



Statutory Framework for Rulemaking

OAR Chapter 690, Division 010 – Processes Related to Establishing Critical Groundwater Area (CGWA) Designations and Controls

Oregon Revised Statutes Chapter 537 – Appropriation of Water Generally

ORS 537.730 Designation of critical ground water area; rules; notice.

(1) The Water Resources Commission by rule may designate an area of the state a critical ground water area if:

- (a) Ground water levels in the area in question are declining or have declined excessively;
- (b) The Water Resources Department finds a pattern of substantial interference between wells within the area in question;
- (c) The department finds a pattern of interference or potential interference between wells of ground water claimants or appropriators within the area in question with the production of geothermal resources from an area regulated under ORS chapter 522;
- (d) The department finds a pattern of substantial interference between wells within the area in question and:
 - (A) An appropriator of surface water whose water right has an earlier priority date; or
 - (B) A restriction imposed on surface water appropriation or a minimum perennial streamflow that has an effective date earlier than the priority date of the ground water appropriation;
- (e) The available ground water supply in the area in question is being or is about to be overdrawn;
- (f) The purity of the ground water in the area in question has been or reasonably may be expected to become polluted to an extent contrary to the public welfare, health and safety; or
- (g) Ground water temperatures in the area in question are expected to be, are being or have been substantially altered except as specified in ORS 537.796.

(2) The proceeding to designate a critical ground water area shall be conducted according to the provisions under ORS chapter 183 applicable to the adoption of rules by an agency, except that a hearing on a critical ground water declaration shall occur at least 60 days after notice has been given.

(3) In addition to the notice requirements under ORS 183.335, the department shall give notice by regular mail to:

- (a) The owners of record of all ground water registrations, permits and certificates for water use within the affected area; and

- (b) Each water well constructor licensed under ORS 537.747.
- (4) If the department satisfies the notice requirements under ORS 183.335 and subsection (3) of this section, a person shall not contest a critical ground water area designation on grounds of failure to receive notice by regular mail.
[1955 c.708 §26; 1957 c.341 §8; 1981 c.589 §5; 1985 c.673 §62; 1987 c.442 §1; 1989 c.201 §4; 1991 c.400 §4]

ORS 537.735 Rules designating critical ground water area.

- (1) A rule adopted by the Water Resources Commission under ORS 537.730 shall:
- (a) Define the boundaries of the critical ground water area and shall indicate which of the ground water reservoirs located either in whole or in part within the area in question are included within the critical ground water area. Any number of ground water reservoirs which either wholly or partially overlie one another may be included within the same critical ground water area.
 - (b) Contain a provision requiring a periodic review of conditions in the critical ground water area. The review shall be in sufficient detail to evaluate the continuing need for the critical ground water area designation and shall occur no less frequently than once every 10 years.
- (2) In adopting the rule, the commission shall consider any orders or permits applicable to the reservoir issued by the governing board or State Geologist of the State Department of Geology and Mineral Industries under ORS chapter 522.
- (3) A rule by the commission under subsection (1) of this section may include any one or more of the following corrective control provisions:
- (a) A provision closing the critical ground water area to any further appropriation of ground water, in which event the commission shall thereafter refuse to accept any application for a permit to appropriate ground water located within such critical area.
 - (b) A provision determining the permissible total withdrawal of ground water in the critical area each day, month or year.
 - (c) The disposition of any application for a water right permit for the use of water in the area that is pending at the time the commission initiates the rulemaking process or that is received during the rulemaking process.
 - (d) Any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992.
 - (e) A provision closing all or part of the critical ground water area to further appropriation of ground water for its thermal characteristics.

(f) A provision determining the permissible change in thermal characteristics of ground water in all or part of the critical ground water area each day, month or year. Insofar as may be reasonably done, the Water Resources Director shall apportion the permissible total temperature impact among those appropriators whose exercise of valid rights in the critical area affect the thermal characteristics of the ground water, in accordance with the relative dates of priority of such rights.

[1955 c.708 §27; 1981 c.589 §6; 1981 c.919 §1; 1985 c.673 §63; 1989 c.201 §5; 1991 c.400 §5]

ORS 537.740 Filing rules designating critical ground water area.

In addition to any applicable requirements under ORS chapter 183, the Water Resources Commission shall file a copy of any rules designating a critical ground water area under ORS 537.730 to 537.740 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.

[1955 c.708 §28; 1985 c.673 §64; 1991 c.400 §6]

ORS 537.742 Contested case proceeding to limit use of ground water in critical ground water area.

(1) Any time after the Water Resources Commission adopts a rule under ORS 537.730 designating a critical ground water area, the commission may initiate a contested case proceeding to limit the use of ground water in the area if the commission has reason to believe that any of the qualifying criteria of ORS 537.730 (1) exists.

(2) Upon the conclusion of a contested case proceeding initiated under subsection (1) of this section and upon finding that the problems that resulted in the designation of a critical ground water area under ORS 537.730 can be resolved by implementing one or more of the corrective control provisions of this section, the commission shall issue a final order establishing any one or more of the following corrective control provisions:

(a) 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.

(b) 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.

(c) A provision reducing the permissible withdrawal of ground water by any one or more appropriators or wells in the critical area.

(d) 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.

(e) 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.

(f) A provision requiring and specifying a system of rotation of use of ground water in the critical area.

(3) The commission shall conduct the proceeding under this section according to the provisions of ORS chapter 183 applicable to contested case proceedings.

[1991 c.400 §2]