

Questions and Answers from Dec 5 RAC

690-010-0100

How will the updated Division 10 rules impact current Critical Groundwater Areas?

These rules clarify the process for delegating a new CGWA. They do not impact current CGWA rules.

How does the department identify thermal impacts to GW?

To date we have not identified any thermal impacts to a GW basin.

How does this allow for future solutions for a compact? Do the CGWA rules need to address future compact?

The Department is actively working with Washington and California outside of the Division 10 process.

690-010-0110

ORS 174.116 would encompass local govts as discussed. Why not use it?

ORS 174.116 is more broad than is necessary for the consultation process.

What would the statutory basis be for pre-notifying these entities? 690-010-0110. Why not just notify the public?

The purpose of consultation with local governments and tribes is to satisfy the requirements of State Agency Coordination (OAR 690-005) and ensuring that the rules will be compatible with the statewide planning goals. Hence the primary local entities that will be consulted are County Planning Departments.

Does consultation include improvement districts?

It may if they are actively engaged in local planning efforts, but generally local improvement districts are not the intended audience for consultation.

Did you intentionally leave out lakes and reservoirs and approved transfers

We did not leave lakes, reservoirs and approved transfers out intentionally. We have added them to the water rights definition.

Instead of consulting with affected local governments, why not just notify the public?

The public will be notified as part of the process outlined in ORS 183.335.

690-010-0120

Would a restriction on an instream water right result in water being removed from the stream?

Should State Scenic Waterways and similar designations also be included in (2)?

We updated (2) to include all types of protected surface water flows.

690-010-0130

(2)(b)(e) should this be more specific? (5) Does 537.730(3)(a) does this include exempt wells? Can it be added? Limiting total permissible groundwater withdrawal. Does this apply to domestic use?

We made substantial changes to 690-010-0130 and these questions may no longer apply. Exempt well owners are not required to be notified under 537.730(3)(a). Due to the number of exempt wells that exist, individual notification to exempt well owners is not feasible. Exempt well owners will receive notice as members of the public.

Exempt Well use could be limited as part of a proposed corrective action. This power originates in ORS 537.735(3)(d) (Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety...)

What is substantial evidence? How do we define substantial evidence? Does this need to be defined?

We are still investigating this question and will provide an answer as soon as we can.

690-010-0150

Why does the 3 year statutory review requirement apply here? Why not use the 10 that is specified.

The 10-year review requirement is for rules that create a CGWA. So the CGWA rules that are adopted must be reviewed no less than once every 10 years.

Anytime the WRC adopts a rule that limits groundwater use, the rule must be reviewed every 3 years.

ORS 537.780 (3) - At least once every three years, the commission shall review any rule adopted under subsection (2) of this section that restricts ground water use in an area. The review process shall include public notice and an opportunity to comment on the rule.

(5) Does curtailment mean shutting of junior users or reducing use?

Either are possible corrective actions that could be proposed.

What do you mean by (3) file a copy of any rules ...with the county clerk of each county within which any part of the critical ground water area lies, and the county clerk shall record the designation in the deed records of the county?

This simply means that the CGWA designation will be officially filed with the county clerk's office and the county clerk will publicly record it in the same place as the deed records. It's basically an official filing of the rules in the county. It does not mean that any deeds will be updated.

Is a public notice included in (3)?

No, the public notice will occur as part of 690-010-0160.

690-010-0160

What tools does OWRD have for regulating GW that has been shown to be hydraulically connected to SW? Do SW laws govern where there is hydraulic connection?

The characteristics of the stream system and the basin hydrogeology dictate where and to what extent groundwater discharges to streams to support baseflow. Most stream (and streamflow) in Oregon are supported by groundwater discharge to some extent. That is generally the source of water in the late summer and fall for streams, prior to the onset of fall rains. Current tools OWRD has is regulation of hydraulically connected wells under the Division 9 rules (OAR Chapter 690-009).

Isn't a corrective action a public record?

Yes. A corrective action and a proposed corrective action are both public record and will be made public as part of the notification process.

Why wouldn't you notify the same people that you notified previously?

The previous notification was part of consultation with local governments and Tribes. This work was to coordinate and ensure that the CGWA and the county comprehensive use plans are compatible with the state planning goals. This notification is broader as it is the notice by which the department and the WRC propose corrective actions.