

Critical Groundwater Area Designation Contested Case Process



OWRD may initiate the contested case process at any time after rule adoption. OWRD will identify the corrective control actions under ORS 537.742(a)-(f) that they believe will correct the problem. Those actions can be:

Apportioning the permissible total withdrawal among valid groundwater rights users

Preferences to withdrawals of groundwater for residences and livestock

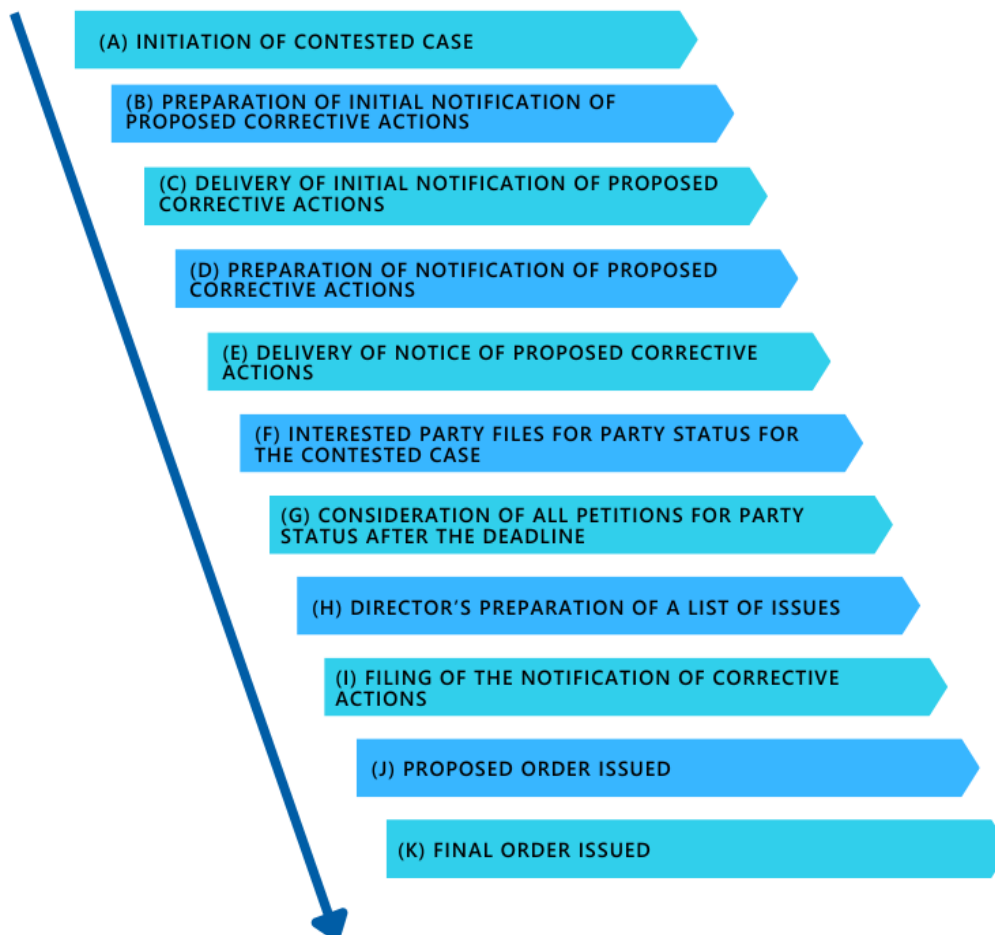
Reducing the permissible withdrawal among appropriators of wells

Allowable permissible withdrawal for appropriators with multiple wells

Abatement of a well causing pollution to the groundwater supply

A provision requiring and specifying a system of rotation of use of groundwater

Contested Case Process Flowchart



Contested Case Process Details

(A) Initiation of Contested Case

Relevant Statute(s) and Rule(s) **ORS 537.742(2)(a)–(f), OAR 690-010-0160(1)(a)–(f)**

Any time after the adoption of the Critical Groundwater Area (CGWA) rule adoption OWRD may initiate the contested case process. The beginning of this process OWRD will identify the corrective control actions under **ORS 537.742(2)(a) – (f)** they believe will correct the problem in the basin. These corrective actions can be:

- A provision apportioning the permissible total withdrawal as established by rule under **ORS 537.730**, among the appropriators holding valid rights to ground water in the critical area in accordance with the relative dates of priority of such rights.
- A provision according preference, without reference to relative priorities, to withdrawals of ground water in the critical area for residential and livestock watering purposes first. Thereafter, the commission may authorize withdrawals of ground water in the critical area for other beneficial purposes, including agricultural, industrial, municipal other than residential, and recreational purposes, in such order as the commission considers advisable under the circumstances, so long as such withdrawal will not materially affect a properly designed and operating well with prior rights that penetrates the aquifer.
- A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.
- Where two or more wells in the critical area are used by the same appropriator, a provision adjusting the total permissible withdrawal of ground water by such appropriator, or a provision forbidding the use of one or more of such wells completely.
- A provision requiring the abatement, in whole or part, or the sealing of any well in the critical area responsible for the admission of polluting materials into the ground water supply or responsible for the progressive impairment of the quality of the ground water supply by dispersing polluting materials that have entered the ground water supply previously.
- A provision requiring and specifying a system of rotation of use of ground water in the critical area.

(B) Preparation of Initial Notification of Proposed Corrected Actions

Relevant Statute(s) and Rule(s): **ORS 537.742(1), OAR 690-010-0160(2), (3)(a)–(e), (4)(a)–(d), (5)(a)–(c)**

OWRD will send out an initial notification of proposed corrective actions. The notification must include the following:

Identification of the Critical Groundwater Area

Relevant Statute(s) and Rule(s): **OAR 690-010-0160(3)(a)**

- The department will identify the Critical Groundwater Area in which the corrective control actions are proposed.

Factors that led to the designation of the CGWA

Relevant Statute(s) and Rule(s): **OAR 690-010-0160(3)(b)**

- A statement describing the factors that led to the designation of the critical groundwater area.

Description of Proposed Corrective Actions

Relevant Statute(s) and Rule(s): **OAR 690-010-0160(3)(c)**

- A description of the proposed corrective actions that the Department believes will resolve the problems that resulted in the designation of the critical groundwater area.

Description of Geographic Area

Relevant Statute(s) and Rule(s): **OAR 690-010-0160(3)(d)**

- A description of the geographic area in which corrective actions will be proposed.

Description of how a person may request a Notice of Proposed Corrective Actions

Relevant Statute(s) and Rule(s): **OAR 690-010-0160(3)(e)**

- A description of how persons may request a Notice of Proposed Corrective Action and the deadline for requesting such notice.

(C) Delivery of Initial Notification of Proposed Corrective Actions

Relevant Statute(s) and Rule(s): **OAR 690-010-0160(4)(a)–(d)**

OWRD will send the initial notification to the following:

- Publication in a newspaper having general circulation in the area in which the corrective actions will be proposed, for a period of at least two weeks and not less than one publication each week.
- Publication in the weekly notice published by the Department for four consecutive weeks.
- First class mail to any affected local governments and to tribal governments within or adjacent to the geographic area in which corrective actions are identified.
- Posting the initial notification of proposed corrective actions on its website.

(D) Preparation of Notification of Proposed Corrective Actions

Relevant Statute(s) and Rule(s): **ORS 537.742(2)(a)–(f), OAR 690-010-0170(1), (2)(a)–(m), (3)(a)–(c), OAR 690-010-0160(3)(e)**

The notification of proposed corrective actions shall include:

Case Caption that Identifies the CGWA Issues

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(a)**

- A case caption that identifies the CGWA at issue including the citation to the rule establishing the CGWA.

Statement of the Problem

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(b)**

- A statement of the problem resulting in designation of the critical groundwater area.

A Description of Corrective Actions

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(c)**

- A clear and concise description of the proposed corrective action(s).

A Description of the Area

Relevant Statute(s) and Rule(s) : **OAR 690-020-0170(2)(d)**

- A description of the area where the Director intends to implement the proposed corrective actions including attachment of any maps as necessary to clearly show the area of intended action(s) such that groundwater right holders and users of groundwater exempt under ORS 537.545 located within the area of intended action may determine whether they will be affected by the proposed corrective action(s).

Identification of Groundwater Users

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(e), 690-010-0160(7)**

- Identification of those groundwater users affected by the proposed corrective actions as those groundwater right holders and exempt groundwater users have identified themselves in a request pursuant to OAR 690-010-0160(7).

Facts Showing that the Corrective Actions Will Fix the Problem

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(f)**

- Findings of fact that support a conclusion that the problem(s) that resulted in designation of a critical groundwater area may be corrected by implementing the corrective control measures specified in the Notice of Proposed Corrective Action(s).

Reference to Evidence Relied Upon for the Findings

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(g)**

- Reference to observations, evidence, reports, or any other information that supports the agency's findings of fact.

Conclusion of the Law

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(h)**

- Conclusions of law based on the findings of fact and applicable law.

Explanation on Reasoning that Led to the Conclusion that the Corrective Control Actions Will Fix the Problem

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(i)**

- An explanation of the reasoning that leads from the findings of fact to the conclusion that the problems that resulted in designation of the critical groundwater area may be resolved by implementation of the corrective control measure(s) identified in the notice.

Citation of Any Laws Involved

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(j)**

- A citation to any laws involved.

Statement of Party's Rights

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(k)**

- A statement of a party's right to a contested case hearing pursuant to ORS chapter 183.

Deadline for Submitting Party Status

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(2)(l)**

- A deadline for submitting a request for party status as provided in **OAR 690-010-0180**

(E) Delivery of Notice of Proposed Corrective Actions

Relevant Statute(s) and Rule(s): **OAR 690-010-0170(3)(a)–(c)**

- After preparation of the Notice of Proposed Correct Actions OWRD will give notice to:
 - Groundwater right holders and persons who exercise the right to use groundwater pursuant to the exemption in ORS 537.545 whose wells are within the identified area in which corrective actions are proposed but only as the Department possesses contact information or may reasonably obtain contact information.
 - Persons who have timely requested copies of the notice as provided in OAR 690-010-0160(3) and who have identified themselves as persons who hold a groundwater right or exercise the right to use groundwater pursuant to the exemption in ORS 537.545.
 - Publication in the weekly notice published by the Department for four consecutive weeks.
 - Publication on the Department's website.

(F) Interested Party Files for Party Status for the Contested Case

Relevant Statute(s) and Rule(s): **ORS 537.545, OAR 137-003-0535, OAR 137-003-0535(5), OAR 690-010-0180(3)(a)–(g)**

- Contained in the Filling of the Notification of Corrective Action is a deadline for anyone to file for a party status. A person or persons who is using a groundwater right or who user groundwater under exempt use can request a limited party or a party status to participate in the contested case. The petition should include:
 - Names and addresses of the petitioner.
 - Name and address of the petitioner's attorney, if any.
 - Identification of the water right held by petitioner or identification of the exempt well, and exempt uses, used or owned by petitioner.
 - A detailed description of how the corrective actions in the Notice of Proposed Corrective Action(s) would adversely affect or aggrieve petitioner supported by an affidavit stating such facts.
 - A detailed description of how the Notice of Proposed Corrective Action(s) is in error or deficient and how

- to correct the alleged error or deficiency.
 - A detailed description of whether the problem(s) that resulted in the designation of the critical groundwater area may or may not be corrected by implementing the corrective control measures specified in the agency notice and why.
 - Any citation of legal authority supporting the petition, if known.
- A person who does not hold a groundwater right or exercise exempt use can request a party status but do not need to be served a copy of the petition.

(G) Consideration of All Petitions for Party Status After the Deadline

Relevant Statute(s) and Rule(s): **OAR 690-010-0180(2)(a)–(b), OAR 690-010-0180(5)**

- After the deadline for party status. OWRD will consider granting the person or persons a party status. If the OWRD grants petition for party status, OWRD shall specify the participation and procedural limitations as it deems appropriate. OWRD shall also list those issues raised by each petitioner's request for party status.

(H) Director's Preparation of a List of Issues

Relevant Statute(s) and Rule(s): **ORS 183.417(8), 690-010-0190(2)(a), OAR 137-003-0501(7)**

- After all party status petitions are considered, the Director will create a list of issues to be heard at the contested cases hearing. The list of issues shall identify each party participating in the contested case and shall list the issues raised by each party in their petition of party status.
- Any party seeking to amend the list of issues must file to the Administrative Law Judge.

(I) Filing of the Notification of Corrective Actions

Relevant Statute(s) and Rule(s): **OAR 137-003-0530, OAR 137-003-0700, OAR 690-010-0200(1)(2)(a)–(f)**

- OWRD submits to the Office of Administrative Hearings the following documents:
 - Copies of evidence, maps, reports, or any other information that supports the Department's findings of fact, conclusions and determination of corrective actions that will resolve the problems that resulted in designation of the critical groundwater area.
 - Copies of each order on party status with the petition for party status attached.
 - The list of issues compiled by the Director.
 - A certificate of service that includes each party's or a party's representative's name, mailing address, electronic mail address and phone number.
 - Any other information that the Director reasonably believes is necessary to support the Notice of Proposed Corrective Actions or is relevant to the proceedings.
- OWRD will post all information filed to the Office of Administrative Hearing on their website.

(J) Proposed Order Issued

Relevant Statute(s) and Rule(s): **OAR 690-010-0210**

- The Administrative Law Judge issues a proposed order. If the orders are averse to any party of OWRD, the party or OWRD may file exceptions and present and argument to the commission. All exceptions must be filled by mail or hand delivered to the commission within 20 days.

(K) Final Order Issued

Relevant Statute(s) and Rule(s): **ORS 537.730, ORS 537.525, ORS 183.482, OAR 690-010-0220, OAR 137-003-0665, OAR 137-003-0670**

- After the conclusion of the contested case and consideration of exceptions filed the Commission will issue a final order.
- If the Commission finds that the proposed corrective actions will resolve the problem that designated the Critical Groundwater Area, the Commission will issue a final order.
- If the commission finds that the proposed corrective actions will not resolve the problem that designated the Critical Groundwater Area, the Commission will order OWRD to consider new proposed corrective actions.