

OREGON



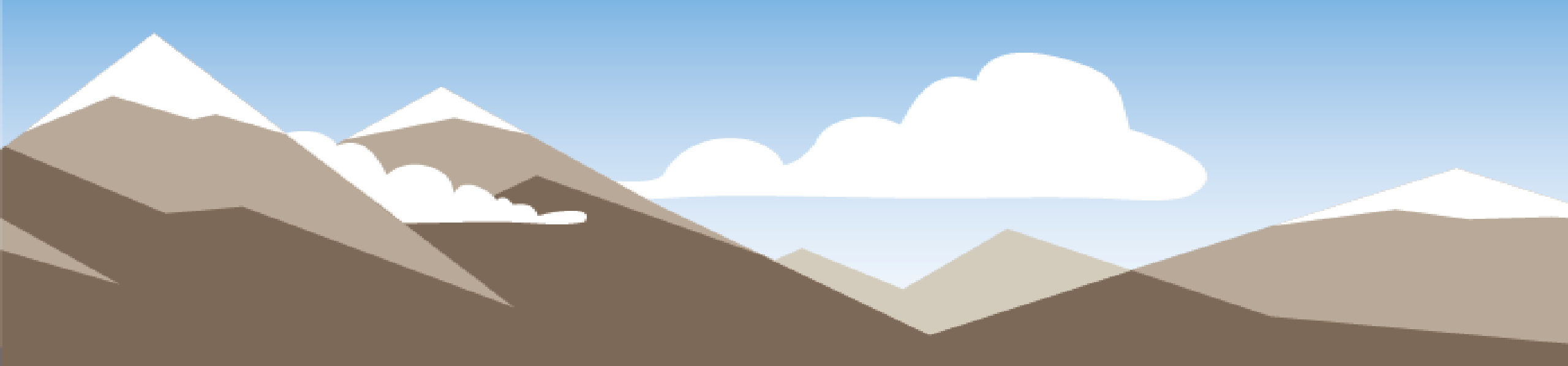
WATER RESOURCES  
DEPARTMENT

# Division 512 Rulemaking: Groundwater Regulation for the Malheur Lake Administrative Basin

Oregon Water Resources Department

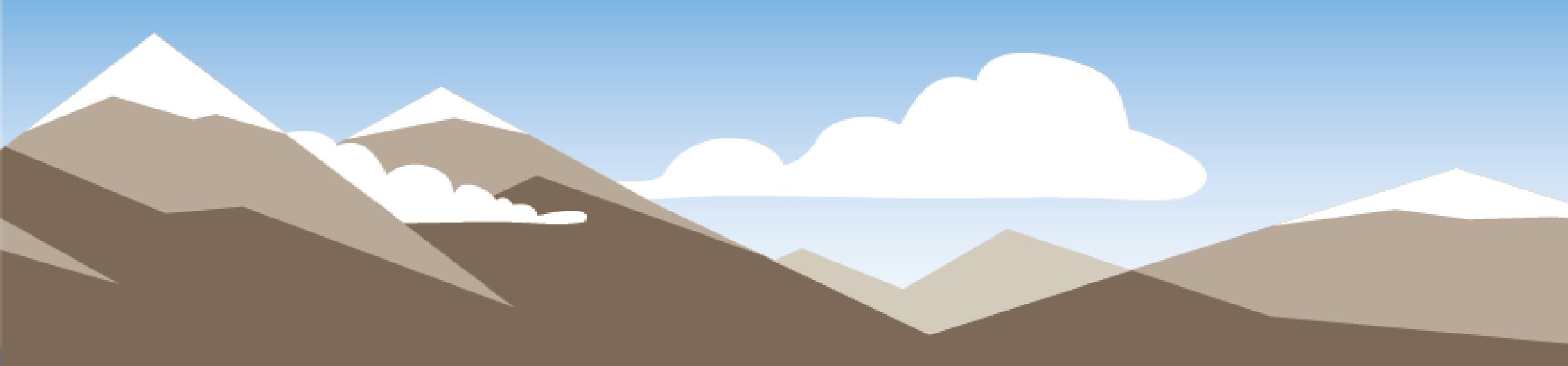
Rules Advisory Committee Meeting

March 6, 2024

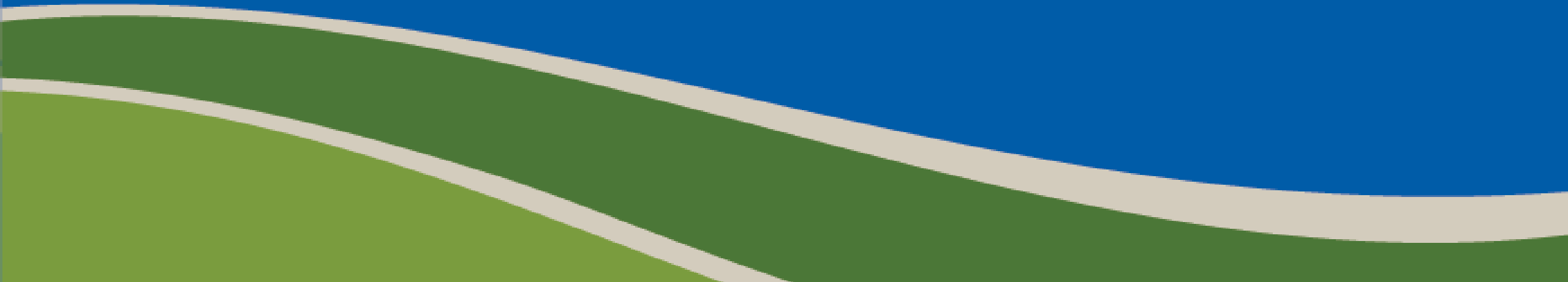


# Welcome and Introductions





# Agenda Review & Meeting Guidelines



# Ground Rules

- You are here to express your viewpoint.
- Treat others respectfully.
- If online, remain muted when not speaking.
- If online, use “raise hand” feature to indicate that you would like to speak.
- If in-person, raise hand to indicate that you would like to speak.
- RAC only participates in RAC meeting and Public only participates in comment period.

# RAC Operating Guidelines

## **RAC Role**

- Attend and participate in meetings at the horseshoe or online.
- Provide input/advice and help the Department consider various perspectives.

## **Public Role**

- Listen only during the presentations and RAC discussions from the audience or online.
- Provide input/advice during the designated comment time.

## **Department Role**

- Facilitate meetings.
- Foster collaboration.
- Consider RAC and public feedback.
- Draft final rules.

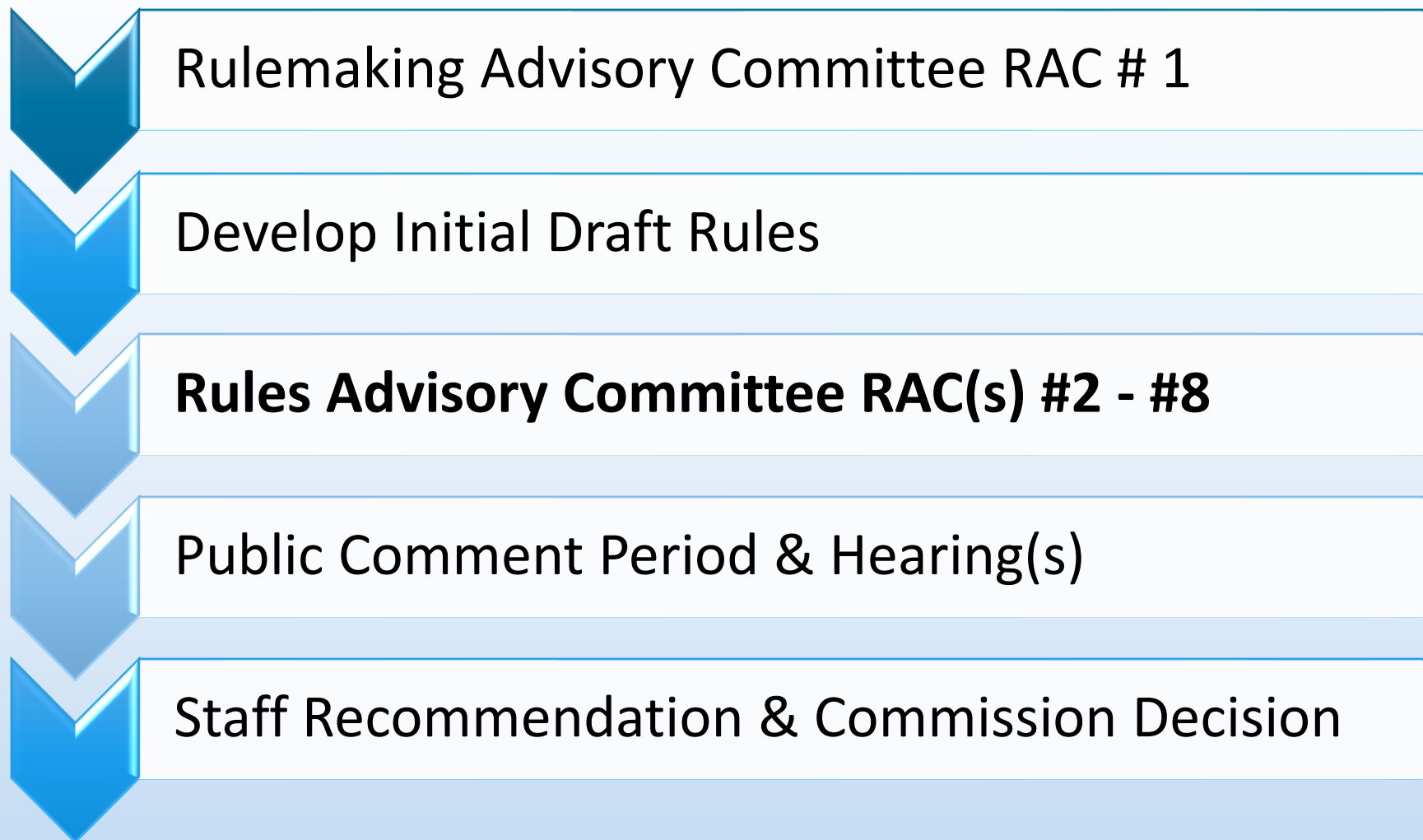
# Meeting Agenda

<b>1:00 to 1:20</b>	<b>Welcome and Introductions</b>
<b>1:20 to 2:00</b>	<b>Fiscal Impact Discussion</b>
<b>2:00 to 2:20</b>	<b>Sub-basin Approach</b>
<b>2:20 to 2:50</b>	<b>Rule Language Review - CGWA</b>
<b>2:50 to 3:05</b>	<b>Public Comment</b>
<b>3:05 to 3:15</b>	<b>Break</b>
<b>3:15 to 4:15</b>	<b>Draft Rule Language – CGWA</b>
<b>4:15 to 4:45</b>	<b>Community Efforts for Groundwater</b>
<b>4:45 to 5:00</b>	<b>Public Comment</b>

## Goal of Today's Meeting

- Begin discussion of the Fiscal Impact.
- Review Draft Rule Language.
- Build a shared understanding on allocation and implementation of the Permissible Total Withdrawal (PTW).
- Build an understanding and awareness of community efforts to reduce groundwater use.

# Overview of Rulemaking Process For Division 512





# Rulemaking Timeline

**April 25, 2023**

RAC Number  
1

**August 2024  
– October  
2024**

Public  
Comment

**December  
2024**

WRC  
Adoption

**August 2023  
– May 2024**

RAC Number  
2– 8

**October -  
December  
2024**

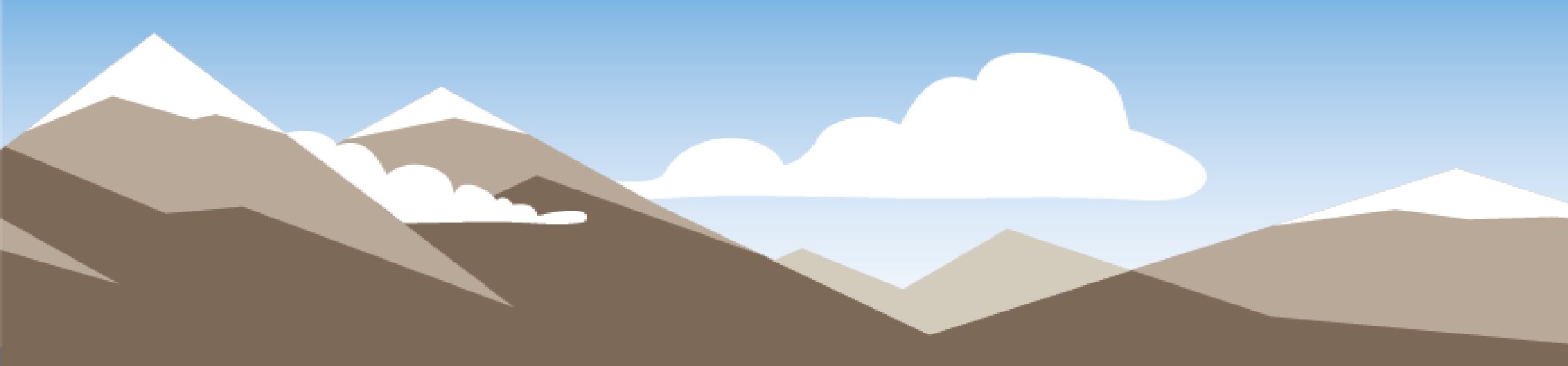
Draft Staff  
Report



# Critical Groundwater Area RAC Topics

# Critical Groundwater Area RAC Topics

- RAC #1: Introduction to Groundwater Management Tools
- RAC #2: Criteria for Delineating the Subareas
- RAC #3: Presented 15 Subareas Rationale, Criteria for Curtailment
- RAC #4: Subarea Rankings and Critical Groundwater Area GIS Map Review
- RAC #5: Regulation Sidebars, Meaning of No Further Decline, Rationale for PTW calculations, The PTWs for the 15 Subareas



# Fiscal Impact Statement



## What is a Fiscal Impact Statement?

- The Fiscal Impact Statement details how the proposed rules will economically impact state agencies, units of local government and members of the public.
- Small Business impacts
- The RAC assists OWRD with providing information to draft this statement.

**This is just the beginning of the conversation.**

## Information that we have gathered so far

- Business Case study for the economic value of water
- USDA Census of Agriculture 2022
- Oregon Department of Employment data

## Information still needed to be gathered:

- Utilities – OTEC, Harney Electric Cooperative

**Question:** Are there any other sources of information the Department should gather?

# Fiscal Impact

Groups to consider that will be impacted:

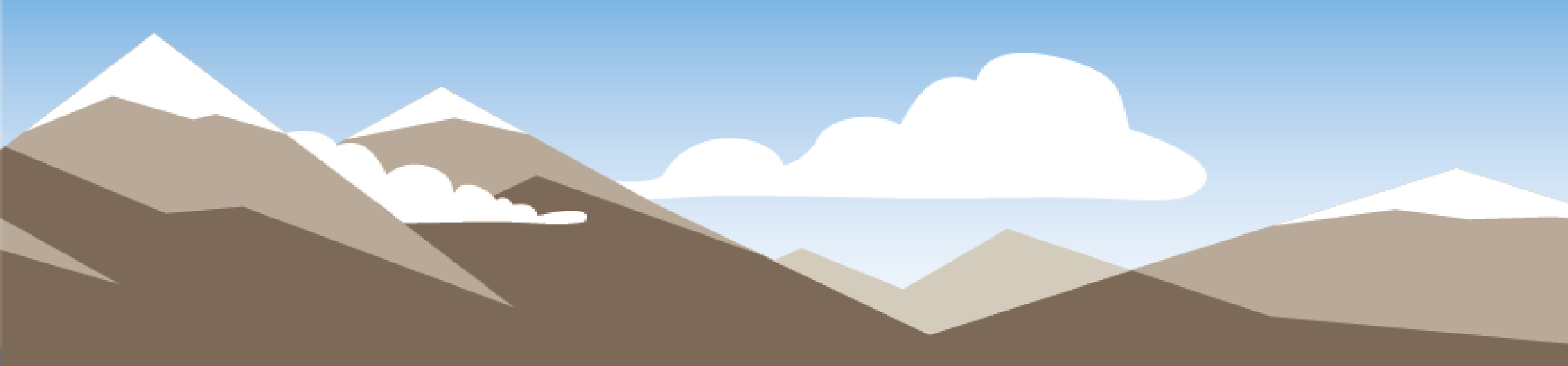
- Well users/ senior water rights
- Groundwater dependent ecosystems
- Agricultural community
- Small Businesses
- Local Government – County Tax Revenue

**Question:** Are other groups likely to be impacted that the OWRD should consider?

## Other Considerations:

- Asked about Datasets
- Asked about the groups
- Is there anything else we need to consider?





# Sub-basin Approach to PTW



# “Sub-basin” Approach to PTW

## Three Surface Water Subbasins:

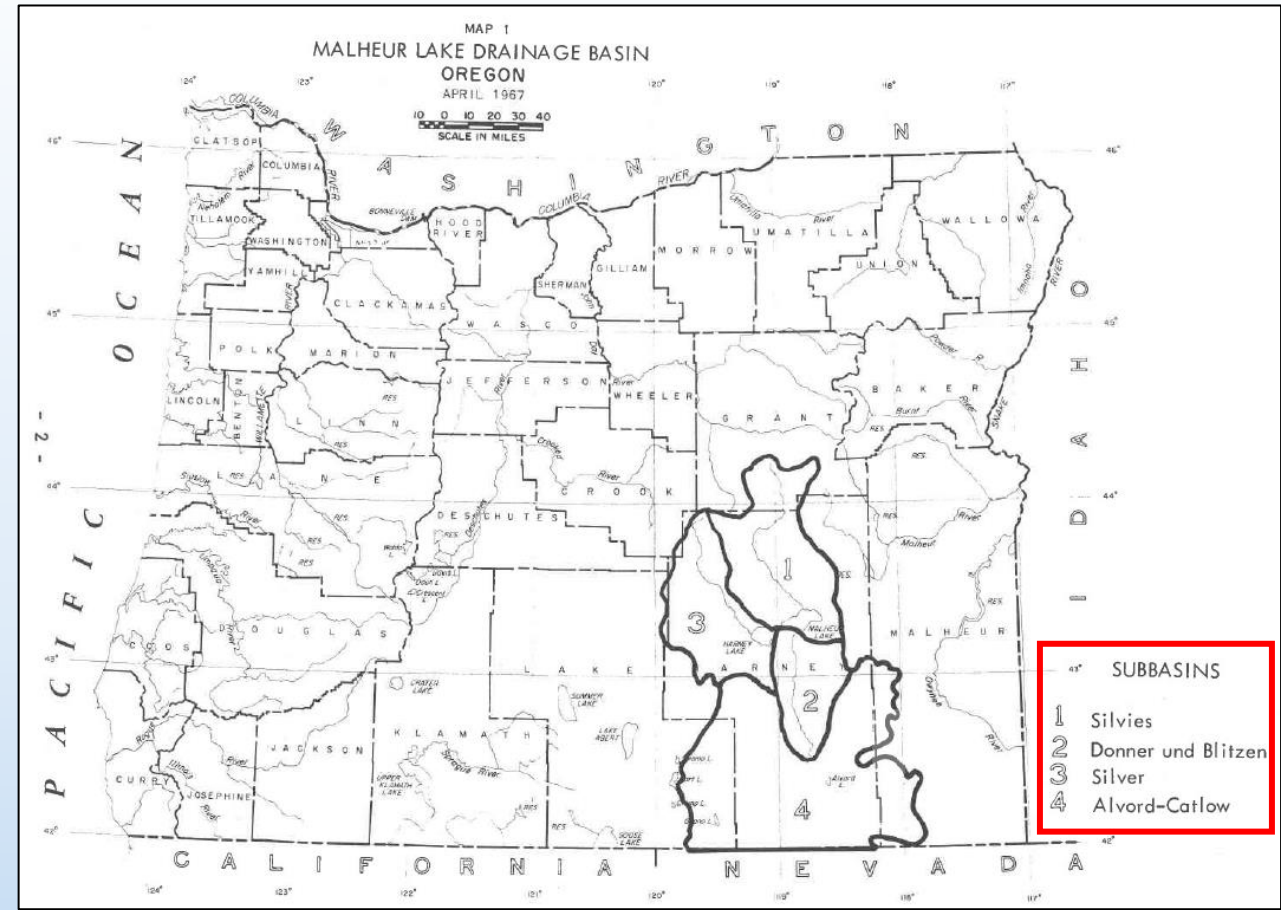
- Silvies
- Donner und Blitzen
- Silver Creek

USDA Report on  
WATER and RELATED LAND RESOURCES  
MALHEUR LAKE DRAINAGE BASIN  
OREGON

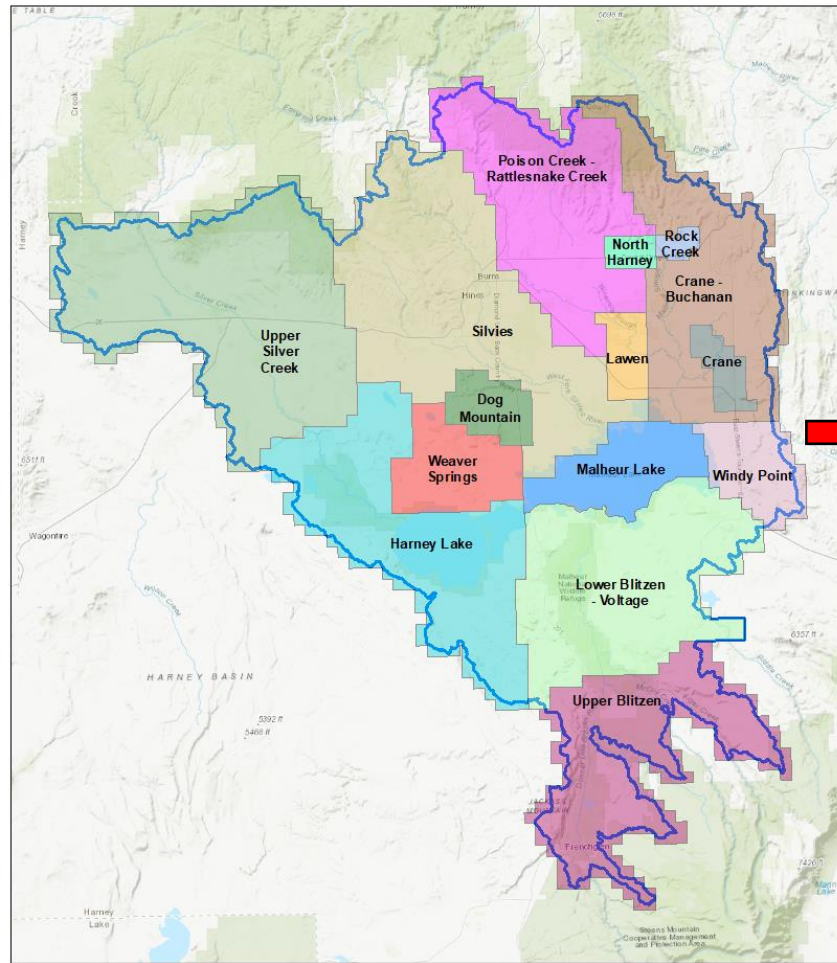
Based on a cooperative Survey by  
THE STATE WATER RESOURCES BOARD OF OREGON  
and  
THE UNITED STATES DEPARTMENT OF AGRICULTURE

Economic Research Service ... Forest Service ... Soil Conservation Service

APRIL 1967



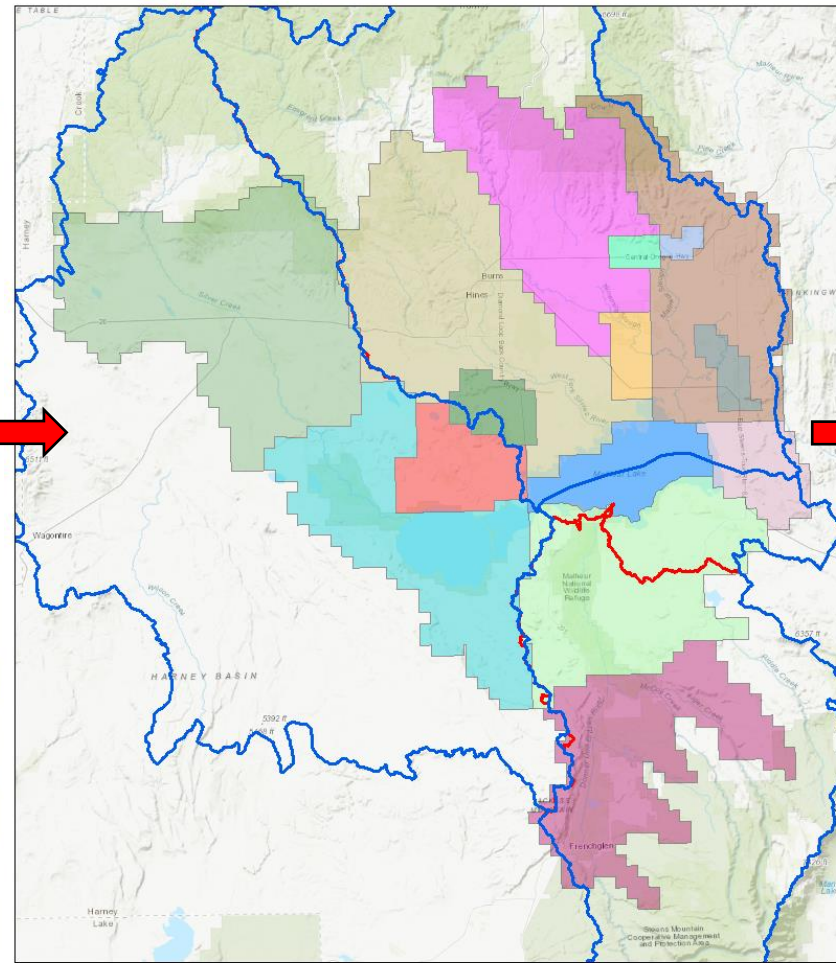
# “Sub-basin” Approach to PTW



**Harney Basin  
Proposed Critical Groundwater Area  
Proposed Subareas**

0 20 Miles

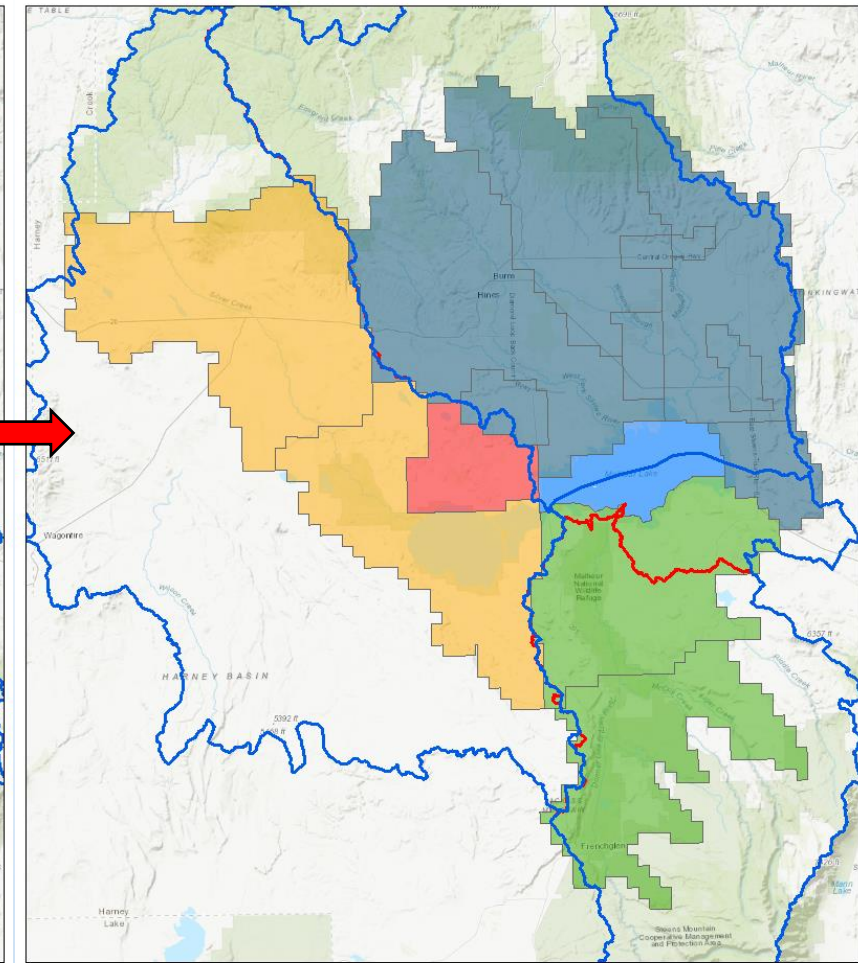
N



Water Budget Regions (Garcia and others, 2022)  
USGS Watershed Boundary Dataset

0 20 Miles

N



Water Budget Regions (Garcia and others, 2022)  
USGS Watershed Boundary Dataset

0 20 Miles

N

# “Sub-basin” Approach to PTW

## Five areas (“sub-basins”):

### 1. “West sub-basin”

- Upper Silver Creek
- Harney Lake

### 2. “South sub-basin”

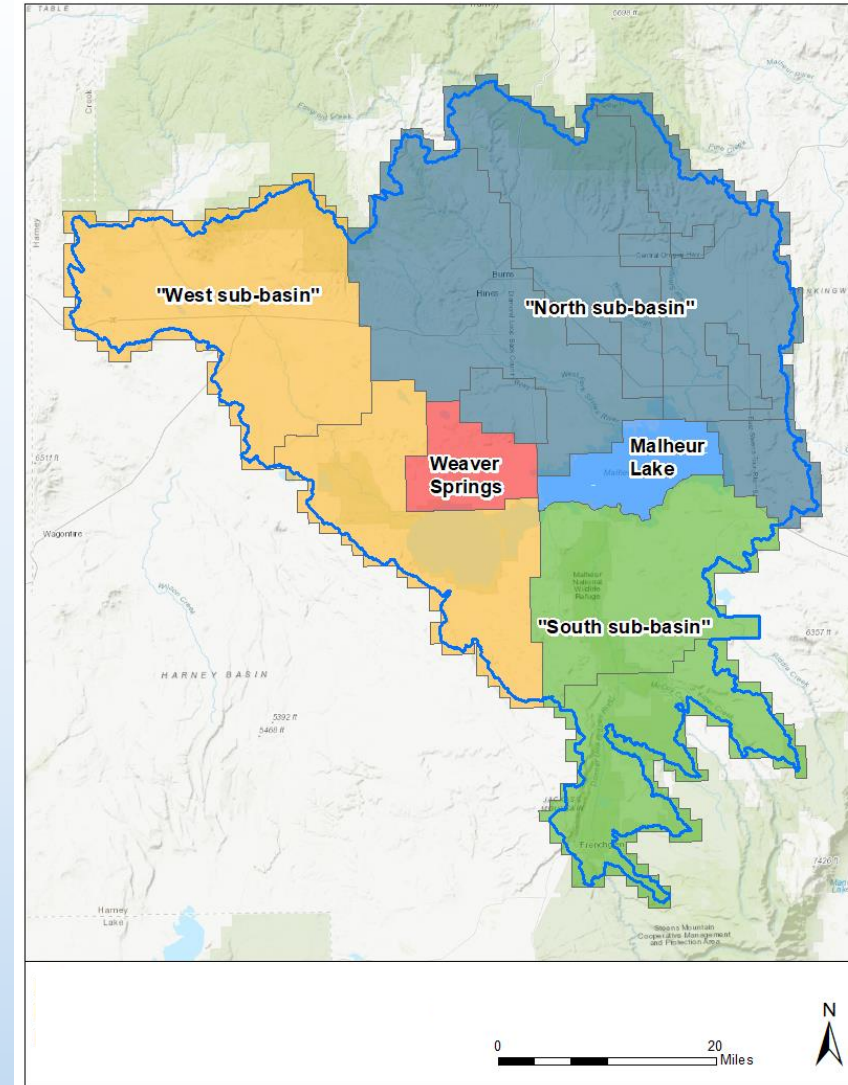
- Upper Blitzen
- Lower Blitzen – Voltage

### 3. Weaver Springs

### 4. Malheur Lake

### 5. “North sub-basin”

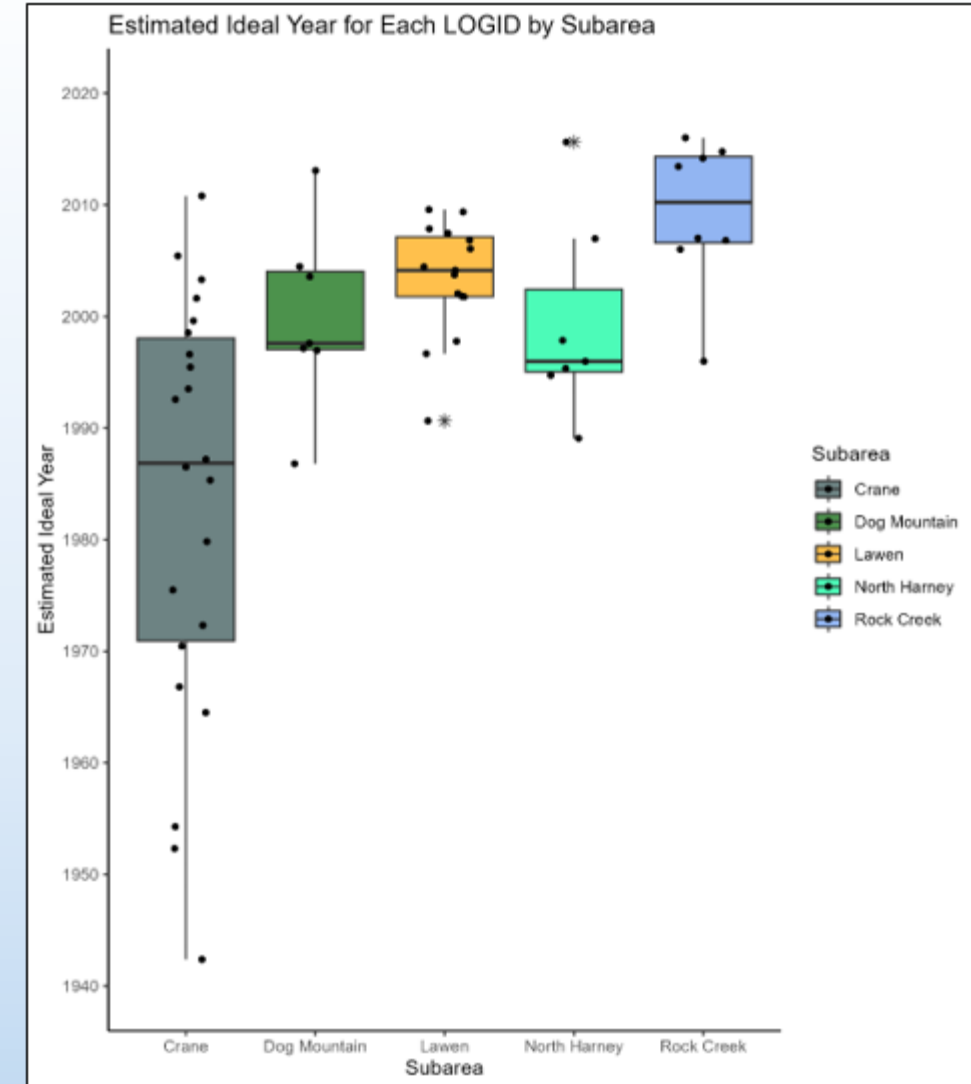
- Dog Mountain
- Silvies
- Poison Creek – Rattlesnake Creek
- Lawen
- North Harney
- Rock Creek
- Crane – Buchanan
- Crane
- Windy Point



# “Sub-basin” Approach to PTW

Target Water Level Trend = 0 ft/yr:

Subarea	1 <sup>st</sup> Q	Median	Mean	3 <sup>rd</sup> Q
Crane (n=22)	1971	1987	1983	1998
Dog Mountain (n=7)	1997	1998	2000	2004
Lawen (n=15)	2002	2004	2003	2007
North Harney (n=7)	1995	1996	1999	2002
Rock Creek (n=8)	2007	2010	2009	2014

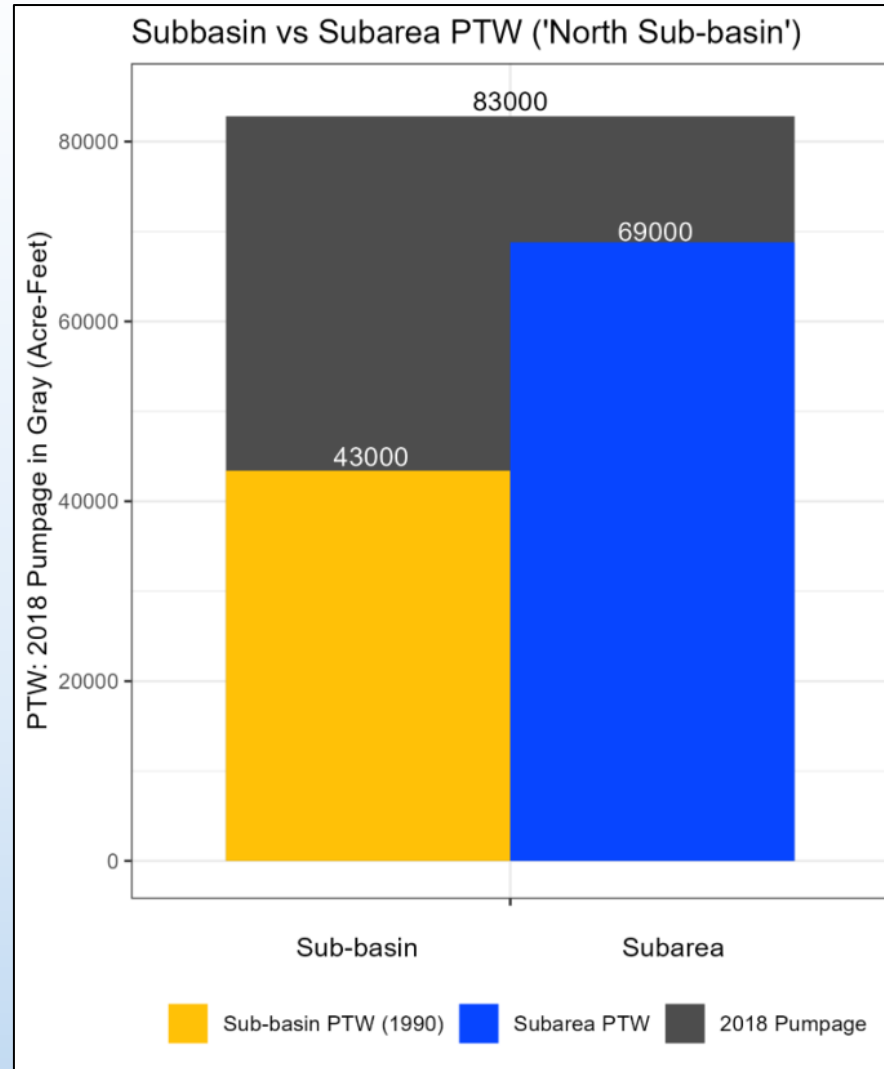


# “Sub-basin” Approach to PTW

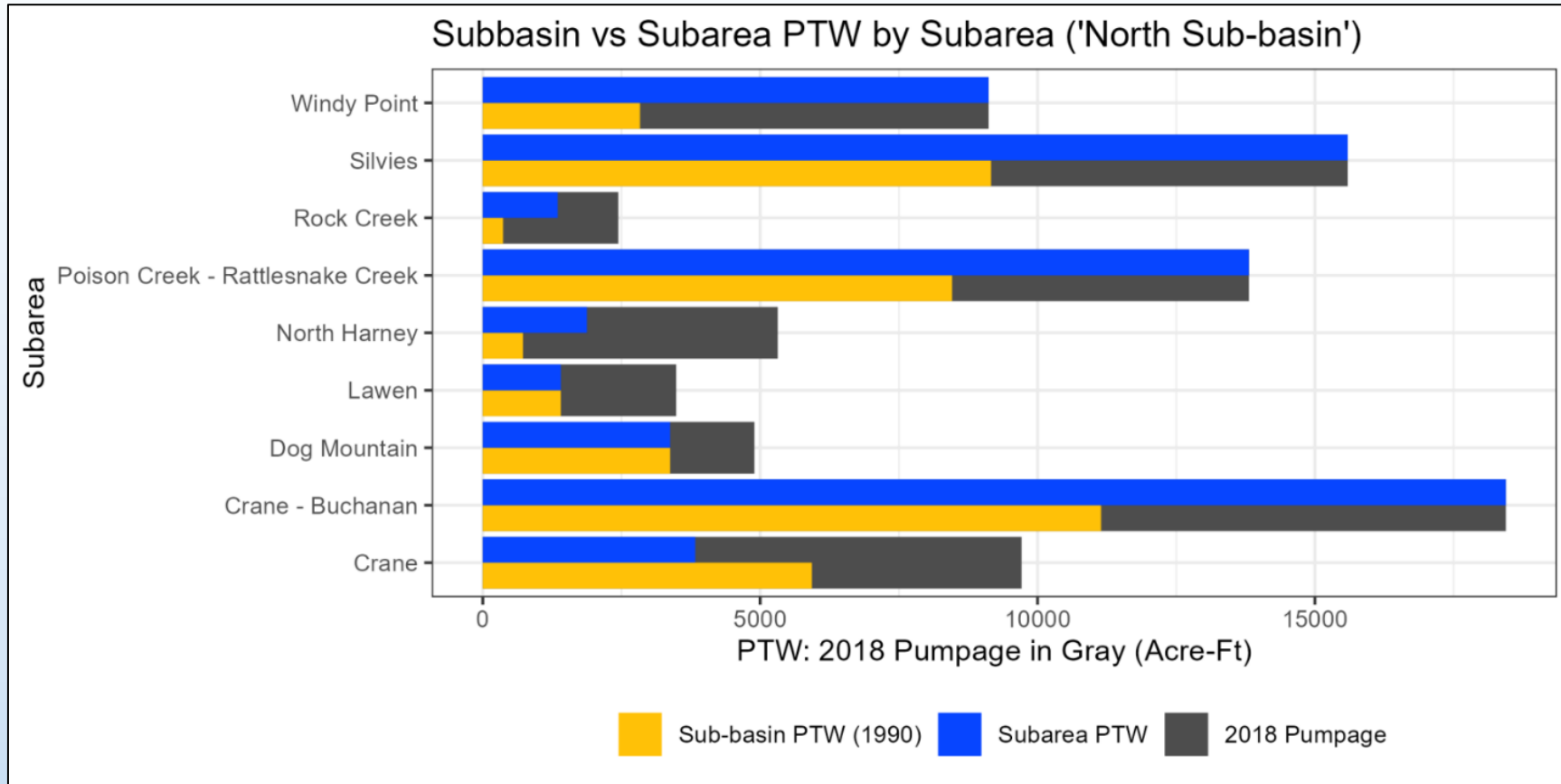
Area	PTW sub-basin (ac-ft)	PTW subarea summed (ac-ft)
North sub-basin	43,000	69,000
West sub-basin	21,300	21,300
South sub-basin	13,700	13,700
Weaver Springs	5,000	5,000
Malheur Lake	5	5
<b>Total</b>	<b>83,005</b>	<b>109,005</b>

PTW is 26,000 acre-feet lower using the “sub-basin” approach

# “Sub-basin” Approach to PTW



# “Sub-basin” Approach to PTW



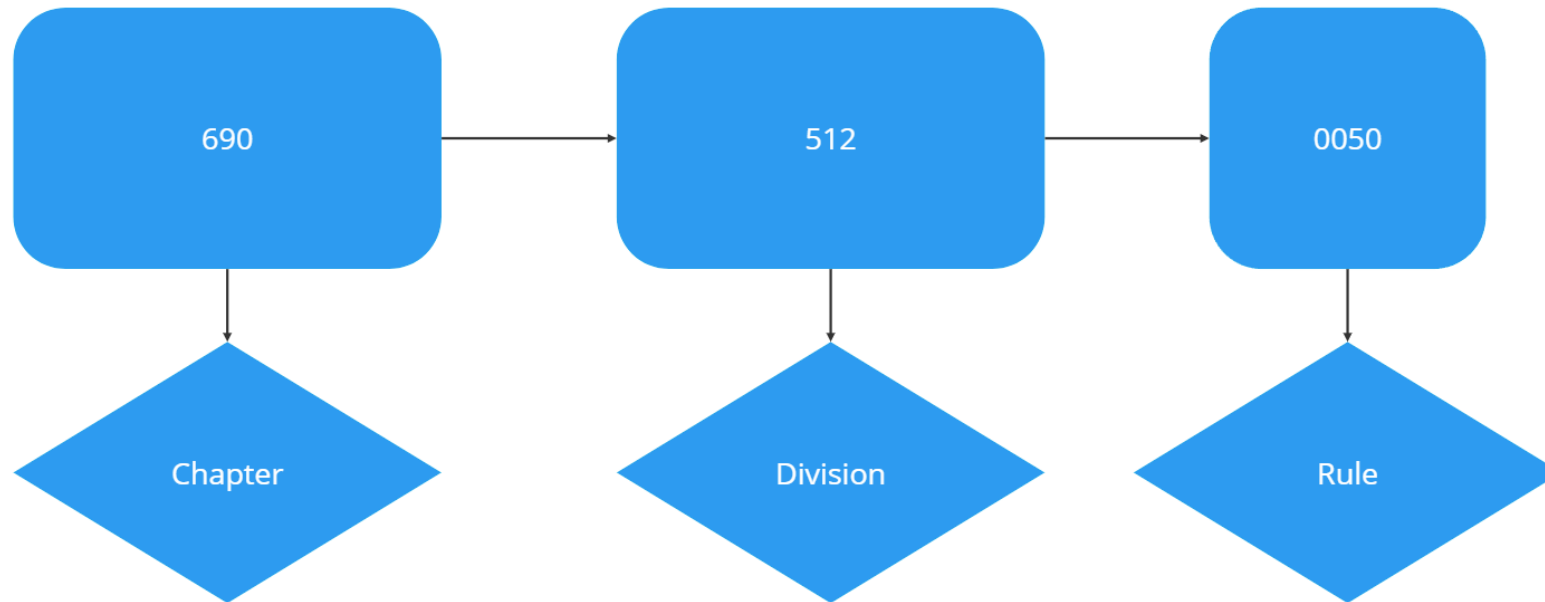


## RAC Questions and Feedback



Rule Language Review - CGWA

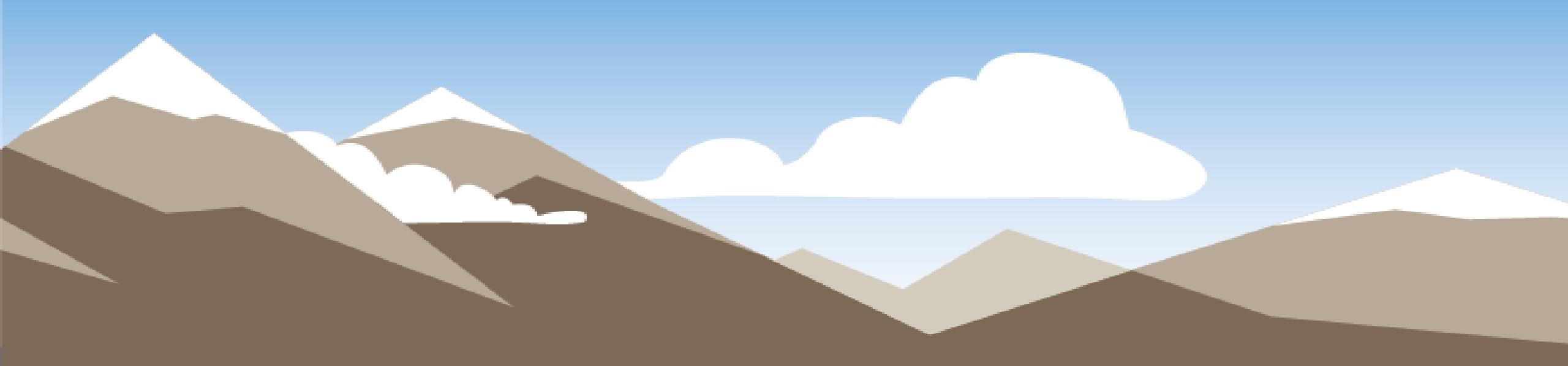
# Rule Anatomy



- 690 - Is a chapter: represents the agency
- 512- is a division: Represent a grouping of rules related to a topic. Division 512 is related to the Malheur Lake Administrative Basin
- 0050 - represent a rule

## What are we looking for in Rule Review:

- We want rules that are clear and understandable to all readers; we are asking for the RAC to help us do that
- We will ensure the rules align with statutory authority



690-512-0010 - Definition



## 690-512-0010 – Definitions

Unless specified in these rules the definitions in OAR 690-300-0010 apply to the below rules.

(1) “Exempt groundwater uses” are those defined in ORS 537.545.

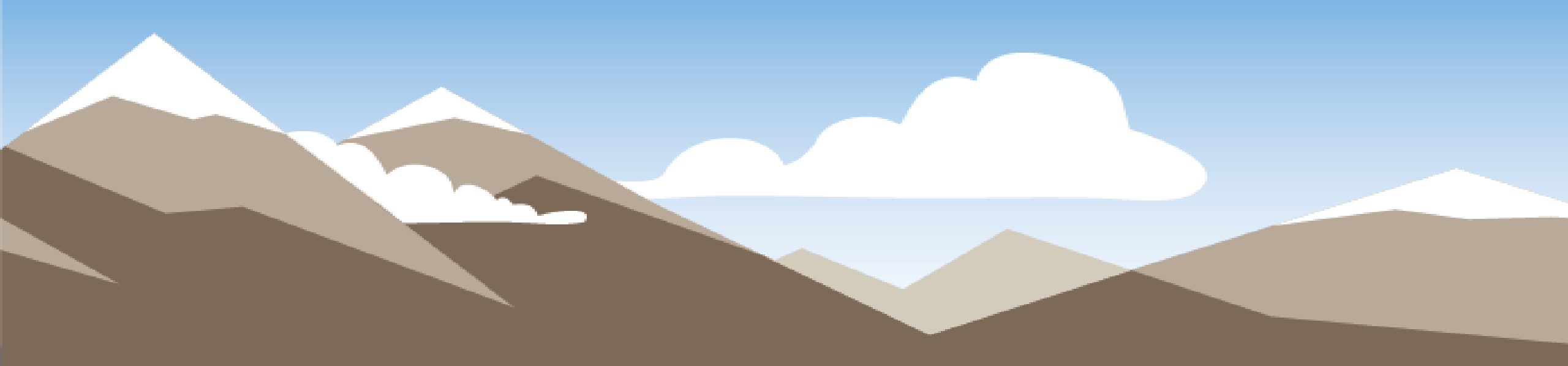
(2) “Public Uses” are those uses defined in OAR 690-077-0010(27).

(3) “Permissible Total Withdrawal” is the total volume of groundwater allowed to be pumped annually within a subarea of the critical groundwater area. The unit of measurement for the permissible total withdrawal is acre-feet.

\*anything indicated in red text is new language. Black language is existing language.

## 690-512-0010 – Definition

- (4) “Department” means the Water Resources Department.
- (5) “Director” means the Water Resources Director
- (6) “Commission” means the Water Resources Commission
- (7) “Totalizing flow meter ” is an instrument used to measure and display both the instantaneous flow rate of groundwater produced from a well and the total volume of groundwater produced from a well.
- (8) “Forbearance” means to voluntarily refrain from using the full amount of water authorized on a water right



690-512-0030 – Classification





## Goals for Classification

- Prevent future appropriation in recharge areas (uplands)
- Support CREP program with the ability to issue Limited Licenses (LL)
- Provide a solution for temporarily changing the character of use (something not allowed in a temporary transfer)

## 690-512-0030 – Classification

(1) Except as provided in OAR 690-512-0020(4), the groundwater and surface water of the Malheur Lake Basin are classified for direct appropriation of, or storage of surface water and use of, water for domestic, livestock, irrigation, municipal, quasi-municipal, industrial, mining, agricultural water use, commercial, power development, forest management, public uses, road watering, dust abatement, and wildlife refuge management.

(2) Except as provided in section (3), groundwater in the Groundwater Classification Boundary defined in OAR 690-512-0020(4) is classified for statutorily exempt groundwater uses as specified in ORS 537.545.

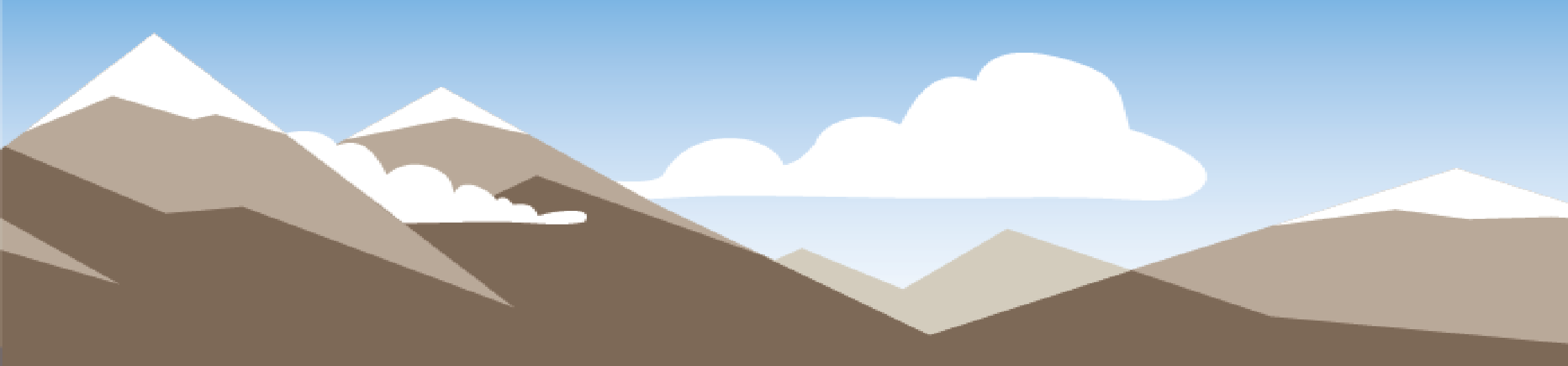
(3) Voluntary water right forbearance for groundwater availability. For the purposes of processing applications pursuant to ORS 537.143 and 690-340-0030 an applicant may request the Department find that Water is Available for the proposed use(s) within the Harney Basin Critical Groundwater Area consistent with this section. In reviewing an limited license application to appropriate groundwater, the Department may find that Water is Available for the proposed use(s) if:

a. The proposed use does not have the Potential for Substantial Interference with surface water as determined pursuant to OAR 690-009; and,

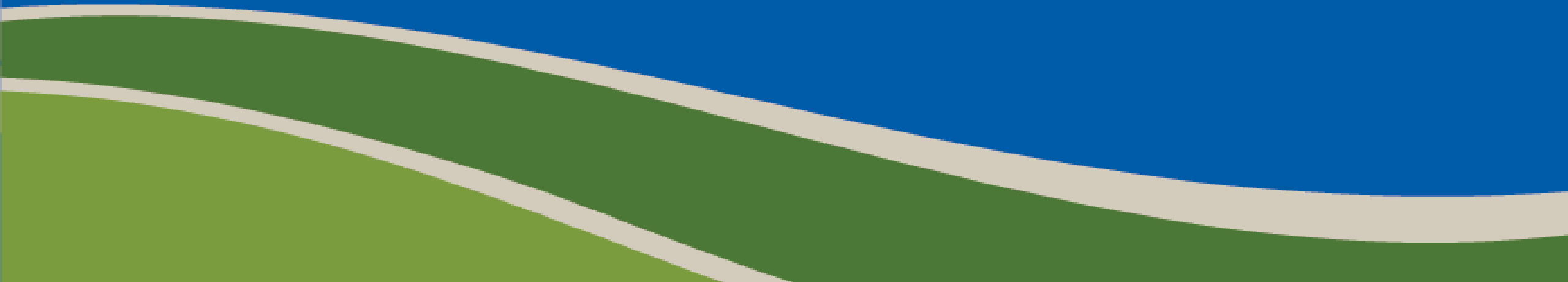
## 690-512-0030 – Classification

- b. The duty of the proposed groundwater use is offset by the forbearance of an existing primary groundwater certificate or primary permit within the same CGWA subarea as the proposed use as defined in 690-512-0040(5) – ( 19); and,
- c. The primary groundwater certificate or primary groundwater permit that is held in forbearance:
  - (A) is not subject to forfeiture or cancellation for non-use.
  - (B) has a priority date not subject to an order to curtail use; and,
  - (C) is equal or greater in duty and acreage as compared to the duty and acreage of the new appropriation sought; and,

- d. The groundwater right held in forbearance was subject to transfer or permit amendment; and,
- e. All water use related to the groundwater right that is being offered in forbearance has ceased prior to submission of the new application.



690-512-0040 – Harney Basin Critical  
Groundwater Area (HBCGWA)



- (1) Reasonably stable water levels within the Harney Basin Critical Groundwater Area means a median static water level decline of 0 feet over a 5-year period within each of the 15 subareas defined in 690-512-0040(5)-(19). A review of the groundwater level trends shall be completed at least once every 10 years for each of the 15 subareas. The findings of the review will be published in a report to the Commission and made publicly available on the Department's website.
- (2) Except as defined in section 690-512-0030 Classifications, the Department will not accept new applications for groundwater permits within the Harney Basin Critical Groundwater Area.

## Options to determine static water level trend of 0 feet:

- Subarea median (the middle value in a dataset. Half the values are above this number and half are below.)
- Subarea mean (the average of the groundwater level dataset in the subarea. Add all the values together and divide by the number of values.)
- No decline in all measured wells in a subarea

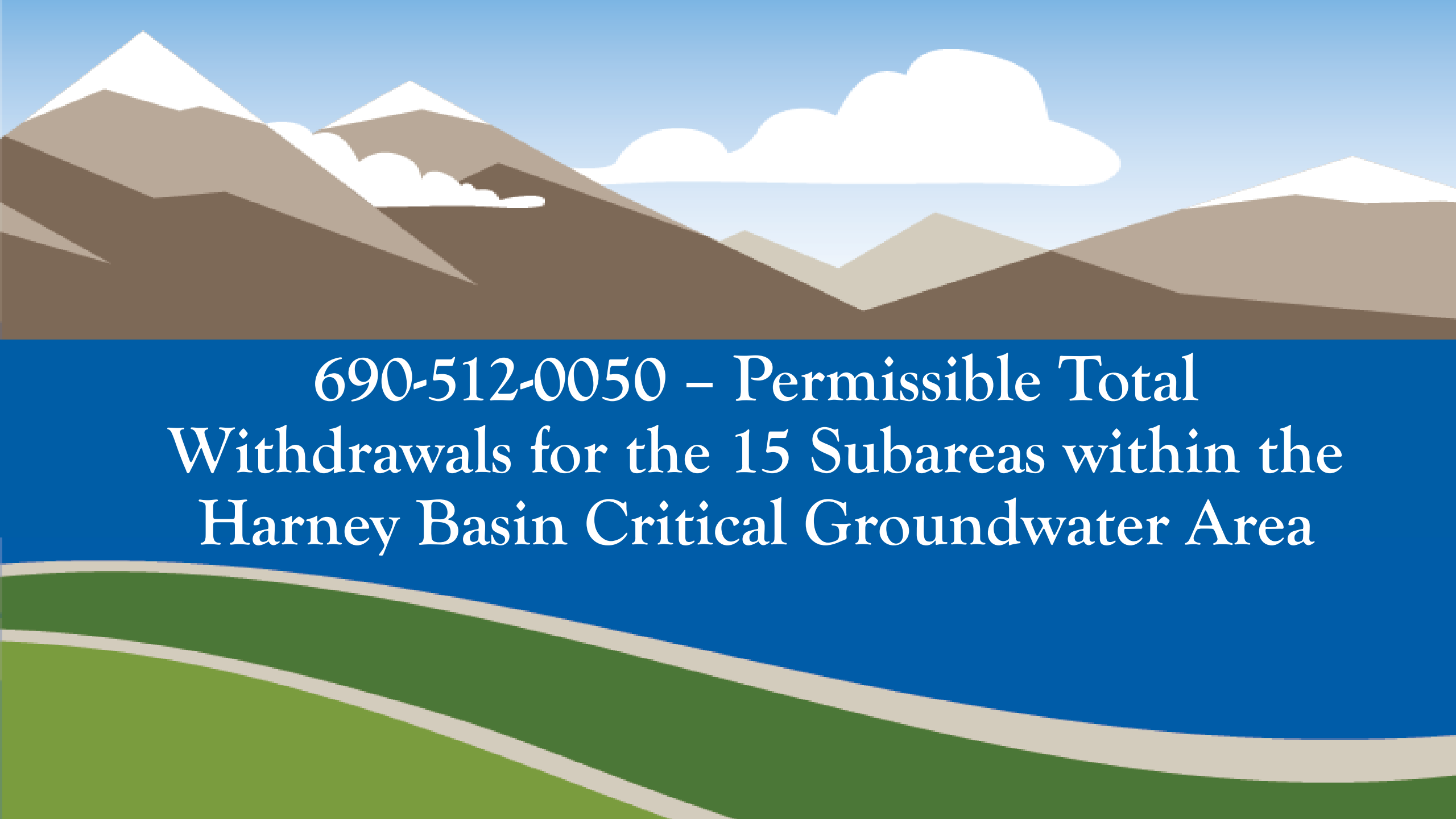


- (3) The Harney Basin groundwater reservoir is defined as a single groundwater reservoir having exterior boundaries which coincide with the boundaries of the Harney Basin as shown in Exhibit X. Only the portion of the groundwater reservoir within the Harney Basin Critical Groundwater Area is subject to the critical groundwater area designation.
- (4) The Harney Basin Critical Groundwater area defined in section 690-512-0020 shall be divided into 15 subareas for the purpose of management as shown in exhibit 3.
- (5) The Crane-Buchanan subarea is shown in exhibit #
- (6) The Crane subarea is shown in exhibit #

- (7) The Dog Mountain subarea is shown in exhibit #
- (8) The Harney Lake subarea is shown in exhibit #
- (9) The Lawen subarea is shown in exhibit #
- (10) The Lower Blitzen – Voltage subarea is shown in exhibit #

- (11) The Malheur Lake subarea is shown in exhibit #
- (12) The North Harney subarea is shown in exhibit #
- (13) The Poison Creek – Rattlesnake Creek Subarea is shown in exhibit #
- (14) The Rock Creek Subareas is shown in exhibit #

- (15) The Silvies subarea is shown in exhibit #
- (16) The Upper Blitzen subarea is shown in exhibit #
- (17) The Upper Silver Creek subarea is shown in exhibit #
- (18) The Weaver Springs subarea is shown in exhibit #
- (19) The Windy Point subarea is shown in exhibit #



690-512-0050 – Permissible Total  
Withdrawals for the 15 Subareas within the  
Harney Basin Critical Groundwater Area

- (1) The Crane -Buchanan subarea permissible total withdrawal shall be 18,400 acre-feet per year.
- (2) The Crane subarea permissible total withdrawal shall be 3,800 acre-feet per year.
- (3) The Dog Mountain subarea permissible total withdrawal shall be 3,400 acre-feet per year.
- (4) The Harney Lake subarea permissible total withdrawal shall be 900 acre-feet per year.

- (5) The Lawen subarea permissible total withdrawal shall be 1,400 acre-feet per year.
- (6) The Lower Blitzen – Voltage subarea permissible total withdrawal shall be 13,600 acre-feet per year.
- (7) The Malheur Lake subarea permissible total withdrawal shall be 5 acre-feet per year.
- (8) The North Harney subarea permissible total withdrawal shall be 1,900 acre-feet per year.

(9) The Poison Creek – Rattlesnake Creek Subarea permissible total withdrawal shall be 13,800 acre-feet per year.

(10) The Rock Creek subarea permissible total withdrawal shall be 1,400 acre-feet per year.

(11) The Silvies subarea permissible total withdrawal shall be 15,700 acre-feet per.

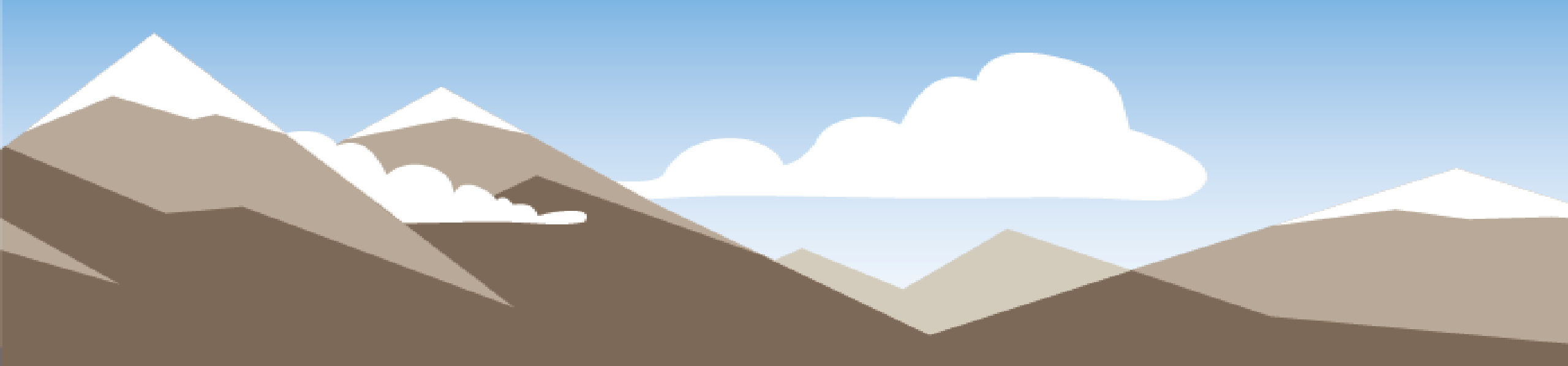
(12) The Upper Blitzen subarea permissible total withdrawal shall be 100 acre-feet per year.



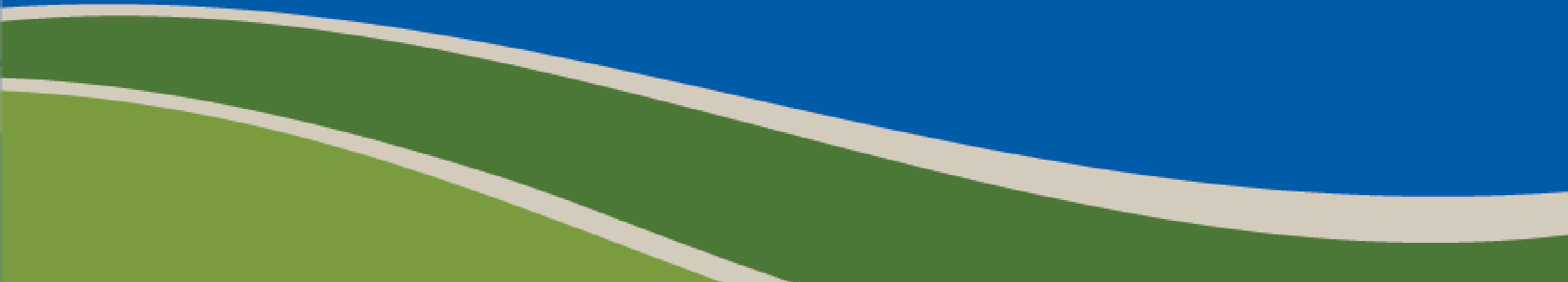
(13) The Upper Silver Creek subarea permissible total withdrawal shall be 20,400 acre-feet per year.

(14) The Weaver Springs subarea permissible total withdrawal shall be 5,000 acre-feet per year.

(15) The Windy Point subarea permissible total withdrawal shall be 9,100 acre-feet per year.



# Challenges of Allocating the PTW



## Considerations when allocating PTW

- ORS 540.610: Beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state.
- In 2018, actual water use was about half of authorized use
  - Land with a water right was not irrigated
  - Water use on irrigated land was less than the duty (volume) allowed

# Options for Allocating the PTW

OWRD is considering two options for allocating the PTW. These include allocating based on the:

1. Full paper water right (what was allocated or authorized)
2. Lands brought into production where water was put to beneficial use (paper water right + beneficial use)

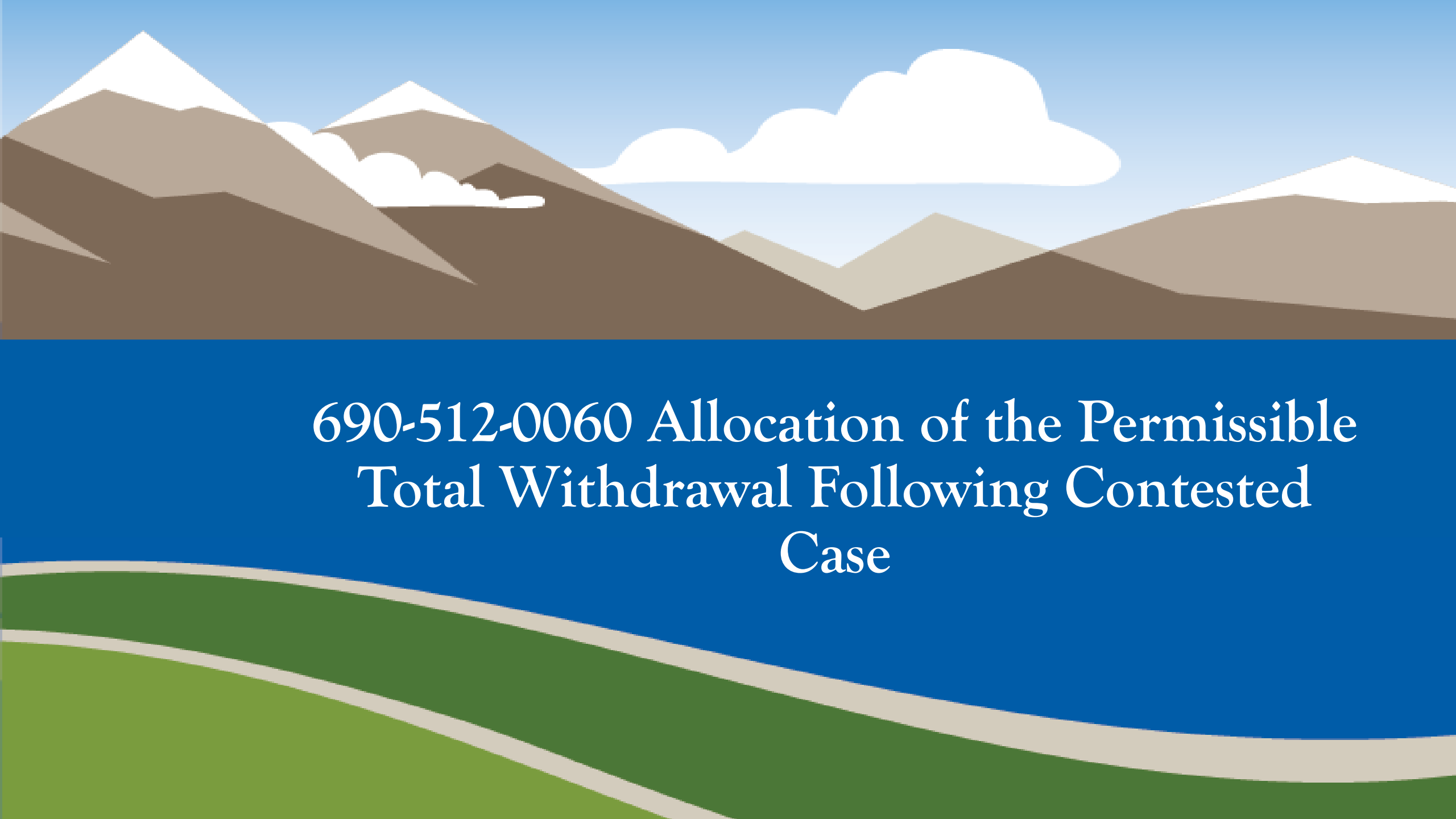
# Allocation based on full paper right

## Considerations for this approach:

- Simple and straightforward process
- Easy to understand and communicate
- Doesn't consider beneficial use
- Historically unused water rights/portions of rights receive full water
- Those who have developed and used water don't get credit for that effort
- Increases the value of paper rights with old priority dates
- More beneficial users are curtailed

### Considerations for this approach:

- Considers beneficial use
- Allows more water right holders to receive more of their water
- Attempts to limit adding value to paper water rights
- Requires verifying place where use occurred for each right
- Requires verifying quantity of water used by each right

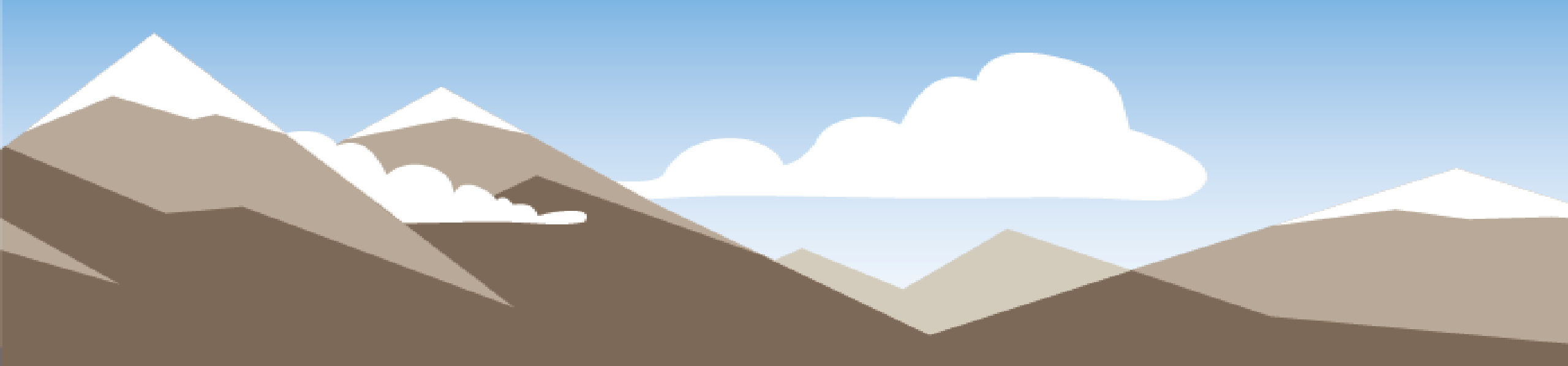


690-512-0060 Allocation of the Permissible  
Total Withdrawal Following Contested  
Case

- (1) If reduction in groundwater use will occur under order of the Water Resources Commission, the permissible total withdrawal for a subarea will be allocated to the most senior rights first.
- (2) The amount of the PTW allocated to a senior right will be based upon beneficial groundwater use over a five-year consecutive period as defined by the Department.



(3) Beneficial use will be based on the best available data, including but not limited to satellite-based evapotranspiration data, flowmeter records of use, or other method as determined by the Department.



# Implementation of the PTW



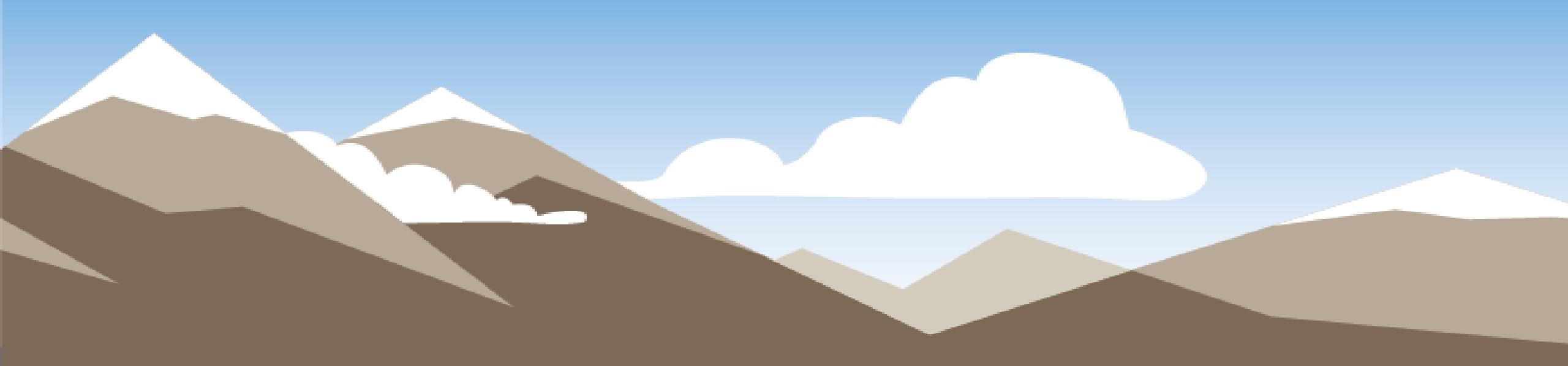
## OWRD's Take Aways from RAC Conversations

- Glide path to full implementation of PTW after the completion of the contested case.
- Curtailment should happen as soon as possible
- Balancing differing needs will be required

# Implementation of the PTW

## Factors for implementing the PTW:

- Economic Impacts
- Domestic Well User Impacts
- Impacts to Senior Rights Holders
- Impacts to Groundwater Dependent Ecosystems
- Time Necessary for Contested Case (estimated 2 – 3 years)
- Time for Voluntary Agreements



# Proposal for Implementation of the PTW



## Implementation of the PTW

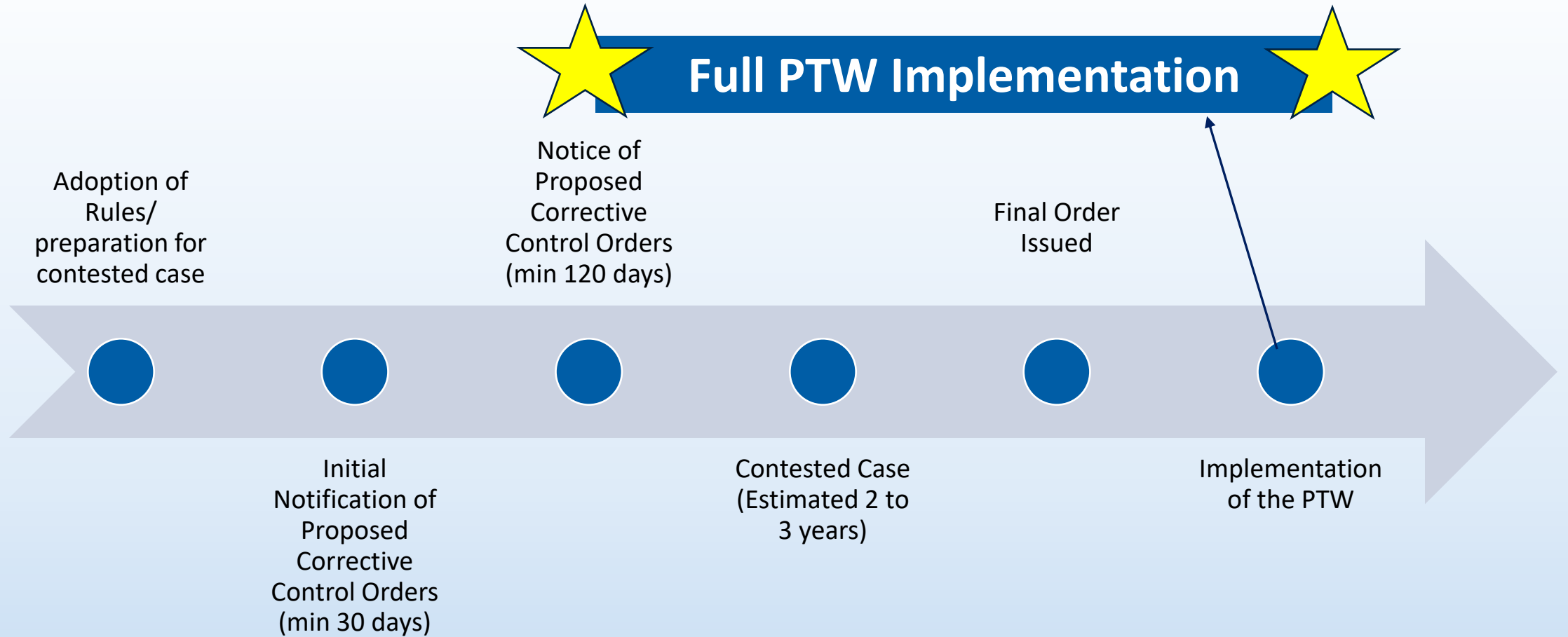
- OWRD plans to bring the 6 High Priority Subareas into the contested first
- “Glide path” – implementation depends on rate of decline
  - Weaver Springs: Little to no glide path considered
  - Crane Dog Mountain, Lawen, North Harney and Rock Creek – A glide path can be considered

## Weaver springs

Proposal: Implement the full PTW immediately after issuance of the final order - completion of the contested case

- Reasons:
  - Weaver Springs has the most severe rate of decline, needs to be swiftly addressed
  - Immediate PTW implementation is needed

# Proposal for Weaver Springs PTW





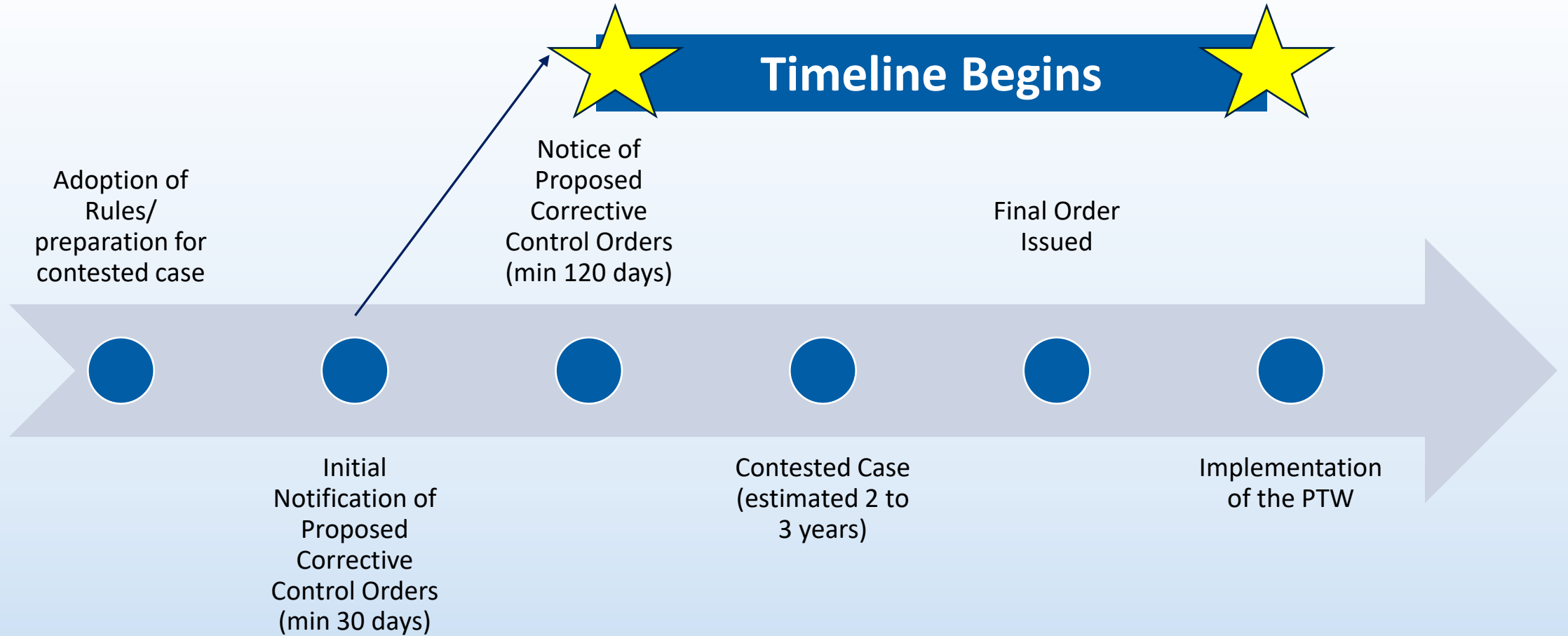
## Crane, Dog Mountain, Lawen, North Harney and Rock Creek

Proposal: Implement the PTW 3 years after the required Notice of Proposed Corrective Control Orders are issued

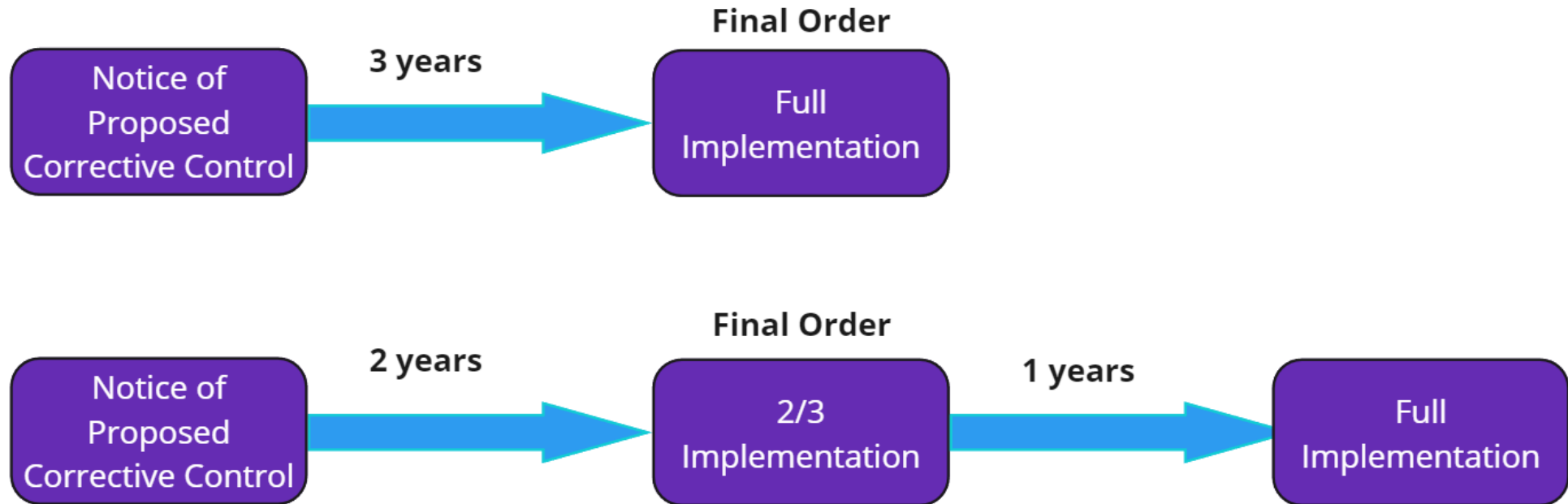
- Reasons:

- These subareas are areas with less significant rate of decline
- More flexibility to implement in these areas

# Proposal for Crane, Dog Mountain, Lawen, North Harney and Rock Creek PTW



# Proposal for Implementation of the PTW



Implementation of PTW will be proportional to the amount of time it takes to issue the final order.

## Conclusion

We believe that our proposal for the 6 high priority subareas balances the needs of these several factors:

- Economic Impacts
- Domestic Well User Impacts
- Impacts to Senior Rights Holders
- Impacts to Groundwater Dependent Ecosystems
- Time Necessary for Contested Case (estimated 2 – 3 years)
- Time for Voluntary Agreements

## We Recognize:

- The optimal timeline for the resource is immediate
- Balancing of needs requires implementation to happen over a series of years
- The timeline is immediately dictated by the contested case process – the areas would experience declines

## The Community Should Expect:

- Groundwater users should prepare for the reductions in allowable pumping.
- Domestic well users should prepare for additional declines in their wells during the transition.

## Going Forward:

- Harney CREP- Payments to permanently retire water rights
- Harney Domestic Well Remediation Fund
- Voluntary Agreements
- Transfers within a subarea

**Comments or concerns?**



A stylized landscape illustration. The top half shows a range of mountains in shades of brown and tan, with white snow-capped peaks and white, fluffy clouds. The bottom half shows rolling green hills with light tan outlines, set against a solid blue background.

690-512-0070: Curtailment of Groundwater Use  
in the Harney Basin Critical Groundwater Area



## ORS 690-512-0070: Implementation of the PTW

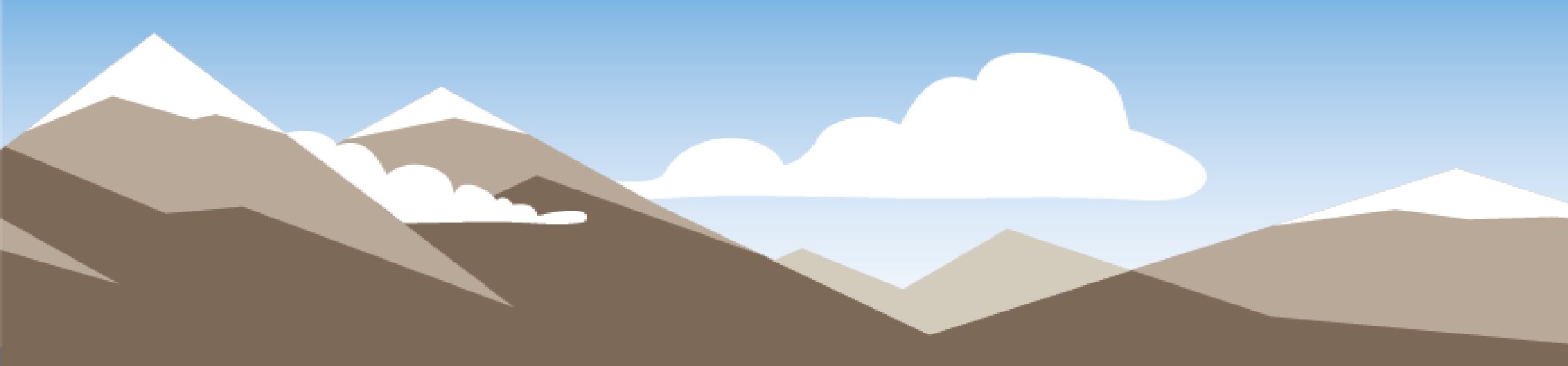
The Department's goal is to reduce groundwater level declines as quickly as possible while minimizing impacts to the groundwater user community. To accomplish this:

(1) During the contested case proceeding on the Notice of Proposed Corrective Control Orders, the Department will recommend to the Commission the following timelines for curtailment of groundwater use.

## ORS 690-512-0070: Implementation of the PTW

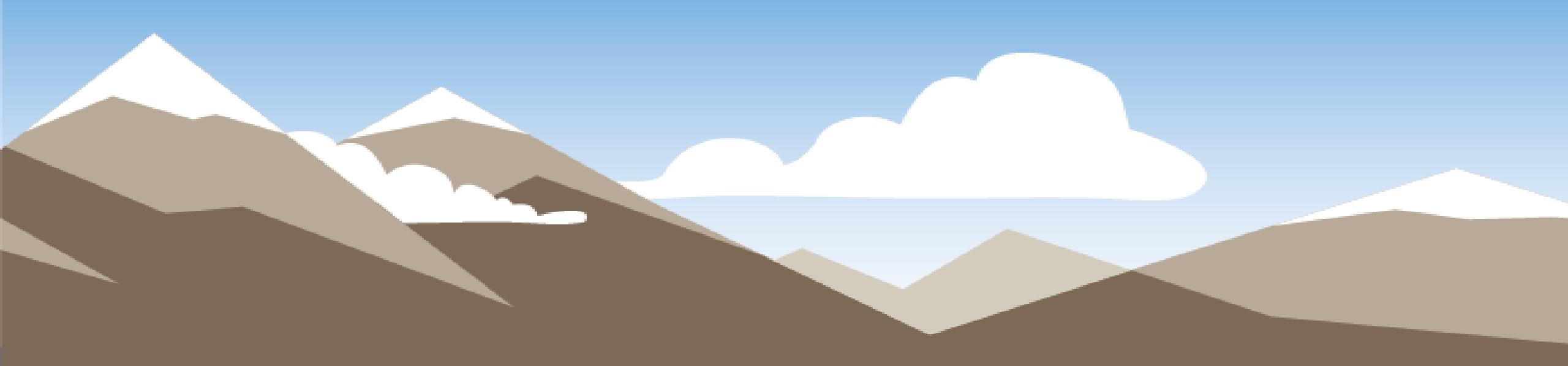
(a) For the Weaver Springs subarea as defined in 690-512-0050(4), full curtailment to meet the PTW shall be implemented at the start of the water year following the issuance of the final corrective control order pursuant to OAR 690-010-0230.

(b) For the subareas of Crane, Dog Mountain, Lawen, North Harney, and Rock Creek the Department will curtail groundwater use in these 5 subareas to the PTW no later than 3 years following the Notice of Proposed Corrective Control Orders as required by OAR 690-010-0180. Curtailment orders will be issued for the start of the water year following the final corrective control order pursuant to OAR 690-010-0230.



# Harney Collaborative Presentation





# Public Comment





## Summary and Next Steps

- Next RAC: RAC #7, April 17, 2024.
- Location: Harney County Community Center.
- Time: 1 pm to 5 pm.



OREGON  
WATER  
RESOURCES  
DEPARTMENT

# Thank You

