



# Oregon

Tina Kotek, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

[www.Oregon.gov/OWRD](http://www.Oregon.gov/OWRD)

**October 20, 2025**

## **DRAFT - Proposed Guidance for Voluntary Agreements Among Groundwater Users from the Harney Basin Groundwater Reservoir**

### **Background**

This guidance outlines initial criteria the Oregon Water Resources Department (Department) has determined to be consistent with ORS 537.745 (Attachment A) to help the Oregon Water Resources Commission (Commission) consider voluntary agreements among groundwater users from the Harney Basin groundwater reservoir. To date, no voluntary agreements have been proposed or approved for groundwater management in Oregon. These initial criteria are subject to change as groundwater users and the Department learn and work through management challenges in the basin.

### **General Applicability**

Voluntary agreements may be entered into for any groundwater reservoir in the state; being a critical groundwater area is not a prerequisite. The agreement must be consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992 (pertaining to civil penalties), in particular ORS 537.525 (pertaining to general policy considerations), 537.730 to 537.740 (pertaining to critical groundwater area designation), and 537.780 (pertaining to Commission authority). This guidance focuses specifically on voluntary agreements within the Harney Basin.

### **Authority**

The Commission has authority to approve or reject voluntary agreements. The Department may provide advice to the Commission. Under ORS 536.037(1)(d), the Department may participate in any proceeding. The Commission can explicitly delegate authority to the Department to act as the Commission's staff in making a recommendation to approve or reject a voluntary agreement, including amendments, to the Commission. The Commission can delegate its authority to approve or reject voluntary agreements, including amendments, to the Department. These guidelines outline terms that the Department would consider adequate for recommending approval of a voluntary agreement to the Commission. The Department will work with the Commission to refine these terms and guidance as more is learned from proposed voluntary agreements submitted by groundwater users.

### **Groundwater Users**

#### **INITIAL PARTIES**

- (1) Parties of a voluntary agreement may include groundwater users who are
  - (a) individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, public and private municipal corporations, political subdivisions,

the state, and any agencies thereof, the federal government and any agencies thereof and federally recognized Indian tribes; and  
(b) districts, corporations, or political subdivisions organized for public purposes.

#### CONSIDERATION OF PRIOR APPROPRIATION

Because voluntary agreements approved by the Commission "...shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992" the participants within an approved voluntary agreement are not subject to other orders/rules of the commission, and may not be subject to regulatory reductions in water use within a Critical Groundwater Area (CGWA) designation. Thus, if a junior right participates in a Commission-approved voluntary agreement, the junior right may not be subject to regulation under the CGWA while a more senior right not part of the voluntary agreement may be regulated off. Considering the number of voluntary agreements, the proposed amount of groundwater use reduction, and the overall tabulation of groundwater rights and priority dates in the area will all be important to the long-term management success of the groundwater reservoir.

#### OVERRIDING ASSUMPTION FOR DEPARTMENT RECOMMENDATION OF APPROVAL OF A VOLUNTARY AGREEMENT

For Department staff to recommend a voluntary agreement for approval by the Commission, the water rights enrolled in the voluntary agreement must demonstrate that substantial water use reductions will be implemented over an appropriate timescale. The Department may model the proposed voluntary agreement reductions to support a recommendation to the Commission which may include an evaluation of how the simulated water levels compare with the proposed trajectories for success in the proposed OAR 690-512 rules. If the reductions are likely to achieve similar median water level trends (no lower than the median trajectory) within the subarea, then the Department will recommend the voluntary agreement be adopted. Regulation of non-participating users will occur in alignment with the scheduled volume of reductions outlined in proposed OAR 690-512-0070.

The goal of a voluntary agreement in the proposed Harney Basin Critical Groundwater Area (CGWA) should be to reduce use such that groundwater levels are stabilized. Success of the voluntary agreement will be measured in conjunction with the adaptive management checkpoints outlined in the proposed OAR 690-512-0080. If the median groundwater level change for the subarea is on track or higher than the median groundwater level change trajectory outlined in rule for the Harney Basin CGWA, then the voluntary agreement will be considered on track and successful. However, if the median groundwater level change (as measured from 2028) is below the median groundwater level change trajectory outlined in the proposed OAR 690-512 rules for the subarea, then the voluntary agreement may be considered unsuccessful. Regular review at the adaptive management checkpoints will ensure that measured groundwater level changes match with the proposed trajectory for achieving success. If they fail to do so, the Department may recommend to the Commission termination of the voluntary agreement and regulatory reductions to reduce groundwater use to slow the rate of groundwater level decline.

## Groundwater Rights

Groundwater rights eligible to participate in a voluntary agreement are limited to current, valid water rights not subject to forfeiture under ORS 540.610.

The following conditions also apply:

- No point of appropriation which has exceeded a permit decline condition or has resulted from a transfer of a point of appropriation that has exceeded a decline condition may be used to pump water or otherwise participate in a voluntary agreement.
- All points of appropriation and the full place of use of any participating water right must be fully subject to the agreement; partial inclusion of points of appropriation or place of use of any water right is not permissible.
- Only lands listed as a place of use on a valid groundwater right may be included in a voluntary agreement.
- Only wells listed as a point of appropriation on a valid water right may be included in a voluntary agreement.
- The maximum volume of water used by an individual right participating in the voluntary agreement may not exceed the volume authorized by the right.

## **Groundwater Reservoir**

### **BOUNDARIES DEFINED**

A voluntary agreement must define the portion of the Harney Basin groundwater reservoir that will be included in the voluntary agreement. A voluntary agreement must be wholly contained within a single proposed Harney Basin CGWA subarea boundary as defined in OAR 690-512. Any groundwater points of appropriation proposed to be included in an agreement must be within the boundaries of the area covered by the agreement.

### **MAP**

- (1) A voluntary agreement must include a map depicting all places of use and points of appropriation for the water rights included in the agreement.
- (2) A voluntary agreement must contain a list of the groundwater rights that provide the basis for water use on all authorized places of use within the geographic scope of the agreement. The list of groundwater rights should also include the current owner and operator of the groundwater right as well as contact information including phone, email, and mailing address.

## **Groundwater Use**

### **AGREED WATER USE LIMIT**

The “Agreed Water Use Limit” is the maximum total volume of water that the parties agree can be pumped annually under the voluntary agreement. A submitted agreement must specify an agreed water use limit, and the total water use by all parties to the agreement may not exceed this value.

Water use reductions within the voluntary agreement may be implemented over a period of years by reducing the agreed water use limit. The schedule for water use reductions must be specified

in the voluntary agreement and should demonstrate a commitment to achieving stable water levels within the same timeframe set in rule by the Commission.

The Permissible Total Withdrawal (PTW) as defined in OAR 690-512 is the annual volume of groundwater pumping for each subarea the Department has determined can achieve the target groundwater level trend by 2058 when following the schedule of reductions defined in proposed OAR 690-512-0070. The PTW and schedule of reductions should be used as a reference for achieving stability within a subarea and considered by voluntary agreement participants as they develop a proposed voluntary agreement.

#### **RATE AND DUTY**

The Director may determine, pursuant to ORS 537.735(3)(d), that a higher instantaneous pumping rate, up to 1/60<sup>th</sup> cubic foot per second per acre, would be allowable. The use of a higher rate shall be discontinued if the Department determines, based on a valid call, that regulation of a groundwater well is necessary to satisfy a senior water right.

#### **OVERUSE**

“Overuse” means use above the agreed water use limit approved in the voluntary agreement.

Overuse is a basis for a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with [“Agreement Termination” (a)].

At no time will underuse result in an increase to the agreed water use limit.

#### **USE FROM UNAUTHORIZED WELLS**

Parties to a voluntary agreement may only withdraw water from wells listed as authorized points of appropriation (POA) on water rights participating in the voluntary agreement. Withdrawal of water from any other well by any party may be a basis for a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with [“Agreement Termination” (a)].

#### **Duration**

The agreement will include the period over which groundwater use will be reduced. For voluntary agreements proposed within the Harney Basin CGWA, the duration of the agreement shall not exceed the number of years until the next adaptive management checkpoint outlined in OAR 690-512-0080. This timeline allows for regular review of water use and groundwater level trends, and renewal of voluntary agreements in coordination with the adaptive management checkpoints where median groundwater level change is tracked within the Harney Basin CGWA.

### **Reporting and Monitoring**

#### **ANNUAL STATEMENT OF PLACE OF USE**

No later than January 5<sup>th</sup> of each year, the parties to the agreement must provide the Department with:

- (1) a map depicting lands subject to irrigation during the upcoming irrigation season. The total number of acres, when multiplied by the approved duty, may not exceed the annual agreed water use limit.
- (2) a list of each well to be pumped during the irrigation season.
- (3) contact information, including telephone and email address, for owners of every well to be pumped during the irrigation season.

Failure to provide an annual statement of place of use in a timely manner may result in a finding that the parties are not substantially complying with the agreement. The Department may recommend termination of the agreement consistent with [“Agreement Termination” (a)].

#### MONITORING

- (1) All parties to the agreement must maintain functional totalizing flow meters in accordance with proposed OAR 690-512-0110.
- (2) Any agreement recommended by the Department to the Commission for approval must include an acknowledgment that Department staff may, with reasonable notice, enter the property of a party for the purposes of water level measurement, reading and recording flow meters, and ensuring that the flow meters are properly functioning. Failure to maintain functional flow meters or provide reasonable access is a basis for termination of the agreement [“Agreement Termination” (a)].
- (3) Prior to the Department recommending a voluntary agreement for approval to the Commission, watermaster staff must visit each participating landowner’s property to verify wells authorized for use under the voluntary agreement and the proper installation and functioning of totalizing flow meters.

#### **Agreement Modification Prior to Commission Approval**

Once groundwater users submit a voluntary agreement for the Commission to review and approve, the Department requires a minimum of 90 days to review the voluntary agreement proposal and prepare a report and recommendation for the Commission. Several factors will influence the timing of the Department’s review and decision of the Commission. This guidance document provides the minimum requirements for the Department to recommend a voluntary agreement be approved by the Commission. The Commission may require additional agreement terms prior to approval if the Commission determines that the terms are necessary to ensure that the goals of the agreement will be achieved. As voluntary agreements are new to both groundwater users and the Commission, new and innovative approaches to groundwater management and use may require additional conversation.

#### **Agreement Amendment After Commission Approval**

The Commission has the authority to approve or reject amendments to approved voluntary agreements. The Commission should be allowed at least 90 days to review any submitted

agreement before approving or rejecting a submitted agreement. Amendments should not attempt to modify the voluntary agreement in the middle of the irrigation season, and should be submitted for review well ahead of the following irrigation season.

#### CHANGED CONDITIONS

Voluntary agreements may be amended if the Commission determines changed conditions, including new information regarding the performance of, or compliance with the agreement, have made the continuance of the agreement a detriment to the public welfare, safety and health or have resulted in the agreement no longer meeting the requirements of ORS 537.745. The parties may agree to amend the agreement to the satisfaction of the Commission as an alternative to termination [“Agreement Termination” (b)].

#### ADDITIONAL PARTIES

Voluntary agreements may be amended to add parties to the agreement. Additional holders of water rights of record within the subarea or area of an existing voluntary agreement may join the voluntary agreement. New parties must comply with all provisions of the voluntary agreement. In addition:

- (1) A prospective party must notify the Department, and the existing parties to the agreement, of their intent to join the agreement by November 1<sup>st</sup> prior to the year in which they wish to join.
- (2) Watermaster staff must visit the prospective party’s agricultural operation to verify wells authorized for use under the voluntary agreement and the proper installation and functioning of totalizing flow meters.
- (3) All existing parties to the agreement and the Commission must consent to the addition of any new party.
- (4) The parties to the voluntary agreement must demonstrate how adding a prospective party to the agreement will not reduce the effectiveness of the agreement in achieving stable water levels within the subarea where the agreement is in effect

#### PARTY TERMINATION

With approval of the Commission, voluntary agreements may be amended to remove parties who request removal. Any party terminating their involvement in the agreement will become subject to any existing groundwater control measures pertaining to the geographic location of their water right.

The remaining parties in the voluntary agreement must demonstrate to the Commission how the voluntary agreement will remain viable and contribute to water use reductions that will lead to the stabilization of water levels in the subarea.

#### WATER RIGHT TRANSACTIONS

Voluntary agreements must be amended and approved by the Commission and all parties to the agreement if any water right subject to the agreement is modified by a water right transaction in a way that changes the amount of water available to the agreement or changes the places of use

subject to the agreement. Such transactions include, but are not limited to, changes to the place of use, changes to the points of appropriation, or splitting of a right. All parties to the agreement must be notified of the need to amend the agreement.

### **Agreement Approval**

Any agreement that meets the requirements of this document may be recommended by the Department to the Commission for approval.

### **Agreement Termination**

Any agreement approved by the Commission may be terminated by the lapse of time as provided in the agreement, by the consent of all parties to the agreement, or by the Commission if the Commission finds, after investigation and a public hearing upon at least 30-days' notice, that:

- (a) The agreement is not being substantially complied with by one or more parties thereto, or;
- (b) Changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992 (pertaining to civil penalties), in particular ORS 537.525 (pertaining to general policy considerations), 537.730 to 537.740 (pertaining to critical groundwater area designation), and 537.780 (pertaining to Commission authority).

The Department also may recommend the Commission consider termination of an approved agreement based on (a) or (b) above.

The Commission's termination of an approved voluntary agreement is an order in other than contested case.

**Attachment A**

**ORS 537.745 Voluntary agreements among ground water users from same reservoir.**

(1) In the administration of ORS 537.505 to 537.795 and 537.992, the Water Resources Commission may encourage, promote and recognize voluntary agreements among ground water users from the same ground water reservoir. When the commission finds that any such agreement, executed in writing and filed with the commission, is consistent with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992, and in particular ORS 537.525, 537.730 to 537.740 and 537.780, the commission shall approve the agreement.

Thereafter the agreement, until terminated as provided in this subsection, shall control in lieu of a formal order or rule of the commission under ORS 537.505 to 537.795 and 537.992. Any agreement approved by the commission may be terminated by the lapse of time as provided in the agreement, by consent of the parties to the agreement or by order of the commission if the commission finds, after investigation and a public hearing upon adequate notice, that the agreement is not being substantially complied with by the parties thereto or that changed conditions have made the continuance of the agreement a detriment to the public welfare, safety and health or contrary in any particular to the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.

(2) When any irrigation district, drainage district, other district organized for public purposes or other public corporation or political subdivision of this state is authorized by law to enter into agreements of the kind referred to in subsection (1) of this section, the commission may approve such agreements as provided in subsection (1) of this section. Any such agreement approved by the commission shall have the same effect and shall be subject to termination in the same manner and for the same reasons set forth in subsection (1) of this section. [1955 c.708 §31; 1985 c.673 §65]