



**WaterWatch of Oregon**  
Protecting Natural Flows In Oregon Rivers

January 31, 2024

Laura Hartt  
Groundwater Allocation Rules Coordinator  
OWRD  
By email to: [Laura.A.HARTT@water.oregon.gov](mailto:Laura.A.HARTT@water.oregon.gov)

**RE: Comments Post-Groundwater Allocation RAC Meeting #8**

Dear Ms. Hart:

Thank you for the opportunity to submit further comments regarding the effort to amend Oregon's rules for groundwater allocation to align with statute and ensure groundwater is sustainably and equitably managed. WaterWatch was very concerned with the recent delay in the process and is very supportive of the schedule shared at RAC meeting #8 with the March release of the hearing draft rules.

We do not reiterate earlier-made comments in this letter and would refer you to our earlier letters, including out January 9<sup>th</sup>, 2024 letter for additional comments. We urge the department to proceed expeditiously with the process required to promulgate the amended rules.

**Comments**

**1. A cap for permit amount should be added to the reasonably stable presumption in *Draft OAR 690-008-0001(9)(c)*.**

*Draft OAR 690-008-0001(9)(c)* allows a presumption that water levels are reasonably stable if no groundwater has been extracted from a groundwater reservoir, stating:

“(9) “Reasonably Stable Groundwater Levels” means:

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(c) If groundwater has not yet been extracted or authorized for extraction from the groundwater reservoir, then water levels may be presumed to be reasonably stable.”

OAR 690-008-0001(9)(c). Upon further thought, we think it would be prudent to add a cap to the amount of this “first” permit that can be issued presuming reasonably stable groundwater levels. We do not think it would be appropriate to use this presumption to issue large groundwater permits, which could have large impacts. For instance, we have seen recent groundwater permit applications as large as 16.8 cfs in the Malheur Lake Basin, and certainly there are larger ones across the state. We suggest a cap of 3 cfs for any permit being issued based on the presumption in OAR 690-008-0001(9)(c).

## **2. Using basin program rulemaking to implement the 1955 Groundwater Act would need to proceed with well-defined sideboards and clear requirements.**

We remain concerned about the provision allowing for adoption of basin specific groundwater allocation rules. In addition to being inefficient, this seems to run the risk of running afoul of statutory standards. Given that OWRD cannot adopt rules (including basin program rules) in violation of the 1955 Groundwater Act, it is best to be clear about this up front in the groundwater allocation rules and spell out the standards that would ensure basin plans will meet statutory directives.

Further, if the rules are going to allow for basin specific groundwater allocation rules, then it is also imperative that any standards reflect that basin program rules could be *more protective* of aquifers and hydrologically connected surface water than the statewide rules. For example, basin program rules could define reasonably stable as something less than a 0.6 feet/year decline, such as a 0.0 feet/year decline. A decline of 0.6 feet/year, over time, may be more than certain aquifers can withstand.

### **Conclusion**

In conclusion, the draft rules are badly needed to align agency rules with Oregon's forward looking 1955 Groundwater Act. Amending the existing agency rules to faithfully implement the Act is not only irrefutably within the agency's authority, but is in fact the agency's duty. The effort is long overdue as demonstrated by significant—and extremely difficult to address—problems across the state resulting from groundwater allocation under the current rules. We appreciate the extensive technical, scientific and process work that the department has invested into this rulemaking process, including at the state-wide public meetings, the Commission meetings, and the eight RAC meetings. We look forward to the next part of the process and to the adoption and implementation of the rules.

Thank you for your consideration of these comments.

Sincerely,

/S/Lisa A. Brown

Lisa A. Brown  
Staff Attorney

[lisa@waterwatch.org](mailto:lisa@waterwatch.org)



Oregon Water Resources Department,

My name is Cheyenne Holliday and I am the Advocacy Manager at Verde. I am writing to express our sincere gratitude for the opportunity to serve on the Groundwater Allocation Rule Advisory Committee. We commend the Oregon Water Resources Department (OWRD) for its commitment to an inclusive and collaborative decision-making process.

Throughout our time on the committee, we gained valuable insights from the agency's expertise and the contributions of fellow participants. The collaborative approach adopted by OWRD has allowed us to better understand the complexities surrounding groundwater rights and water resources sustainability, and we appreciate the dedication of all involved in this important endeavor.

Verde strongly supports a science-based approach to groundwater allocation that prioritizes the well-being of communities affected by such decisions. We believe that decisions rooted in scientific evidence are crucial for ensuring sustainable and equitable resource management.

While we are grateful for the opportunity to be part of this committee, the technical nature of some sessions made it difficult for us to fully comprehend and engage in discussions. Although the pre-meeting materials were helpful, the complexity of the content impacted our capacity to provide meaningful comments in real time. We encourage OWRD to explore ways to bridge the gap between technical content and the capacity of community-based organizations to actively participate in the decision-making process.

Once again, we want to express our appreciation for the opportunity to contribute to the Groundwater Allocation RAC. We look forward to continued collaboration and hope that our feedback will contribute to creating a more inclusive and accessible process for all stakeholders.

Thank you for your commitment to transparency, collaboration, and the well-being of our communities.

Sincerely,

Cheyenne Holliday, Verde



DESCHUTES RIVER  
CONSERVANCY

January 31, 2024

Oregon Water Resources Department  
Laura Hartt - Water Policy Analyst / Rules Coordinator  
725 Summer St. NE, Suite A  
Salem, OR 97301

via email to: [Laura.A.Hartt@water.oregon.gov](mailto:Laura.A.Hartt@water.oregon.gov)

RE: Groundwater Allocation Rules Advisory Committee meeting comments for the January 23, 2024 RAC

Ms. Hartt:

The Deschutes River Conservancy (DRC) restores streamflow and improves water quality in the Deschutes Basin using a coordinated, collaborative, and voluntary approach. Founded in 1996 as a consensus-based, multi-stakeholder organization, the DRC's Board of Directors includes diverse representation from tribal, environmental, irrigated agriculture, and hydropower interests as well as federal, state and local government. Together with our partners we have restored over 300 cubic feet per second of flows to our basin's rivers while increasing the reliability of agricultural water rights and operations, and water supply for cities.

Thank you for the opportunity to participate in and provide comment on the Groundwater Allocation Rulemaking and for the seat on the Rules Advisory Committee (RAC). The Deschutes Basin, like many throughout the state, faces unique challenges and barriers in its effort to balance water needs to support agriculture, rivers and communities while maintaining resiliency. A changing climate and growing populations and communities only increase the urgency of this work.

We would also like to recognize the hard work of the OWRD staff on this difficult and complicated rulemaking. The additional technical sessions were helpful, as were the two additional RAC's which allowed for more in-depth discussions and important additional changes to the proposed rules.

The Deschutes Basin has a long history of collaborative success with the DRC, partners and stakeholders developing and implementing water conservation and water marketing projects that restore streamflow, support agriculture and help meet the needs of growing cities. We recently completed the data-rich Upper Deschutes River Basin Study which was succeeded by the Deschutes Basin Water Collaborative, a group of 46 stakeholders currently working to use Basin Study information to develop a comprehensive Deschutes Basin Water Plan that prioritizes integrated implementation strategies. We believe we are on track to be a model for how we can solve water issues for rivers, aquifers and communities at the basin level through close collaboration.

The ability to look at individual basins and their unique attributes within the Groundwater Allocation Rules (690-008-0001(9)(d)) allows for more scientific data to be collected or supplied that may support a different outcome from review. The decades of efforts in the Deschutes Basin to find creative and collaborative solutions that have multiple benefits and involve stakeholder participation in rebalancing water uses could be further explored with respect to sustainable use of groundwater. We appreciate that this will allow the state to consider that basins

can differ dramatically and that the state rule may not be one size fits all once additional scientific information is available. We also recognize that we are fortunate in the Deschutes Basin to have some level of this data already available. This may be more difficult for other basins, as well as for the Deschutes as it is costly to collect the data necessary to develop basin specific program. This is something that is important across the state and for which funding assistance within the state budgets will be helpful in assuring equity. Funding (and staff) to support basin specific rules - additional studies, groundwater conservation efforts, and to help capitalize water banks and water markets to help meet new demands will be integral to sustainability in our water supplies.

DRC appreciates the addition to 690-008-001(9)(b)(B) relating to reference levels - which allows a consideration for or review of anthropogenically-enhanced recharge when setting reference levels. This will be important in the Deschutes Basin as increasingly more leaky canals are piped for surface water conservation.

We would like to make three high-level points that touch on the Groundwater Allocation Rulemaking and its interconnections with water management in the Deschutes Basin as a whole.

1. We applaud the state for taking the initiative to steward our groundwater resources and to update groundwater allocation rules to be more protective. The majority of the work we do at the DRC stems from a legacy of the state over-appropriating rivers over a century ago. As you well understand, restoring balance to an over-appropriated system is challenging work. It's much preferable to protect a resource on the front end. We appreciate rules that are protective of existing water right holders, both in and out of stream, and the forward-looking sustainability approach to reviewing groundwater allocations and are committed to work in a collaborative space to find creative solutions to water supply issues in the Deschutes Basin to avoid additional over-appropriation.
2. Surface and groundwater are well studied and intimately connected in the Deschutes, and we would be well-served to look at the whole system holistically. We are supportive of the state's efforts to protect groundwater, AND we are trying to make up for a legacy of streamflow over-appropriation. A holistic view of water resources that truly strives to manage water conjunctively and that helps us understand tradeoffs of various water management scenarios on both surface and groundwater will help us best adapt to the dynamic conditions we will be facing in the future.

Even specifically within the groundwater realm, extending the view to some topics outside the purview of the current rule-making would be helpful, namely the measurement and regulation of exempt wells. While these rules do not apply to exempt well uses, these should also remain on the radar of the state. Water uses that might best be served with a group domestic or small quasi-municipal water right could evade and have evaded the requirements of a permit by installing clustered exempt domestic wells which are not subject to the same rules. Exempt wells do play a role in the water budget in the Deschutes basin.

Applying an even broader holistic filter, what are the connections between water policy and our land use goals in Oregon, land use goals that generally prioritize compact growth over sprawl, compact growth in cities being much more water-efficient per capita than non-agricultural development spread out into our rural areas? Where there are limited supplies for new allocations, shouldn't our water policies reflect these land use principles? This holistic view underlines the need to take an overall basin water management approach that is situated in a specific context and recognizes the implications and interconnections with other basin goals and policies.

The DRC works diligently to help move water from areas of excess to areas of need. Looking to the future, with rapidly growing cities and limited water supplies, we understand the cautious review of new groundwater allocations is necessary. We would also like to suggest that supporting growing communities with *established* population centers and economies (quasi-municipal or municipal) should be of priority over issuance of new groundwater rights to small irrigation uses or undeveloped or not-yet-developed quasi-municipal uses.

3. Our third point is that you have good partners in the Deschutes Basin. In our efforts to restore streamflow while actively trying to ensure reliable agricultural water and future water supplies for cities, we have a long history of driving conservation and innovating solutions to meet multiple needs with limited water supplies. Along with our suite of streamflow restoration strategies, we are actively involved in the Deschutes Groundwater Mitigation Program, the only program of its kind in the state. DRC is the state-chartered temporary mitigation bank, generating temporary mitigation credits through instream leases while separately facilitating permanent instream transfers that generate credits and permanently protect streamflow. This program was designed to address the interference of new groundwater pumping on surface water flows, specifically lower Deschutes Scenic Waterway flows, while incentivizing restoration of upstream tributaries and allowing for some measured growth.

Basin partners have been able to develop tools to implement this program, and the program has had some success in achieving its goals, including restoring significant flows to the Middle Deschutes River (~40 cfs) and other tributaries. This demonstrates the basin's ability to adapt and innovate to meet water management challenges. We are committed to continuing to help Central Oregon cities secure water supplies whatever the new regulatory framework looks like- because in the Deschutes all the water supplies and demands are interconnected. While we are unsure of how the Deschutes Basin Mitigation Program will interface with the new Groundwater Allocation Rules it is important to recognize that the Deschutes Basin Mitigation Rules have an impending sunset in January 2029. While we are approaching the cap and may need additional time to update these basin specific rules, addressing the sunset is of utmost importance to allow breathing room to thoughtfully address the cap and collaboratively work on other updates and how they will interface with the new allocation rules.

We appreciate the long view toward sustainability. Over-allocation is costly in its impacts to existing water users, future water users who may make investments and then be regulated, to our surface waters – streams and lakes that we all love, and in the costs to generations after us who may have to correct problems we create from lack of action.

Thank you for your consideration of these comments and for allowing the DRC the opportunity to participate and comment during this rulemaking process.

With sincere appreciation,



Genevieve Hubert  
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January 30, 2024

To: Laura Hartt, Water Policy Analyst and Rules Coordinator  
From: Bill Jaeger, Professor of Applied Economics  
Re: Final comments following Groundwater Allocation RAC meeting #8

First, I want to reiterate my view that this RAC process has been handled exceptionally well by OWRD staff. Their professionalism, the step-by-step approach, the rigor, and their responsiveness to all comments and suggestions from RAC members was impressive, and, taken together, allowed RAC members to focus on the substance, to listen and learn from each other, and to move the process forward.

Second, I believe that the resulting proposed rule changes represent important, much needed improvements that will contribute to the mandated objective to make water use “more sustainable and protective of existing water right holders, both instream and out of stream.”

However, I share the concerns raised by several RAC members about the proposed language that allows the limits in the definition of “reasonably stable groundwater levels” to be superseded by limits defined in basin program rules. I agree that this language should be removed. While this provision appears to provide reasonable flexibility in the rules, it also makes them vulnerable to abuse. Moreover, relying on a common set of statewide rules for protecting all of Oregon’s groundwater resources for all Oregonians conforms to the notion that the waters of Oregon belong to all Oregonians.

Third, I want to summarize some observations on core issues that extend beyond the specific rule changes considered by the RAC. As I have indicated previously, while I believe these changes represent a substantial improvement, they do not correct or resolve a fundamental shortcoming with the laws and rules governing groundwater in Oregon. This problem is due to an historical artifact, not to any recent administrative mismanagement.

The root cause of the problem is that the prior appropriations doctrine for water rights was developed for surface water, where it is easy to observe the flows of water, and thus observe directly any interference between a junior and a senior water right. This allows the seniority system to be monitored and enforced. In contrast, interference between groundwater rights is hidden below ground and thus cannot be seen or generally proved. This means that the critical mechanism in prior appropriations law, intended to adjust water use levels in response to variations in water availability, is not enforceable in the case of groundwater. For surface water under both the prior appropriations doctrine and riparian water rights systems, adjusting water use in response to reduced water availability is routine and effective. In Oregon’s coastal fisheries, routine adjustments – up and down – are made to the total allowable catch under

catch-share systems. But in Oregon's groundwater seniority system, enforcement in the form of regulating junior water rights is absent.

An analysis presented in our RAC #8 meeting estimated that for every foot of decline in groundwater levels statewide, 1,600 wells would go dry. For a decline of 25 feet, 15,000 wells would go dry at an estimated cost of \$400 million. Groundwater declines in the past 10 or 20 years have no doubt imposed similar costs. These costs represent a failure of enforcement of the prior appropriations seniority system. These dry wells occur for both junior and senior water right holders, and for rich and poor. Having dry wells inflicted on poor households that lack the resources to deepen them raises troubling concerns about equity and fairness.

Research on groundwater management nationally and internationally has identified three key components needed to manage groundwater efficiently and sustainably (Holley et al. 2020):

1. Rights allocated to individuals and firms for use
2. A cap on total resource use
3. Rules to allow reallocation, adjustment, and adaptation to changing conditions.

To implement these three components requires data on stocks and flows. So a fourth is:

4. Data on well levels and use rates

The current system in Oregon includes #1, and Oregon's ability to deny additional groundwater permits is a less direct version of #2. But the inability to enforce the prior appropriations seniority system leaves Oregon without #3. Moreover, Oregon's water rights holders have not generally been required to report well levels or pumping rates, which means #4 is lacking.

The adverse implications of these shortcomings are exacerbated by two factors. First, any test to determine whether water levels are declining (not reasonably stable) must rely on limited past water level data (lacking forecasting models) to make a judgement. Second, changes in water levels can take years or decades to adjust to a new equilibrium in response to changes in pumping rates. As a result, data available in a given year to judge the stability of water levels when approving a groundwater permit application (to pump essentially in perpetuity) cannot discern future declines that may have already been set in motion by recent changes in pumping. This problem and its potential harms will not go away. What additional steps could be taken to address the problem?

Proposal: I propose the following: a) rule changes be made so that all new groundwater permits be valid for 10 years, but they would be renewed automatically as long as water levels continue to be "reasonably stable" (otherwise they expire); b) all new groundwater permits, or transferred or modified groundwater permits, would include the requirement of regular reporting of well water levels and pumpage rates to OWRD.

Reference: Holley, C., Rinaudo, J.-D., Barnett, S., & Montginoul, M. (2020). Sustainable groundwater management in France and Australia: setting extraction limits, allocating rights and reallocation. *Sustainable Groundwater Management: A Comparative Analysis of French and Australian Policies and Implications to Other Countries*, 1–15.



31 January 2024

Laura Hartt  
Groundwater Allocation Rules Coordinator  
OWRD  
By email: [Laura.A.HARTT@water.oregon.gov](mailto:Laura.A.HARTT@water.oregon.gov)

Re: Follow-up comments to Groundwater Allocation RAC #8

Oregon Environmental Council has appreciated the opportunity to participate in OWRD's Groundwater Allocation RAC. After eight meetings, we feel the draft rules are in good shape.

We are pleased that the Department is willing to clarify that the rules apply to new permit applications only, as this has been a significant issue of concern for current groundwater permits.

We would like to see the Department require measurement and reporting as a part of any new groundwater permits issued under the new rules.

We would also like to see sideboards set for basin rules. As these rules are developed, the Department needs to be sure that basin rules do not allow groundwater extraction that exceeds minimum standards for ensuring protection and sustainability of the groundwater resource.

We intend to fully support these draft rules as they move through the public comment period, and hope to see them in place and on the way to implementation in the near future.

As we have said in past testimony and written comments, the science-based nature of these rules are essential to protecting Oregon's groundwater resource.

Thank you for the opportunity to serve on this RAC.

Sincerely,



Karen Lewotsky, PhD, JD  
Water Program Director  
Rural Partnerships Lead

## HARTT Laura A \* WRD

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**From:** Adam Sussman <asussman@gsiws.com>  
**Sent:** Wednesday, January 31, 2024 5:34 PM  
**To:** HARTT Laura A \* WRD; LIEBE Annette I \* WRD; IVERSON Justin T \* WRD  
**Cc:** Michael Buettner; Michael Preedin; Owen McMurtrey; Doug Riggs; Lori Faha (Lfaha@bendoregon.gov)  
**Subject:** GW Allocation RAC meeting #8 - COCO input

Hi Laura:

We understand that OWRD is seeking follow-up thoughts from the RAC #8 meeting on 1/23/2024. The following comments are on behalf of Central Oregon Cities Organization (COCO) regarding the draft rules and other materials provided at the RAC #8 meeting. As we have mentioned before, COCO is made up of 9 cities in Central Oregon that have a combined population of approximately 150,000.

**Division 8** – As expressed in COCO’s comments dated 1/4/2024 and as expressed at RAC #8 COCO supports recent proposed changes to Division 8. Specifically, we support the changes to the definition of “Reasonably Stable Water Levels” under 9 (a)(B) regarding total decline that provide for consideration of increases in water levels due to historic “anthropogenically-enhance recharge.” COCO reiterates its comments dated 1/4/2024 which highlight human influence on Upper Deschutes Basin aquifer water levels (magnitudes and timescales) and appreciate the consideration of impacts on groundwater levels from both historic artificial recharge and current-day irrigation efficiency (canal piping projects.)

As stated in the RAC meeting, the Department’s recognition of these human-caused impacts should also be captured in the reference water level considerations in 9 (a)(A) regarding rate of decline for the same reasons – the history of recharge and the past and proposed amounts of irrigation efficiency projects (canal piping) is a key aquifer stressor that cannot be brushed aside.

COCO also reiterates its support for the current draft of 9(d) which provides for an opportunity to seek basin specific rules. As outlined above and in COCO’s comments dated 1/4/2024 it would be inappropriate and unnecessary for the proposed rules to put sidebars on the opportunity for future Commissions to adopt place-based, basin-specific rules, particularly in the Upper Deschutes Basin where the timescale and magnitude of the dynamically stable range for groundwater sustainability and the human influence on water level changes are well understood.

It should be noted that in past comments COCO has advocated for a basin specific approach **instead of** the current statewide approach. We believe this type of place-based planning approach for a basin like the Deschutes that has an abundance of groundwater data, and a well-established collaborative framework makes sense as an initial step, not a subsequent “off-ramp” from state-wide rules. We continue to ask the Department and Commission to consider this input.

### **Statement of Need/Fiscal impact**

#### **The following statement is made on page 7:**

OWRD notes that even in the absence of the new rules, acquisition of new groundwater through either application or purchase and investing in new infrastructure to access those new rights is perhaps not as cost-effective as either enhancing conservation and efficiency measures or transferring the type of use, place of use, and/or point(s) of diversion/appropriation authorized under existing water rights.

While we agree that conservation is necessary and needs emphasis and can be cost-effective in comparison to major infrastructure construction - this is a very general statement with no back-up information. The accuracy of this statement is dependent on local conditions, including the degree to which conservation programs are already underway,

and the actual availability and cost of other existing water rights to purchase and transfer. We encourage OWRD to provide supporting data. OWRD should also note that a combination of conservation PLUS new water rights may be necessary to provide for growth that must be accommodated under statewide land use planning rules. We also encourage OWRD to explicitly support municipalities as part of the rulemaking in both technical/financial support for more intensive water conservation measures and in identifying where rights are available for acquisition and transfer.

**The following statement is made on page 7:**

With few exceptions, these WMCPs also predate the Oregon Governor’s recent affordable housing goals (see Executive Order No. 23-04 and House Bill 2001(2023)), which may necessitate municipalities updating comprehensive plans and WMCPs to rebalance economic priorities to achieve these goals. However, OWRD notes that the goals are not mandates, do not apply to municipalities of fewer than 10,000 residents, and affordable housing production targets are not required until 2025.

Municipalities are in fact currently working to address the Governor’s affordable housing goals and production targets; 2025 is only one year away. We anticipate water demand projections to be impacted by these goals.

**The following statement is made on page 7:**

Also, because the new rules will result in the issuance of fewer new groundwater rights based on groundwater availability for allocation, the unique treatment municipalities receive during water rights application reviews suggests that municipalities may not be impacted as much as other water use sectors seeking new groundwater rights.

The proposed criteria for making a finding of groundwater availability, as summarized in page 1, 3<sup>rd</sup> paragraph, do not provide for unique treatment of municipalities during water rights application reviews, but rather are based on stable water levels and lack of interference. It is our experience over many years that the statutes cited in this paragraph regarding municipal preferences will not/cannot be used to overcome a finding of “no water is available” and is a misrepresentation. OWRD should not sugar-coat or underestimate the impact of the proposed rules on future water supply for municipal water providers.

COCO intends to provide additional comment as the process moves forward. Thank you for all your efforts!

Sincerely,

Adam

**Adam Sussman**

**Principal Water Resources Consultant**

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GSI Water Solutions, Inc. | [www.gsiws.com](http://www.gsiws.com)

RECEIVED

JAN 24 2024

OWRD

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Attn: Laura Hartt, Groundwater Allocation Rules Coordinator  
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Re: Ground Water Allocation Rulemaking

Dear Ms. Hartt,

Thank you for this opportunity to comment on the ground water allocation rulemaking. This is a joint letter of comment from the Water Resources chair and the Legislative Chair on behalf of the Jackson County Stockmen's Association (JCSA). We are writing concerning the Oregon Water Resources Department's (ORWD) rulemaking, pertaining to groundwater allocation for agricultural irrigation.

We strongly believe that OWRD should focus its energy and resources on groundwater studies, implemented across the state, before restructuring the groundwater allocation system. This proposed rulemaking systematically puts the cart before the horse and will result in a de facto moratorium on new groundwater use, even in areas where there is not a strain on groundwater.

We strongly believe changes to groundwater allocation should not be made through a rule making process. Rather this should be the purview of the State Legislature, after sufficient data has been gathered to justify legal changes, on a region-by-region basis.

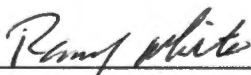
We strongly believe the proposed regulations will set standards not supported by sufficient data and that are not applicable statewide, leading to a one size fits all for ground water allocation among basins with vastly different ground water resources and demands.

We strongly believe that the proposed regulations will shift the burden of groundwater studies to individual landowners, many without the financial, human resources or expertise to perform multi-year studies before they can even apply for new groundwater rights. We presume that OWRD does have the resources and expertise to carry out the necessary studies, including studies leading to increased water conservation through monitoring, application, timing, improved plant cultivars, and other water saving measures. OWRD was directed and given funding for such studies through HB 2018.

We strongly believe the groundwater allocation rules will be contrary to the statutory directive that allows for beneficial use within the capacity of the resource. The moratorium created by the proposed rules will hamper sustainable beneficial use in areas where groundwater resources are not currently overdrawn.

In summary, we strongly urge you to commit the necessary energy, staff, financial resources, and time to complete effective groundwater studies and consider that our greatly diverse State has greatly diverse groundwater resources and greatly diverse beneficial use demands.

Sincerely,



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Randy White, JCSA Water Resources Chair  
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Jon Elliott, JCSA Legislative Chair  
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Oregon Water Resources Dept  
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9730131266





OREGON HOUSE OF REPRESENTATIVES

Representative Emily McIntire  
House District 56

January 28, 2024

Greetings Advisory Committee,

I am writing to you today on behalf of my district.

I am very concerned about the Groundwater Rule making that is taking place across the state. When I speak with my water users in district, they feel that their concerns are falling on deaf ears. Questions like- how will this impact current water users? What is the specific need to be looking at Groundwater rules now? How will these rules impact each basin? What are we doing to establish “Regional Solutions?” Harney Basin, Deschutes Basin, Willamette Basin, The Gorge, Klamath Basin- each of these areas are so different, different needs, different geology- how will these new rules impact each of these basins and their current water users?

There have been multiple letters submitted on behalf of water users and yet, there still is this push to pursue this despite the HUGE legitimate concerns that people are having. As well as I sent an email to the director in June of last year asking if these rules would be applied retroactively. I was sent a reply stating that the rules would only apply to NEW groundwater users. And yet, I am hearing that previously applied for and approved water projects are being shut down with the new rules that are being set into place.

I understand you have received multiple letters from concerned people across the state. Letters that contain all the facts, give specific examples, provide solutions, offer suggestions, beg for a collaborative compromise- and yet here we are. To say I am disappointed is an understatement. I do not know for what purpose this Groundwater rule making is happening, but this will beyond negatively impact the hard-working

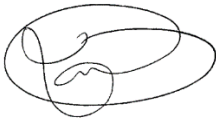
Address: 900 Court Street NW, H-379, Salem, OR 97301 – Phone: (503)986-1456  
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Rep.EmilyMcIntire@oregonlegislature.gov

agricultural people in our state who rely on water to feed us and cultivate the land. Moving forward with this will continue to put our farming communities out of business, it will reduce our ability to provide food for our communities, it will lower our revenues as we lose these farming families, and the list goes on.

My ask? That you stop, listen, and re-think these rules. There are ways that this can be done that won't put water users out of business.

Thank you for your time in reading this letter.

Blessings,

A handwritten signature in black ink, appearing to read "Emily McIntire", enclosed within a hand-drawn oval border.

Representative Emily McIntire  
Member  
Oregon House of Representatives

January 31, 2024.

**Ground Water Rulemaking Advisory Committee:**

Email to: [Laura.A.Hartt@water.oregon.gov](mailto:Laura.A.Hartt@water.oregon.gov)

Greetings, we are writing to express our deep concerns regarding the Water Resources Department's rulemaking process as it relates to groundwater allocation within our state.

In light of the potential magnitude such rules may pose for those within Oregon who manage and utilize groundwater resources, we strongly encourage the Commission, in conjunction with the Department, to suspend further action concerning such rules.

Our concern is neither recent nor new. From the outset of the current rulemaking process, we have been troubled with the comprehensive impact the proposed rules may have for those who rely on groundwater resources for a variety of productive purposes, in addition to our state as a whole.

Considering these ongoing issues associated with the proposed rules, during the early stages of the rule development, Representative McIntire made a direct inquiry with the acting Director of the Department, as to the actual application of the said rules to those who utilize groundwater resources. Her inquiry was short and direct in nature; were said rules expected to be applied in a prospective manner to the development of new uses of groundwater resources, or would the rules be extended in such a manner as to impact or result in the regulation of existing groundwater appropriations?

The response she received was short, concise, and direct: the proposed rules would be extended in a prospective manner – to proposed future or new uses of groundwater as opposed to representing an impact or regulation of existing uses. [note]

Unfortunately, as this process has continued, it has become increasingly evident the proposed rules would serve to impact existing, as well as new uses of groundwater resources. Perhaps first and foremost, we believe this underlying issue must be addressed and ultimately resolved.

Aside from these initial concerns, and again in light of the potential magnitude the proposed rules may pose for groundwater users throughout our state, we encourage the Commission and Department to extend efforts for enhanced public notice and general public information. It appears somewhat convenient to suggest public comment and input has been solicited, a Rules Advisory Committee has been formed, organized and even extended. Rather, we would contend the majority of groundwater users within Oregon are not yet aware of the proposed rules, or the potential said rules may have on such users.



Throughout the development stages of the rules, a number of observers have suggested there likely exist other and perhaps better alternatives to the issues such rules are intended to address. we would agree with such contentions.

First, before the development and potential adoption of the proposed rules, it would seem most appropriate to review existing options the Department maintains through existing statutory provisions for levels of enhanced groundwater regulation and protection. Clearly, the Department maintains authority to designate critical groundwater areas throughout the state – the Commission maintains authority to withdraw certain waters from further appropriation – through Basin programs, the Commission may designate groundwater limited areas. Specifically with respect to the management and control of groundwater resources, the Commission has maintained authority to designate serious water management problem areas in an effort to address a variety of issues. The immediate question may be -- has the Commission utilized this authority effectively?

Prior to advancing additional and comprehensive rules regarding groundwater resources, it may be advantageous for the Department to review existing authorities previously noted and clearly identify why such authorities fail to provide appropriate and adequate avenues for the management and protection of groundwater resources. We believe the need to review existing authorities, identify any potential problems associated with the administration of these authorities and make efforts to rectify such problems prior to advancing additional administrative rules. In brief, it may be very appropriate to first evaluate the authorities maintained by either the Commission or the Department to manage and regulate groundwater use and identify potential shortcomings of such authorities before attempting to develop a new, comprehensive regulating framework as contemplated through the proposed rules. Again, authorities exist for the control and management of our state's groundwater resources. Unnecessary tensions between our existing statutory framework and the proposed rules will unquestionably be created if such rules are pursued at the present time.

In light of the dramatic differences between the various regions of our state, the extension of the proposed rules in a uniform manner, throughout the state may prove less than prudent. Issues associated with the Klamath Basin, unique in many aspects, are drastically different than issues within the Willamette Basin. The Umatilla Basin is dramatically different than the Harney Basin, the Deschutes Basin different from each of these, and so on. We believe the differences between our various basins serve to make the uniform application of the proposed rules extremely problematic and may actually result in future controversies we may desire to avoid.

Specifically with respect to the Klamath Basin and the management or control of groundwater resources, it is abundantly clear this basin is somewhat unique in nature. Before extending new rules to this basin, should not the Department be encouraged to review the equitable apportionment of groundwater resources between the states? Although representing a substantial undertaking, specifically with respect to the Klamath

Basin, we suggest this effort should be initiated before advancing the rules under consideration.


As previously noted, various individuals who have been engaged with the development of the proposed rules have suggested alternatives to the statewide application of these rules. We agree with those suggesting, as well as advancing, viable options. In this same regard, we suggest the identification and establishment of a pilot program. Prior to the potential statewide application of the proposed rules, advance a pilot program within a given area of the state, implement the rules, and thoroughly review outcomes.

In summary, once again we strongly recommend the Commission and the Department to review a number of issues before the further advancement of the proposed rules as they relate to groundwater allocation. Please consider a comprehensive review of these issues before proceeding with the proposed rules.

Sincerely,



E. Werner Reschke  
State Representative District 55



Emily McIntire  
State Representative District 56



Bobby Levy  
State Representative District 58



Vikki Breese Iverson  
State Representative District 59



# JACKSON COUNTY

Oregon

## Board of Commissioners

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February 22, 2024

Ms. Laura Hartt  
Water Policy Analyst/Rules Coordinator, Policy Section  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem OR 97301  
Laura.A.Hartt@water.oregon.gov

RE: Comments Regarding Proposed Groundwater Allocation Rulemaking

Dear Ms. Hartt and the Rules Advisory Committee:

On January 18, 2024, we, the Jackson County Board of Commissioners, provided comment on the proposed rules on groundwater allocation by requesting that the rulemaking process be paused or otherwise placed on hold. The request for the pause or the delay in developing these rules was for the purpose of allowing the Oregon Water Resources Department the opportunity to establish a workgroup of experts to develop the information and data necessary to adopt rules that address the differences within groundwater basins throughout Oregon. As in our previous letter, we continue to believe that a standardized rule applied throughout Oregon will fail to take into consideration the circumstances affecting the various basins throughout the State.

This letter is to reiterate our request that the rulemaking process be paused or otherwise placed on hold in order to develop the needed data and information. Groundwater has been, is, and will continue to be, a vital resource in Jackson County. Any proposed rules will impact the use of groundwater for the existing development by citizens in the County, as well as for future development and growth. Therefore, we have a vested interest in ensuring that these proposed rules, and the process being used to develop the rules, are done appropriately. As we have written in a previous letter, water is a huge issue for all Oregonians, and rushing, without considering all concerns, does a disservice to all citizens of this great State.

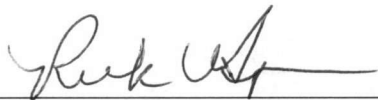
We, the Jackson County Board of Commissioners, reiterate our support for delaying the proposed rulemaking process in order to gather the information necessary get these rules right at this juncture in the process.

Thank you for your consideration.

Ms. Laura Hartt  
February 22, 2024  
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Sincerely,

JACKSON COUNTY BOARD OF COMMISSIONERS



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Rick Dyer, Chair



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Dave Dotterrer, Commissioner



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Colleen Roberts, Commissioner

:jb/mc

By: Email Only