal (PTW) or Target for Voluntary Reduction (TVR) that the VA gets to pump?
- How should water be allocated within the areas? Should the high and low priority subareas be treated the same or differently?
- Should we allow multiple agreements in the same geographic area (or subarea)?
- Should we broaden the scope of the "target for voluntary reduction" to include other corrective controls (besides water use reduction) such as geothermal, water purity, interference between wells, or interference between wells and surface water? For instance, change it to "target for voluntary action".
- If a user exceeds their duty or rate, is that grounds for termination of the agreement?
- Should there be a minimum or maximum duration for an agreement?
- Should there be restrictions on the length of time it takes for the voluntary agreement to reach the PTW or TVR?
- WRD is still reviewing the methodology by which agreements will be approved and/or amended and orders issued in relation to voluntary agreements. Language that states the WRC or WRD will issue an "order in other than contested case" or "proposed order in contested case" is likely to change once final determinations of process have been made.

General Applicability

Voluntary agreements may be entered into in areas with critical groundwater area designations and those without. If a voluntary agreement is entered into in an area with a critical groundwater area designation, the agreement must comply with all rules pertaining to the critical groundwater area.

Groundwater Users

INITIAL PARTIES

(1) Parties of a voluntary agreement may include

- (a) individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, public and private municipal corporations, political subdivisions, the state, and any agencies thereof, the federal government and any agencies thereof and federally recognized Indian tribes; and
- (b) districts, corporations, or political subdivisions organized for public purposes.

MINIMUM PARTICIPATION LEVEL

An approved agreement must result in a reduction of water use sufficient to meet the permissible total withdrawal or target for voluntary reduction for the groundwater reservoir, or portion thereof, subject to the agreement.

Groundwater Rights

Groundwater rights eligible to participate in a voluntary agreement are limited to current, valid water rights that can prove beneficial use within 5 years prior to the time the agreement is approved.

No water right that has exceeded its permit decline condition may participate in a voluntary agreement.

Only lands currently listed as a place of use on a valid water right may be included in a voluntary agreement.

Only wells currently listed as a point of appropriation on a valid water right may be included in a voluntary agreement.

The maximum volume of water available to the parties within a voluntary agreement is the sum of the total duty allocated to all valid rights participating in the agreement.

Groundwater Reservoir

BOUNDARIES DEFINED

An approved agreement must define the groundwater reservoir, or portion thereof, the agreement is intended to cover. For a designated CGWA, the groundwater reservoir may be defined as the entire CGWA, one or more subareas within the CGWA, or a portion thereof.

Any groundwater points of appropriation proposed to be included in an agreement must be within the boundaries of the area covered by the agreement.

MAP

- (1) An approved agreement must be accompanied by a map depicting all places of use and points of appropriation for the water rights included in the agreement.
- (2) An approved agreement must contain a list of the water rights of record that provide the basis for water use on all authorized places of use within the geographic scope of the agreement.

Groundwater Use

PERMISSIBLE TOTAL WITHDRAWAL (PTW) & TARGET FOR VOLUNTARY REDUCTION (TVR)

“Permissible total withdrawal” or “PTW” means the total amount of groundwater that the Department determines can be withdrawn on an annual basis within a specified geographic area or subarea. The unit of measurement for the permissible total withdrawal is acre-feet.

“Target for Voluntary Reduction” or “TVR” means the total amount of groundwater that the Department determines should be withdrawn from an area. The unit of measurement for the target for voluntary reduction is acre-feet.

- (1) If a voluntary agreement is within a critical groundwater area or subarea where a permissible total withdrawal has been set by rule, the Department must use the PTW as the primary criterion for evaluation when considering whether to approve the voluntary agreement.
- (2) If a voluntary agreement is within a critical groundwater area or subarea where a target for voluntary reduction (TVR) has been set, then the Department must use the TVR as the primary criterion for evaluation when considering whether to approve the voluntary agreement.
- (3) If a voluntary agreement is within an area or subarea where no permissible total withdrawal or target for voluntary reduction has been set, the Department may set a target for voluntary reduction, based on the best available evidence, for the purpose of determining whether to approve the voluntary agreement.

AGREED WATER USE LIMIT

The “Agreed Water Use Limit” is the maximum total volume of water that the parties agree can be pumped under the agreement. A voluntary agreement must specify an agreed water use limit and the total water use by all parties may not exceed this value.

RATE AND DUTY

The rate and duty for each acre of irrigation shall be specified in the agreement. The specified rate and duty may be lower than, but may not exceed, the rate and duty of any water right of record that is the basis for water use on any land within the geographic scope of the agreement.

Notwithstanding this provision, the Director may determine, pursuant to ORS 537.735(3)(d), that a higher rate would result in more efficient water use. In no case shall an approved rate exceed 1/60th cubic foot per second per acre. The use of a higher rate shall be discontinued whenever the Department determines, based on a valid call, that regulation of a groundwater well is necessary to satisfy a senior surface water right.

OVERUSE ADJUSTMENTS

If, based on water use reporting by the parties or evidence gathered by the Department, the Department determines that the parties have exceeded the agreed water use limit in a given year, the agreed water use limit for the following year will be debited by the amount of over-use. The Department's determination of over-use is a proposed order in contested case.

The agreed water use limit will adjust back to the original value after one year in which overuse does not occur.

Over-use persisting for a period of two or more consecutive years is a basis for a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with ["Agreement Termination" (a)].

At no time will under use result in an increase to the agreed water use limit.

USE FROM UNAUTHORIZED WELLS

Parties to a voluntary agreement may only withdraw water from wells listed as authorized points of appropriation (POA) on water rights participating in the voluntary agreement. Withdrawal of water from any other well by any party is a basis for a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with ["Agreement Termination" (a)].

Duration

The agreement will include the period of time over which groundwater use will be reduced.

(1) If a voluntary agreement is within a critical groundwater area or subarea where a permissible total withdrawal has been set by rule, the period of time for voluntary reduction to match the PTW cannot exceed [10? 15? 20?] years or the duration of the agreement, whichever is shorter.

(2) If a voluntary agreement is within a critical groundwater area or subarea where a target for voluntary reduction has been set, the period of time for voluntary reduction to match the TVR cannot exceed [10? 15? 20? etc.] years or the duration of the agreement, whichever is shorter.

(3) If a voluntary agreement is within an area or subarea the Department has set a target for voluntary reduction, the period of time for voluntary reduction to match the TVR cannot exceed the duration of the agreement.

Reporting and Monitoring

ANNUAL STATEMENT OF PLACE OF USE

No later than January 5th of each year, the parties to the agreement must provide the Department with:

(1) a map depicting lands subject to irrigation during the upcoming irrigation season. The total number of acres, when multiplied by the approved duty, may not exceed the annual agreed water use limit.

(2) a list of every well to be pumped during the irrigation season;

(3) contact information, including telephone and email address, for owners of every well to be pumped during the irrigation season.

MONITORING

(1) All parties to the agreement must maintain functional totalizing flow meters of a type approved by the Department and must report water use to the Department monthly.

(2) Any agreement recommended by the Department to the Commission for approval must include an acknowledgment that Department staff may enter the property of a party for the purposes of water level measurement, collecting flow meter readings, and ensuring that the flow meters are properly functioning. Failure to maintain functional flow meters or provide reasonable access is a basis for termination of the agreement [“Agreement Termination” (a)].

(3) Prior to the Department recommending a voluntary agreement for approval to the Commission, the watermaster must visit each participating landowner’s property to verify wells authorized for use under the voluntary agreement and the existence and functioning of totalizing flow meters.

Agreement Modification Prior to Approval

This document provides the minimum requirements for the Department to recommend a voluntary agreement be approved by the Commission. The Commission may require additional agreement terms prior to approval if the Commission determines that the terms are reasonably necessary to ensure that the goals of the agreement will be achieved.

Agreement Modification After Approval

CHANGED CONDITIONS

Voluntary agreements may be subject to amendment if the Department determines changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health. The parties then may agree to amend the agreement to the satisfaction of the Department as an alternative to termination [“Agreement Termination” (b)]. The Department’s approval of an amendment is an order in other than contested case.

ADDITIONAL PARTIES

Voluntary agreements may be amended to add parties to the agreement. Additional holders of water rights of record within the subarea or area of an existing voluntary agreement may join the voluntary agreement. New parties must comply with all provisions of these rules and the voluntary agreement. In addition:

(1) A prospective party must notify the Department and the existing parties to the agreement of their intent to join the agreement [XX days] prior to irrigation season in which they wish to join.

(2) The watermaster must visit the prospective party’s agricultural operation to verify wells authorized for use under the voluntary agreement and the existence and functioning of totalizing flow meters.

(3) All existing parties to the agreement and the Department must consent to the addition of any new party.

PARTY TERMINATION

With approval of the Department, voluntary agreements may be amended to remove parties who request removal as long as the minimum participation level remains intact. Any party terminating their involvement in the agreement will become subject to any existing groundwater control measures pertaining to the geographic location of their water right.

WATER RIGHT TRANSACTIONS

Voluntary agreements must be amended and approved by the Commission/Department and all parties to the agreement if any water right subject to the agreement is modified by a water right transaction in a way that changes the amount of water available to the agreement or changes the places of use subject to the agreement. Such transactions include, but are not limited to, changes to the place of use, changes to the points of appropriation, or splitting of a right.

Agreement & Modified Agreement Approval

Any agreement that meets the requirements of this document, may be recommended by the Department to the Commission for adoption. The Department may approve an amended voluntary agreement, provided that agreement was initially approved by the Commission and is consistent with the terms contained herein.

Agreement Termination

Any agreement approved by the Commission may be terminated by the lapse of time as provided in the agreement, by consent of all parties to the agreement, or by the Commission if the Commission finds, after investigation and a public hearing upon at least 30-days' notice, that:

- (a) The agreement is not being substantially complied with by the parties thereto;
- (b) Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary to the intent, purposes and requirements of the Ground Water Act of 1955; or
- (c) When an agreement is within a critical groundwater area that the agreement is ineffective in achieving the goals of the critical groundwater area rules.

Appeal Process

- (1) The Commission's approval of or refusal to approve a voluntary agreement is an order in other than contested case.
- (2) The Department's involuntary termination of an agreement is a proposed order in contested case.
- (3) The Department's approval or refusal to approve an amendment for a voluntary agreement is an order in other than contested case.