

OREGON



WATER RESOURCES
DEPARTMENT

Annual Five-Year Rule Review 2024

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The purpose of the review

[ORS 183.405](#) of the Oregon Administrative Procedures Act requires that agencies review newly adopted rules within five years after adoption. This document conducts the 2024 five-year review that looks back at the rules adopted in 2019.

Legal requirements

The statute requires agencies to review new rules to determine whether:

- The rule had the intended effect
- The agency over- or underestimated the rule’s anticipated fiscal impact
- Subsequent changes in the law required the agency to amend or repeal the rule
- There is a continued need for the rule

Agencies are only required to use available information to conduct this review.

If the agency appointed an advisory committee in developing the rule, the agency must provide the committee members a copy of the review.

Exemptions

Rules are exempt from this review if they:

- Consist only of the repeal of or an amendment to an existing rule
- Are adopted to implement court orders or to settle civil proceedings
- Only adopt federal laws or rules by reference
- Implement legislatively approved fee changes
- Only correct omissions or errors

Distribution of the review

OWRD’s Agency Rules Coordinator:

- Provides a copy of this review to OWRD’s Leadership Team
- Provides a copy of this review to rules advisory committee members
- Posts a copy of the review on OWRD’s rulemaking website
- Preserves a copy of the review in OWRD’s electronic rulemaking archives
- Submits a copy to the Oregon Secretary of State

Rules subject to 2024 review

Division 25 Regulation of Groundwater in the Off-Project Area During the Irrigation Season for Senior Surface Rights in the Klamath Basin

Adopted date: April 12, 2019

Rule numbers: 690-025-0020, 690-025-0025, 690-025-0040

Reviewer: Margo Mashkovskaya (Rules Coordinator) and Danielle Gonzalez (Policy Section Manager)

Rule Summary

This rulemaking adopted the following rules to OAR 690, Division 25:

690-025-0020 Defines terms used in OAR 690, Division 25, including sections -0025 and -0040

690-025-0025 Outlines that the Department may manage surface water and groundwater uses to protect senior holders of water rights and determined claims in accordance with the users' water rights and determined claims pursuant to these rules, instead of the existing Division 9 rules.

690-025-0040 Specifies Department finding of the hydraulic connection between surface water and groundwater in the Klamath Basin, and that groundwater use results in stream and spring flow depletion, based on the best available information. Indicates that the Department finds regulation of wells within 500 feet of surface water will result in relief to holders of surface water rights, that the Department shall determine the distance between each well and the source of surface water rights, and that the Department may regulate these wells when a valid call is made by a holder of a senior right or determined claim. Specifies effective date of rules, and that they do not set a precedent.

Was a Rules Advisory Committee used?

Yes.

Did the rule achieve the intended effect?

No, these rules were found beyond the statutory authority of the Department authorized by ORS 537.525. On May 4, 2020, in Case Brooks v. Byler et al. (19-cv-27798), the Circuit Court of the State of Oregon for Marion County found that the Division 25 rules were not authorized by ORS 537.525. The court held that the rules effectively declared a critical groundwater area without following the statutory requirements set forth in ORS 537.730–742.

Did the agency over- or underestimate the rule's fiscal impact?

These rules were found beyond the statutory authority of the Department authorized by ORS 537.525 and therefore the fiscal impact analysis prepared at the time of adoption does not reflect the effects of rules.

Do subsequent changes in the law require the agency to amend or repeal the rule?

Yes, these rules should be repealed, as they were found to exceed the statutory authority granted under ORS 537.525. These rules remain on the Departments list of necessary rulemakings and will be addressed at the earliest available opportunity.

Is there a continued need for the rule?

No.