

OREGON



WATER RESOURCES
DEPARTMENT

Division 10: Critical Groundwater Area Designation Rules



Regulatory Groundwater Control Tools

Regulatory Tool	Description	What does it manage?
Withdrawal of Unappropriated Waters (Out of scope for 512 rulemaking)	Withdraws unappropriated waters from appropriation.	Future Groundwater Use
Classification of Water	Classifies or reclassifies waters of Oregon to the highest and best use and quantities of use for the future.	Future New Groundwater Use
Serious Water Management Problem Areas (SWMPA)	Requires reporting and measurement of water use.	Measure Present and Future Groundwater Use
Critical Ground Water Area Designation (CGWA)	A CGWA designation allows for control of current groundwater use.	Present Groundwater Use
Groundwater Mitigation Area (Out of scope for 512 rulemaking)	Affects groundwater allocation in Deschutes Basin.	Future Groundwater Use

Regulatory/Voluntary Groundwater Control Tools

Regulatory		
Tool	Descriptions	What does it control?
Permit Conditions	OWRD regulates groundwater use based on permit conditions.	Present Use

Voluntary		
Tool	Description	What does it control?
Voluntary Agreements	An agreement between groundwater users within the same groundwater system.	Present Use

Rulemaking Timeline

**December 2022-
February 2022**

Rule
Development
(RAC Meetings)

May 2023

Consideration of
Comments &
Development of
WRC
Recommendation

**March/April
2023**

Notice in SOS
Bulletin (Public
Comment Period
& Public Hearing)

September 2023

WRC Meeting &
Decision on
Recommendation
(Potential Rule
Adoption)

Why is a Rulemaking Needed?

- The administrative rules do not match the current statute
 - Statute was last updated in 1991
 - The current rules were updated in 1990
- Proposed Division 10 rules will clarify statutory terms and processes

Differences Between the Old Rules and New Rules?

Old Rules	New Rules
A CGWA was designated by the State Engineer through an order	CGWA designated by the Commission via rule adoption
Does not contain process for the contested case	Contains process for contested case

- New rules provide the public more input on a designation by the rulemaking process.
- Contested case sections of the rules assure that groundwater right holders and exempt users are provided due process if use limitations are being proposed

Two phase approach:

1. CGWA is designated in the basin program rules through a rulemaking
2. Groundwater use is restricted through an order after a contested case process

The background features a stylized landscape. The top portion shows a range of mountains in shades of brown and tan, with white snow-capped peaks. A large, white, fluffy cloud is positioned in the center of the sky. Below the mountains, a solid blue horizontal band serves as a backdrop for the title text. At the bottom of the image, there are rolling green hills with light tan outlines, suggesting a valley or a field.

Phase 1: Designating a Critical Ground Water Area (CGWA) By Rule

Criteria for CGWA Designation

In order to declare a Critical Groundwater Area (CGWA) under **ORS 537.730(1)(a-g)**, **one** of the following seven conditions must be met:

The groundwater supply is nearly overdrawn

Pattern of substantial interference
on senior surface water rights holders

Groundwater is declining excessively

Patterns of interference on
regulated geothermal resources

Pattern of substantial interference
between wells

Groundwater temperature is, or has been,
extensively altered

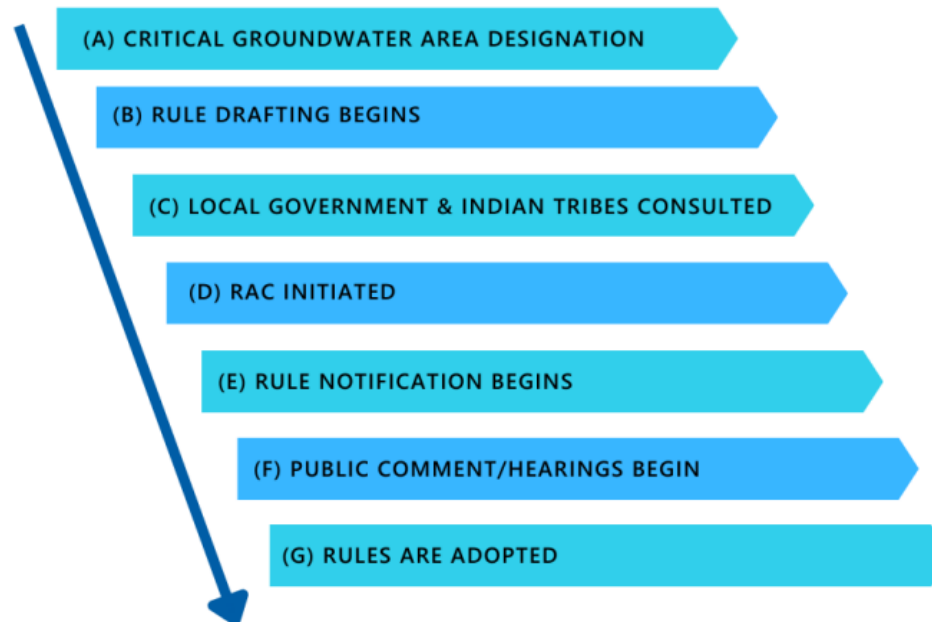
Groundwater pollution
is impacting public health



Rulemaking Process



If conditions are met for CGWA Declaration under **ORS 537.730(1)(a-g)**,
OWRD may initiate the following rulemaking process



Step B: Corrective Controls in Rule

ORS 537.735 authorizes use of the following corrective control provisions within a CGWA rule:

A provision closing the critical ground water area to any further appropriation of ground water. Any application for a permit to appropriate ground water located within the CGWA will be refused.

A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year.

The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process.

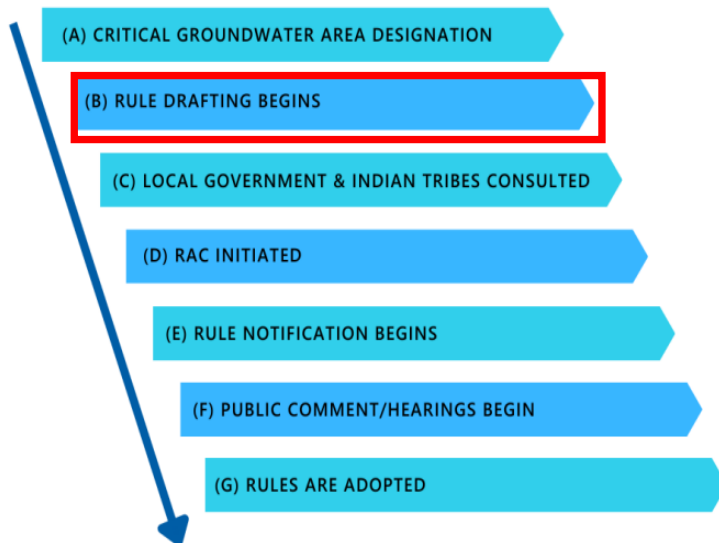
Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety.

A provision closing all or part of the critical ground water area to further appropriation of ground water for its thermal characteristics.

A provision determining the permissible change in thermal characteristics of ground water in all or part of the critical ground water area each day, month or year.

Step B: Draft Groundwater Report

If conditions are met for CGWA Declaration under **ORS 537.730(1)(a-g)**,
OWRD may initiate the following rulemaking process



Step B

- In addition to drafting the rules the Department shall draft a Report to support the CGWA designation process
- Prior to the RAC the Department will post this report on its website.

Step B: Information Required in the Report

- The Report shall be based on the best available science and:
 - identify the criteria met under ORS 537.730(1)(a) – (g).
 - identify and characterize the groundwater reservoirs subject to the proposed critical groundwater designation.
 - identify corrective control measures likely to resolve the problems that resulted in the recommendation to designate a critical groundwater area.

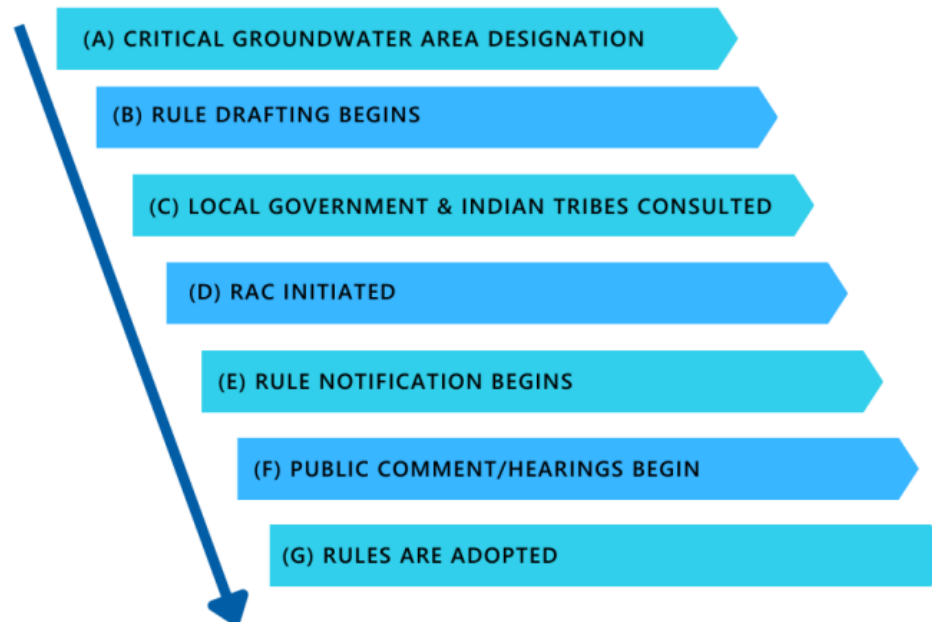
Step B: Public Comment on the Report

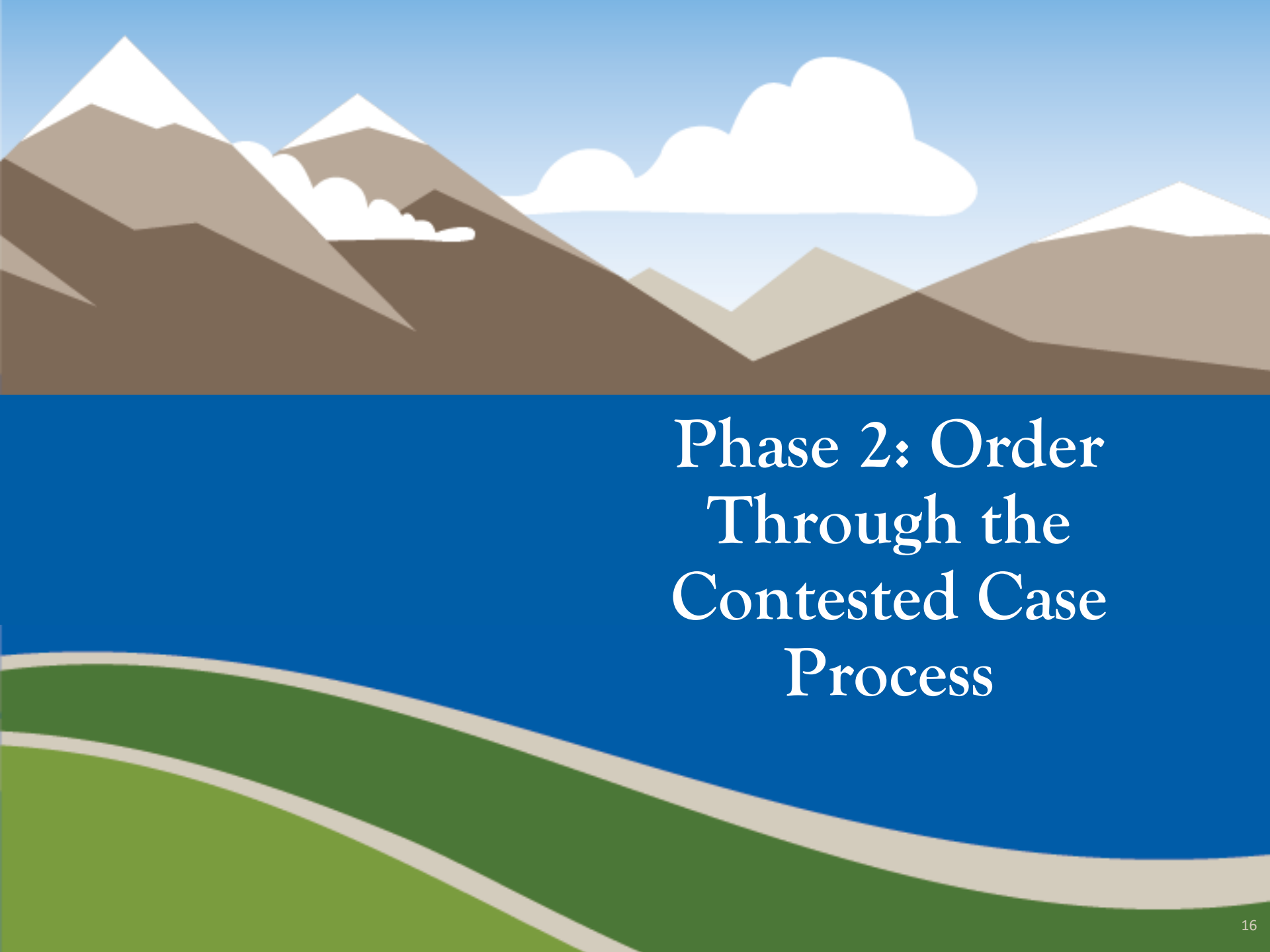
- Until the close of the public comment period, and consistent with ORS 183.335, the Department shall solicit and accept information and comments from the public regarding the draft report.
- The Department shall review the information and comments received and present a final report to the Commission that includes the Department's findings and conclusions and includes an assessment of the information and comments received.

Rulemaking Process



If conditions are met for CGWA Declaration under **ORS 537.730(1)(a-g)**,
OWRD may initiate the following rulemaking process



The background features a stylized landscape. The top portion shows a blue sky with a large, white, fluffy cloud. Below the sky are several mountain ranges in shades of brown and tan, with white snow-capped peaks. The bottom portion of the image shows rolling green hills with a light beige path or road curving through them. The central text is overlaid on a solid blue rectangular area.

Phase 2: Order Through the Contested Case Process

Initiating the Contested Case Process

Prep Initial Notification of Corrective Control Orders

Deliver Initial Notification

Prep Notice of Proposed Corrective Control Orders

Deliver Notice of Proposed Corrective Control Orders (draft order)

Corrective Controls in Orders

ORS 536.735 authorizes use of the following corrective control provisions within a CGWA rule:

A provision apportioning the permissible total withdrawal as established by rule... among the appropriators holding valid rights to ground water in the critical area in accordance with the relative dates of priority of such rights.

A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for residential and livestock watering purposes first. Thereafter, the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer.

Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.

A provision requiring the abatement, in whole or part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.

A provision requiring and specifying a system of rotation of use of ground water in the critical area.

Notification Requirements for Initial Notification of Corrective Control Orders

Scope of Rulemaking

First Class Mail

- Affected Local Governments
- Federally Recognized Indian Tribes
- Property owners of tax lots within the CGWA

Publication

- OWRD weekly bulletin for four weeks
- OWRD website
- Local newspaper for two weeks

Meeting

- Hold a meeting in the CGWA

Notification Requirements for Notice of Corrective Control Orders

Scope of Rulemaking

By Certified or Registered Mail

- Groundwater rights holders
- Exempt users whose groundwater use would be limited

Regular Mail to

- Persons who have requested copies of the order and chose mail as preferred contact method

Email to

- Persons who have requested copies of the order and chose email as preferred contact method

Publication

- OWRD Weekly Bulletin for four weeks
- OWRD Website

Preparing for the Hearing

Parties file Request for Hearing or interested parties file Petition for Party Status

WRD notifies all parties of any petitions

WRD decides on any petitions for party status; for granted petitions, WRD specifies area of participation and procedural limits

Director prepares the list of issues and refers the matter to the Office of Administrative Hearings (OAH)

Conducting the Hearing

Office of Administrative Hearings assigns an Administrative Law Judge (ALJ)

Contested Case Hearing conducted

ALJ issues a proposed order

Issuing the Final Order

Exceptions to the proposed order
can be filed within 60 days

Water Resources Commission
Considers all timely filed exceptions

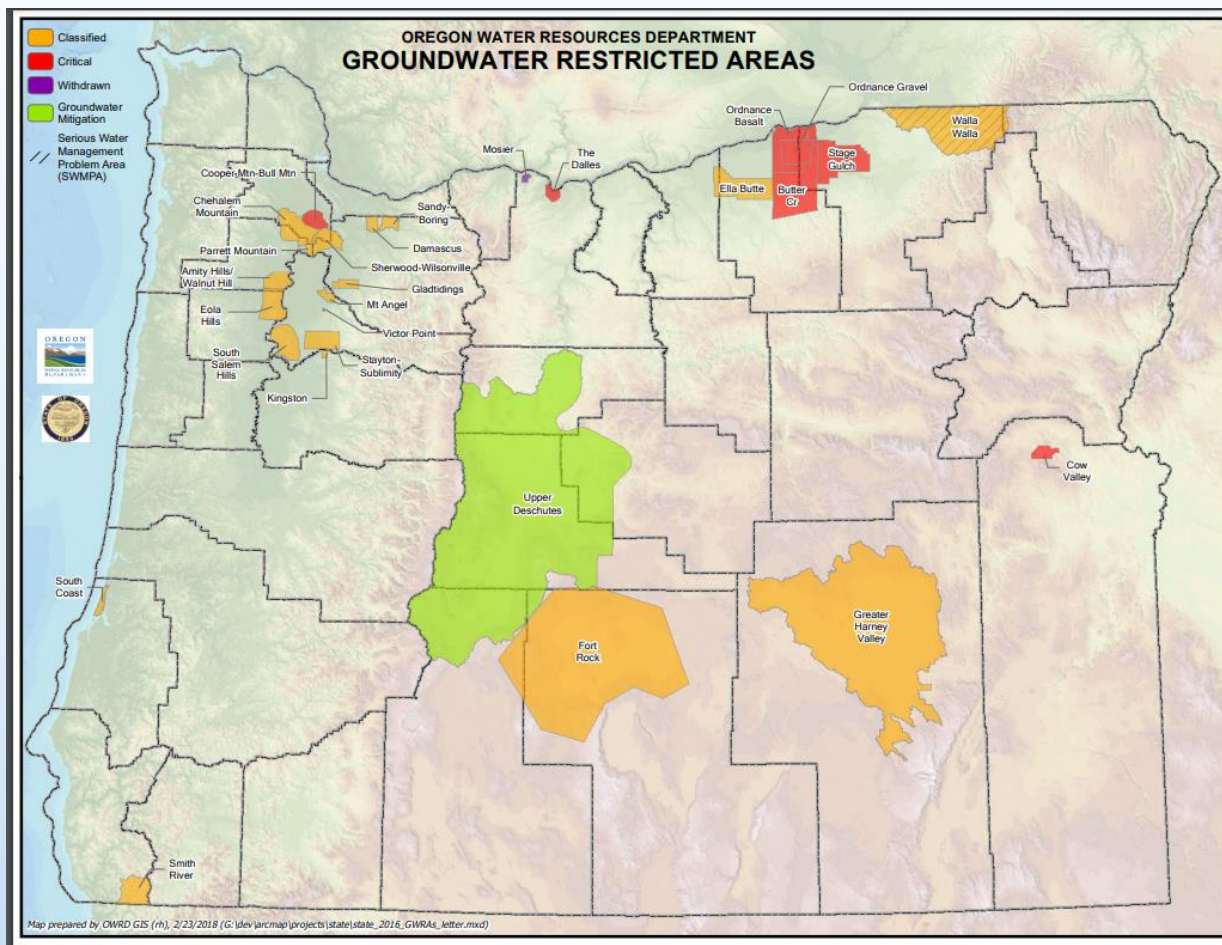
WRC issues final order

WRD regulates per the final order



Modification of Existing CGWA

Current Groundwater Restricted Areas



Modification of Existing CGWAs

- Seven existing CGWAs in Oregon
- Division 10 rules give OWRD the capability to modify the designation based on the best available science

Reasons for Modification

- New data suggest boundaries of a CGWA or a sub-area may need to be adjusted.
- The original permissible total withdrawal may need adjusting.
- Management of groundwater reservoirs needs to be adaptive and flexible to address changing conditions.
- Two early CGWAs require significant staff time to allocate GW annually to senior users; OWRD is interested in modernizing the allocation process to reduce staff workload and provide more certainty to water users.



Thank you



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