



Voluntary Agreement Group

MEETING SUMMARY

Tuesday, October 1, from 3 PM - 5:00 PM
High Desert Partnership

ZOOM recording link: https://media.pdx.edu/media/t/1_czflqus5

I. Attendees:

Alexandria Scott (OWRD), Brenda Smith (High Desert Partnership), Chad Karges (High Desert Partnership), Danielle Gonzalez (OWRD), Darrick Boschmann (OWRD), Dominic Carollo (Carallo Law), Elizabeth Howard (Schwabe), Harmony Burrigh (High Desert Partnership), Jason Spriet (OWRD), Karen Moon (Harney County Watershed Council), Kelly Mainz (OWRD), Ken Bierly, Kristen Shelman (Harney County Court), Laura Hartt (OWRD), Rep. Mark Owens (Rep. and farmer), Tim Seymour (OWRD), Zach Freed (The Nature Conservancy)

II. Action items

- Distribute meeting summary and meeting recording (Oregon Consensus)
- Do line edit suggestions to the Second Draft Guidance (All)
- Do a deeper review on how exactly the Commission can approve a Voluntary Agreement and have an Order that allows the flexibility needed to implement and manage a Voluntary Agreement (OWRD and Rep. Owens)
- Draft a sample Voluntary Agreement the group can use to get specific (High Desert Partnership with Oregon Consensus)
- Send rotation agreement examples (OWRD)

III. Welcome, Introductions, Updates:

Bobby welcomed the group together, people introduced themselves, and Jason with OWRD introduced the updates to:

- The Second Draft proposed guidance memo for Voluntary Agreements; and
- OWRD's responses to this subgroup's initial set of comments.

Jason provided some updates on how OWRD is thinking about Voluntary Agreements:

- A Voluntary Agreement itself is not an Order of the Commission, but the Commission's decision to Accept or Reject a Voluntary Agreement is an order, and

- Conceptually, a Voluntary Agreement is kind of like an irrigation rotation agreement.

IV. Feedback on the Second Draft Guidance Memo

The group then walked through the comments and OWRD responses on the guidance memo. Some of the “high-level” questions and issues the group was concerned about included:

- How does OWRD get the assurances that a group of pumps within a Voluntary Agreement are moving toward the same goals as the rule—But how can the approach be substantively different between rule implementation and Voluntary Agreements in a way that provides the incentives (e.g., not being regulated off by priority date, and not having to participate in a contested case) for irrigators to join Voluntary Agreements?
- How can water rights and water uses be moved within a Voluntary Agreement in an efficient way?
- How can Voluntary Agreements be implemented and managed in a way that doesn’t require Commission approval and opportunity for contest for every change?
- What is the scale of “compliance” --At the total of all pumps in the Agreement, or for each member/Point of Appropriation of the Agreement
- How is the proportion of water reductions allocated to a Voluntary Agreement

The group expressed concern about the form of the Commission’s approval:

- Balancing the opportunity for public comment and contest with trying not to get the approval of Voluntary Agreements caught in disputes or introducing the possibility of contesting even minor changes to the Agreement (e.g., the rotation of different Points of Appropriation from year to year).
- Is the Voluntary Agreement a “contract”, “partnership”, or some other legal form?
- Could there be some “bucketing” of changes, such as
 - “Minor” changes that only require notification to OWRD/Commission
 - “Regular” changes that require mutual agreement from all Parties and OWRD/Commission
 - “Major” changes that require Commission approval

The group also talked conceptually about how to apply the analog of rotation agreements. In a rotation agreement, the diversion for the ditch is the point of regulation. So, for wells, is every pump like a “diversion,” or is it the collection of pumps within the same Voluntary Agreement geography/groundwater reservoir that is the “diversion”? OWRD was leaning toward every Point of Appropriation as the points to pay attention to, and most of the other meeting participants leaned toward an approach that would pay attention to the collective of all pumps within a Voluntary Agreement.

The group expressed a desire for monitoring to occur at the seasonal (i.e., end of irrigation season) time rather than monthly. OWRD wanted to make sure there was some way to know if use might be exceeded mid-season rather than wait until the end.

One of the participants noted that increased flexibility likely means increased transparency, so how can that balance be achieved?

Several participants asked about more flexibility in moving Places of Use within a Voluntary Agreement, and OWRD was less concerned about the Places of Use and more focused on the Points of Appropriation.

The group discussed easy ways to demonstrate that a well was disconnected from the irrigation system and thus would not require a flow meter or reporting. It also discussed partnering with OWRD to legally decommission wells that would never be used.

OWRD confirmed their assumption that wells and the total pumpage within a Voluntary Agreement will operate with some variance. There do need to be some sideboards that prevent new cones of depression (e.g., how to avoid increased pumping on one edge of a Voluntary Agreement impacting neighboring wells just on the outside of that boundary)

The group asked what kinds of year-to-year “true ups” there might be on Voluntary Agreements—Basically some time period after the irrigation season (and before the next season) where irrigators and OWRD can look at monitoring and reporting results, make any minor adjustments, and then prepare for the next irrigation season. There needs to be a way to build adaptive management into the Voluntary Agreement without having to go to OWRD or the Commission for every minor change, but where the Commission revisits its approval for substantive or major changes.

The group asked if the Commission or within the Voluntary Agreement could include a statement consistent with ORS 540.610 that, by definition, participants in a Voluntary Agreement are acting to conserve water, and therefore, no rights are subject to forfeiture. Further, if Parties to an Agreement can show they are ready, willing, and able to put any included water right to beneficial use, that could protect rights against forfeiture.

If the rates are increased for any particular Point of Appropriation, how can the Agreement protect against interference with neighboring wells outside of the Agreement? And how to protect against other well-to-well interference?

How do the Targets for Voluntary Reduction and Permissible Total Withdrawal connect? And how are those allocated proportionally where subareas have irrigators within and outside Voluntary Agreements?

The group also talked about some examples to look at from the CA SGMA program and Nevada.

V. The meeting adjourned at 5:15pm