

DIVISION 512 - STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

ORS 183.335(2)(b)(F) requires agencies to identify how proposed rules will affect racial equity in Oregon.

In response to declining groundwater levels, OWRD is proposing to amend the Division 512 rules to:

1. Designate a portion of the Harney Basin as a Critical Groundwater Area
2. Designate a Serious Water Management Problem Area (SWMPA) to require reporting and measurement
3. Classify groundwater for exempt and non-consumptive geothermal uses only

The Racial Equity Impact Statement is a qualitative assessment of potential impacts associated with all three groundwater management tools unless otherwise specified below.

Community Outreach/Rules Advisory Committee (RAC)

According to the 2023 Census data, Harney County's population is 7,440, located primarily in the communities of Burns and Hines, with the remainder living on individual ranches, farms, and unincorporated communities across the basin. 87% of the population identifies themselves as white only, with a 12% poverty rate. 13% of the population identifies with at least one other race, with an 18.7% poverty rate. (U.S. Census Bureau, 2023).

The Oregon Water Resources Department (OWRD) conducted extensive outreach to the community in Harney County to form a Rules Advisory Committee (RAC) to represent those likely to be impacted by the new rules. To initiate this process, OWRD staff met with local community members and attended local meetings in Burns March 7 - 9, 2023. The goals of these meetings were to 1) talk about engagement opportunities for the upcoming update to the Harney Basin-specific rules (Division 512), 2) collect nominations for the Rules Advisory Committee (RAC), 3) seek input for future outreach efforts, and 4) answer questions about rulemaking. Community members suggested that members of the group should include Harney Basin Groundwater Study Advisory Committee members, Harney Community-Based Water Planning Collaborative members, Burns Paiute Tribal members, groundwater irrigators, City Planners and County Commissioners, and domestic well users. In addition to the in-person engagement in early March, the Department solicited RAC members with the help of local organizations using social media pages, a press release, a radio broadcast, and printed flyers hung up in locally frequented businesses. The Department also mailed a postcard to every groundwater right holder in the basin to invite them to volunteer to be on the RAC.

Consistent with ORS 183.333(3), the OWRD invited representatives from interest groups likely to be economically impacted by the proposed rulemaking relating to Harney Basin groundwater management to serve on the RAC. Groundwater availability is critical not only to support the agricultural community in the Harney Basin but to support the needs of residents, specifically those who rely on domestic wells. Equally important to supporting human needs is the need to support the Harney Basin's diverse aquatic systems, which provide critical habitats for fish and wildlife. Seeking to hear from the diverse groups who rely on groundwater in the Harney basin,

OWRD included representatives from the local community, including the Burns Paiute Tribe, environmental organizations, local governments, irrigators, ranchers, domestic well owners, well drillers, consultants, and water rights experts to serve on the RAC.

During the April 2 and May 15, 2025, meetings, the RAC discussed potential racial equity impacts, noting the following:

- [PLACEHOLDER FOR RAC / PUBLIC INPUT RECEIVED DURING RAC MTGS]

Tribal Coordination & Potential Impacts

OAR 690-010-0150 requires that:

(1) Prior to convening a Rules Advisory Committee under ORS 183.333, the Department shall initiate engagement with any federally recognized Indian tribes with reservation lands within the proposed critical groundwater area boundary and with any federally recognized Indian tribes in Oregon who have expressed an interest in the proposed critical groundwater area.

(2) To aid with the engagement, the Department will provide a copy of the draft report that will be posted on the Department's website under OAR 690-010-0130(4)(c)(B).

Consistent with this requirement, on December 16, 2022, OWRD notified (in writing and by email) all nine federally recognized Tribes in Oregon of the rulemaking effort, inviting participation informally during the RAC process and formally through government-to-government consultation. Moreover, on June 21, 2024, OWRD notified (in writing and by email) all nine Tribes of the availability of the Groundwater Report for the Harney Basin Critical Groundwater Area (CGWA) Rulemaking, also inviting participation informally during the RAC process as well as formally through government-to-government consultation. The Report was posted on [OWRD's website](#) by July 1, 2024.

Also consistent with this requirement, OWRD contacted the Burns Paiute Tribe to invite a representative to serve on the RAC. That invitation was accepted.

OWRD staff also provided regular staff-to-staff updates during quarterly Legislative Commission on Indian Services (LCIS) meetings, including those for the Cultural Resources Cluster (January 19, May 14, June 12, and October 31, 2024; January 29, July 23, and October 28, 2024; January 28 and April 15, 2025) and for the Natural Resources Work Group (January 17, April 20, August 17, and December 7, 2023; February 2 and September 11, 2024; January 15, 2025).

Approximately 670 permitted groundwater rights are used in various ways within the Harney basin. In the Silvies subarea, the Burns Piute Tribe has three groundwater rights with priority dates of 1991, 1940, and 1947, corresponding to 112.2, 14.3, and 21.1 acres, respectively (Oregon Water Resources Department). Oregon water rights are allocated based on the prior appropriation doctrine; therefore, the 1991 Burns Piute Tribe's water right could potentially be regulated off. Regulating that 1991 water rights may have an adverse economic impact on a community with a poverty rate of 36.7% (U.S. Census Bureau, 2023).

Local Government Coordination & Potential Impacts

OAR Chapter 690 Division 10 requires coordination with affected local governments (e.g., city, county, metropolitan service district) to ensure the proposed rules are in accordance with their land use planning. OAR 690-010-0110(1); OAR 690-010-0140.

Consistent with this requirement in the Division 10 rules on June 21, 2024, OWRD notified by email all Affected Local Governments to the City of Hines, the City of Burns, and the Harney County Court of the availability of the Groundwater Report for the Harney Basin Critical Groundwater Area (CGWA) Rulemaking, also inviting participation informally during the RAC process as well as formally through meetings between OWRD and the local government. The Report was posted on [OWRD's website](#) by July 1, 2024. Additionally, members from the Harney County Court and a Grant County commissioner were invited to serve and are serving on the RAC.

The local government collects revenue through land appraisals by the County Tax Assessors. The county uses this revenue to provide services, such as funding for schools and hospitals. Because the proposed rules will curtail junior water rights, lands associated with those rights will likely be assessed at a lower value, reducing tax revenue. With reduced revenue the county may need to reduce services from current levels. Based on the US Census data, the Harney County poverty rate is 12.8%; however, among those reporting as a race other than white, the poverty rate is higher at 18.7%, and they are more likely to be adversely impacted by the reduced services (U.S. Census Bureau, 2023).

Water & Energy Supply Impacts

The proposed draft rules would allocate water to municipal and quasi-municipal uses at 110% of their highest reported use over the preceding 6-year period (see draft rules OAR 690-512-0060(3)). Every six years, the water allocated for these uses will be adjusted to 110% of the highest reported use over the preceding six years (see draft rules OAR 690-5120-0070(1)(d)). The main municipalities in Harney County are the City of Hines and Burns, where 75% of the population lives. If either municipality's demand grows beyond their authorized pumpage, they may have to increase rates in order to incentivize conservation and/or pursue alternative water supplies, passing the costs along to the ratepayers.

The Harney Electric Cooperative is the main supplier of electricity in the county that serves over 20,000 square miles in southeast Oregon and northern Nevada. The cooperative relies primarily on irrigation customers to generate enough revenue to operate and maintain its infrastructure. The proposed draft rules would result in junior groundwater rights being regulated off resulting in less electricity being used and less revenue being generated. To compensate the cooperative may need to increase rates in the county, which would affect rate payers.

Domestic Wells Impacts

Uses exempt from permitting as specified in ORS 537.545 include domestic wells and livestock watering. In 2025, there are roughly 2000 domestic wells in Harney County. Since 2022, the continued groundwater declines in the basin have resulted in the Department receiving 18 new dry well reports in Harney County. Because dry well reporting is voluntary, it is likely that more

wells have gone dry without being reported. A Department analysis using the Harney Basin Groundwater model projects that an additional 200 domestic wells will go dry by the end of the century if groundwater pumping continues at the current rate. Under OWRD's proposed rules, the Department estimates only 98 by the end of the century, just under half as many as under continued full pumpage. A domestic well going dry presents a heavy burden for the well owner, who faces either time-intensive and expensive repairs or uncertainty in acquiring alternative drinking water sources. According to the Business Case for Investigating in Water in Oregon "Self-supplied domestic well users are more likely than those supplied by public systems to be members of frontline communities (Dalgaard 2022); in Harney County this could include Tribal members and other minority groups as well as low-income households." (Pilz et al. 2023). OWRD's plan to reduce groundwater declines will benefit Harney County's frontline communities.

Impacts on Existing Water Rights Holders - SWMPA

The proposed Division 512 rule requires all groundwater users with wells that are listed as Points of Appropriation (POA) on valid water rights within the Serious Water Management Problem Area (SWMPA) to install a totalizing flowmeter by March 1, 2028, as well as measure use monthly and report annually. Requiring each groundwater user to measure and report their use would mean greater accountability and ensure equitable groundwater use.

Impacts on Future Water Right Availability - Classification

New groundwater right applications will not be approved within the proposed classification boundary (see statement of need for boundary). The proposed rules will not redress existing inequities attributed to the historical awarding of water rights through prior appropriation because the new rules would further restrict the availability of future groundwater rights. These inequities may become further amplified because future groundwater users may need to pursue costly alternatives such as transferring or purchasing existing water rights. However, the new rules may improve certainty regarding future access to groundwater by stabilizing groundwater levels and slowing the rate of decline. (Or. Sec. of State 2023).

Environmental Impacts

The Harney Basin consists primarily of public lands, where roughly 73% of the basin is administered by either federal or state agencies. The U.S. Fish and Wildlife Service manages the Malheur National Wildlife Refuge, consisting of 187,000 acres and is visited by as many as 60,000 people annually. The Basin also lies along the Pacific Flyway, which serves as a rest and refuel wetland stopover for 70% of U.S. migratory birds, or roughly 6 million, travelling between the Arctic and the Mexican coast. Other significant public land holdings include the Ochoco and Malheur national forests. (See Harney County Watershed Council; High Desert Partnership).

By stabilizing groundwater levels, the new rules should reduce adverse impacts to springs and hydraulically connected streams within the Greater Harney Basin. Healthy springs and streams provide cultural value and ecosystem services, including fish and wildlife habitat, water purification, nutrient cycling, flood control, and drought mitigation. Preserving these services is not only of cultural importance but also important for providing equitable access to commercial and non-commercial opportunities on public lands and waters, including fishing, hunting, and outdoor recreation.

Further Input

Further public comments on this rulemaking and its impact on racial equity in the state is encouraged through the close of the public comment period, [date/time].

Documents Relied Upon

Boschmann, D.E., 2024, Groundwater Report for the Harney Basin Critical Groundwater Area Rulemaking, draft prepared by OWRD, available at

<https://www.oregon.gov/owrd/Documents/Groundwater%20Report%20for%20the%20Harney%20Basin%20CGWA%20Rulemaking.pdf>.

Dalgaard, S., 2022, State of Water Justice in Oregon: A primer on how Oregon water infrastructure challenges affect frontline communities across the state, prepared for Oregon Environmental Council and the Oregon Water Futures Project, available at <https://www.oregonwaterfutures.org/water-justice-report>.

Harney County Watershed Council, 2025, Our Basin. Accessed March 19, 2025. Available at <https://hcwatershedcouncil.com/the-basin/>.

High Desert Partnership, 2025, Harney Basin Wetlands Collaborative. Accessed Marcy 19, 2025. Available at <https://highdesertpartnership.org/collaboratives/harney-basin-wetlands-collaborative/overview.html>.

Oregon Secretary of State, 2023, Advisory Report: State Leadership Must Take Action to Protect Water Security for All Oregonians, Report 2023-04, available at <https://sos.oregon.gov/audits/Documents/2023-04.pdf>

Oregon Water Resources Department, 2024, Water Rights Information System (WRIS), available at <https://www.oregon.gov/owrd/programs/WaterRights/WRIS/Pages/default.aspx>

Oregon Water Resources Department, 2023, Harney Basin Groundwater Rules Update (Division 512) Community Conversation Recap, available at: <https://www.oregon.gov/owrd/Documents/Division%20512%20March%202023%20Community%20Conversations%20Recap.pdf>.

Pilz, D. et al., 2023, The Business Case for Investing in Water in Oregon, prepared for OWRD, available at https://www.oregon.gov/owrd/WRDPublications1/230721_FINAL_Business_Case_for_Water_in_OR.pdf.

U.S. Census Bureau, 2023, U.S. Department of Commerce. "Selected Economic Characteristics." American Community Survey, ACS 1-Year Estimates Data Profiles, Table DP03, [https://data.census.gov/table/ACSDP1Y2023.DP03?q=profile&g=010XX00US_040XX00US41,41\\$0500000&y=2023](https://data.census.gov/table/ACSDP1Y2023.DP03?q=profile&g=010XX00US_040XX00US41,41$0500000&y=2023). Accessed March 12, 2025. Also available at <https://www.oregon.gov/das/oea/Documents/ACS-2019-2023-profiles.xlsx>.