



## **Groundwater Allocation Rules Advisory Committee Hybrid Meeting #2 (8:30 am – noon, May 10, 2023) Meeting Summary**

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This is a summary of the Groundwater Allocation Advisory Committee (RAC) Meeting held in person (Salem office, Oregon Water Resources Department) and virtually (Zoom platform), on May 10, 2023, from approximately 8:30 to Noon. For more information, see the Meeting Agenda, Meeting Presentation, Draft Rules, and other Meeting Materials, available online at <https://www.oregon.gov/owrd/programs/GWWL/GW/Pages/Groundwater-Rulemaking.aspx>

### **Rules Advisory Committee (RAC) members in attendance:**

Adam Sussman, Central Oregon Cities Organization (COCO), GSI Water Solutions  
April Snell, Oregon Water Resources Congress (online)  
Bill Jaeger, Applied Economics, OSU  
Casey McClellan, Seven Hills Winery  
Cheyenne Holliday, Verde (online)  
Dave Wildman, Anderson Perry & Associates (online)  
Gen Hubert, Deschutes River Conservancy (online)  
Greg Kupillas, Pacific Hydrology  
Jeff Stone, Oregon Association of Nurseries  
Karen Lewotsky, Oregon Environmental Council (online)  
Kelly Warren, Confederated Tribes of the Umatilla Indian Reservation (online)  
Laura Masterson, 47<sup>th</sup> Ave Farms (online)  
Lisa Brown, WaterWatch of Oregon (online)  
Margaret Durner, Powder Basin Watershed Council (online)  
Misty Buckley, Homeowner, Klamath County (online)  
Nick Siler, Atmospheric Science, OSU (online)  
Obie Strickler, Grown Rogue (online)  
Robyn Cook, GSI Water Solutions  
Sarah Liljefelt, Oregon Cattlemen's Association (online – no audio)  
Scott White, Klamath Drainage District (online)  
Susan Lea Smith, Willamette University Law School  
Tammy Wood, Oregon Lakes Association (online)  
Zach Freed, The Nature Conservancy (online)



### **RAC members not in attendance:**

Brad Parrish, Klamath Tribes  
Derrick DeGroot, Klamath County Commission/AOC  
Kelly Simmelink, Jefferson County Commission  
Lauren Poor, Oregon Farm Bureau  
Michael Martin, League of Oregon Cities  
Phil Brown, Northwest Groundwater Services  
Tyler Hufford, Rancher

### **Others in attendance:**

Oregon Water Resources Department (OWRD) staff: Justin Iverson (Groundwater Section Manager), Laura Hartt (Policy Analyst and Rules Coordinator), Annette Liebe (Technical Services Division Administrator), Ben Scandella (Groundwater Data Chief), Travis Brown (Hydrogeologist). Additional staff listening virtually: Darrick Boschmann, Jeana Eastman, Grayson Fish, Jerry Grondin, Mitra Khadka, Joseph Kemper, Emelie McKain, Kelly Mainz, Dennis Orłowski, Jeffrey Pierceall, and Tim Seymour.

Members of the public: Rex Barber (Big Falls Ranch), Susie Hart (Bend resident), Cole Hendrickson (Oregon Department of Environmental Quality), Jason McClaughry (Oregon Department of Geology and Mineral Industries), Rachel O'Connor (Environmental Defense Fund), David Pilz (AMP Insights), Ted Ressler (Summit Water Resources), John Short (Water Right Services), Nolan Smith (Carollo Law Group), and Ken Yates (Oregon Water Resources Congress)

### **Welcome & Agenda**

OWRD staff attending in person introduced themselves. The Technical Services Division Administrator stated that OWRD's objective is to develop rules consistent with the Water Resources Commission's goal of managing groundwater sustainably and protecting existing ground and surface water right holders. RAC members introduced themselves and each offered one thing they would like the committee to accomplish. Some RAC members stated they would like rules that would protect the groundwater resource from over allocation, protect groundwater-dependent ecosystems, and protect existing users including domestic users. Many RAC members mentioned sustainability as part of their goals, with some RAC members mentioning equity and others wanting the new allocation rules to acknowledge a trade-off between short term development and long-term sustainability. Some RAC members mentioned climate change as a challenge to sustainability. Some RAC members stated they would like rules that balance the protection of surface water flows and the groundwater resource with the benefits of new groundwater allocations. Several RAC members indicated a desire for rules that are easier to understand and follow, can be mutually agreed upon, provide more certainty for all users, and



*don't need to be revised again soon. Amongst other RAC members goals were desires for rules that could be implemented easily statewide, that would allow for co-management with local and tribal governments, and that would protect the integrity of the prior appropriation system.*

Key OWRD staff and RAC members introduced themselves then responded to the “Icebreaker” question: “What one thing would you like to accomplish through this rulemaking?” as follows:

- Annette Liebe- the Department’s goal is to develop rules consistent with the Commission’s goal to manage groundwater sustainably and protect existing ground and surface water right holders.
- April Snell – develop mutual understanding of what we’re trying to accomplish with rulemaking.
- Dave Wildman – concern that restricting new groundwater allocations could require municipalities with surface water rights to divert directly from surface water and have a more significant impact to surface water flows than would be caused by groundwater pumping.
- Tammy Wood – develop rules that explicitly acknowledge some trade-off to be made between managing state’s water resources sustainably vs short-term maximizing use of the resource.
- Lisa Brown – develop rules that prevent over allocation statewide, prevent steep declines in water levels, protect groundwater dependent ecosystems, make sure we’re protecting domestic users.
- Gen Hubert – protect resources from over allocation, sustainable use of resources.
- Kelly Warren – develop a set of rules so that if/when tribes become co-managers on ceded lands/reservations these rules can be implemented easily.
- Nick Siler – create rules that are sustainable and don’t require coming back to drawing board in 10 years.
- Karen Lewotsky – protect ecosystem services as well as groundwater resources, acknowledge we really don’t know what new precipitation patterns and recharge will look like; err on side of caution.

Margaret Durner – consider the sustainability of water resources regarding climate change, turn around decline of salmon. Point of order – Margaret is representing herself, not Powder Basin Watershed Council (though she is on council).

- Laura Masterson – greater certainty.
- Scott White – develop rules that protect integrity of priority system, recognize that groundwater plays a role, rules that provide local management and control of groundwater resources.
- Sarah Liljefelt – no audio
- Zach Freed – prevent future overallocation of groundwater in face of changing climate.
- Obie Strickler – develop rules that allow us to not be so reactive to overallocation.
- Casey McClellan – RAC and public can agree on what regulations mean and help avoid litigation in future.



- Bill Jaeger – ensure long term sustainable use of groundwater resources, considering a systems perspective and including efficiency and equity.
- Greg Kupillas – instead of rules that direct OWRD to sustainably manage surface and groundwater together, recognize tradeoffs of development to continue to grow food in state without damaging environment, do so without just saying no and putting undue burden on users.
- Adam Sussman – hoping Department steps back and studies ORS 537.525 review legislative priorities to balance use of surface and groundwater, should have rules based on science, recognize that groundwater declines and overallocation are not the same thing, focus on balance, statewide rules should recognize every aquifer in the state aren't the same.
- Robyn Cook – rules that are easy to understand and follow and based on science, can be implemented across state.
- Susan Smith – transform currently convoluted rules so that the Oregon Water Resources Commission, lawyers and the public can understand them.
- Jeff Stone – recognize that climate is going to change how agricultural sectors act, the RAC should recognize that definitions matter and drafting and implementation can be very different.

Several RAC members wondered whether it was appropriate to find that groundwater is not available if there is any hydraulic connection with an over appropriated surface water source. OWRD staff clarified that the draft rules do not assume that all groundwater is hydraulically connected to surface water in the state, although such hydraulic connection is common in Oregon. The RAC will discuss the groundwater-surface water interaction, including the Division 9 rules, at the next RAC meeting (meeting #3). In cases where groundwater is not hydraulically connected to surface water, the primary determinant of groundwater availability will be groundwater levels.

Several RAC members expressed a desire for the new groundwater allocation rules to be based on science and not on ease of implementation, noting that groundwater levels can be affected by many factors in addition to pumping. One RAC member noted that managing groundwater is difficult because of the high degree of uncertainty in analyses, but decisions must be made regardless of uncertainty. Another RAC member suggested that the uncertainty regarding the quantity of illegal groundwater use makes management difficult. Another RAC member advocated for a “first do no harm” principle in managing groundwater.

### **Meeting & RAC Operating Guidelines – Reminders**

*OWRD staff reviewed the meeting and RAC operating guidelines.*



## **Timeline Discussion**

OWRD staff reviewed the timeline for rulemaking; OWRD staff indicated that they will be seeking to schedule one or two more RAC meetings and the timeline may shift as a result.

## **RAC Meeting #1 Recap – Meeting Summary**

OWRD staff reviewed the objective of this rulemaking and summarized RAC meeting #1. In response to questions from RAC members, OWRD staff clarified that the proposed rules would not apply to applications received before the date that the proposed rules become effective. The effective date will be determined at the time of Commission adoption and filing with the Secretary of State's office.

## **RAC Meeting #1 Recap – Follow Up Items**

OWRD staff reviewed items from RAC meeting #1 that required follow-up, including questions about exempt use wells and updates to rule changes already proposed for “Water is Available”, “Over-Appropriated”, and “Capacity of the Resource”, described in more detail below.

### **Exempt use wells:**

OWRD staff reviewed exempt uses of groundwater under ORS 537.545 and answered questions about their representation among wells in Oregon, contribution to total water use, and clarified that exempt uses are not part of the scope of this rulemaking.

### **690-300-0010(57) “Water is Available”:**

OWRD staff presented updates to the proposed definition of “Water is Available” to refer to groundwater being “overdrawn” instead of “over-appropriated”. RAC members expressed concern about unintended consequences of the new definition, especially references to surface water impacts through the definition of “overdrawn.” OWRD staff agreed to review the rule pathway for unintended consequences to the Deschutes Basin Mitigation program. Staff also agreed to review the approach with the goal of making the requirements understandable to the general public.

### **690-400-0010(11) “Over-Appropriated”:**

OWRD staff presented updates to the proposed definition of “Over-Appropriated” to make it specific to surface water, such that groundwater could instead be characterized as being “overdrawn” (defined later). RAC members asked for clarification about the role of variable recharge and the meaning of “period of time” in the text being removed under this update. Staff noted that the water budget comparison of appropriation against recharge is being removed in large part due to the lack of data at an appropriate spatial scale. There was mixed feedback from RAC members on this approach; some supported removing this concept while others suggested that the water budget comparison should be retained.



## **690-400-0010(4) “Capacity of the Resource”:**

OWRD staff presented updates to the proposed definition of “Capacity of the Resource” that distinguish over-appropriation of surface water from overdraw of groundwater. RAC members expressed concern that the standard of “contributing to” instead of “causing” was too broad in capturing impacts of groundwater pumping. OWRD staff solicited suggestions.

## **Draft Rules Overview**

OWRD staff summarized the objective of the rulemaking and introduced the draft rules in Division 8 to be discussed in the remainder of the meeting. Staff addressed questions from RAC meeting #1 about the origin of the Division 8 term “Declined Excessively” and noted that this term and its companion, “Excessively declining”, remain unchanged under the proposed rules. A RAC member noted that those definitions were developed during a time when the focus was on Columbia River Basalt Group aquifers in the Umatilla basin and voiced concern that they may not be as appropriate when applied statewide.

## **Draft Rules - Division 8**

OWRD staff reviewed current draft Division 8 rules:

### **690-008-0001(1) “Aquifer”:**

OWRD staff presented the proposed updated definition of “aquifer”. Some RAC members expressed concern that the proposed definition may not be appropriate for the purposes of groundwater allocation, especially considering the potential specificity of conditions like temperature and chemistry. Another RAC member responded that the term “similar” gives room for professional interpretation about appropriate degrees of similarity within an aquifer.

### **690-008-0010(9) “Overdraw, Overdrawn, Overdrawing”:**

OWRD staff presented the proposed definition of “Overdraw, Overdrawn, Overdrawing” as a replacement for the existing term “over-appropriation” of groundwater. Some RAC members asked for clarification about how many representative wells with declining groundwater levels could lead to a finding of an aquifer being overdrawn. Other RAC members expressed concern about how the proposed definition includes impacts to surface water, and staff deferred the discussion to the following definition and RAC meeting #3.

### **690-008-0001(8) “Impairment, Substantial Interference, Undue Interference” (I/SI/UI):**

OWRD staff presented the proposed definition of “Impairment, Substantial Interference, Undue Interference”, which was originally based on “Substantial and Undue Interference.” A RAC member asked for clarification of the role of Division 9. RAC members asked how the definition accounts for seasonal variation in surface water availability. OWRD staff explained that the Department is considering stream depletion impacts over different time scales, and they emphasized that the 2022



public outreach efforts preceding this rules process demonstrated support for evaluating impacts over a long-time scale. Further discussion of stream depletion impacts was deferred to RAC meeting #3. A RAC member suggested that the rules should allow for aquifer storage and recovery in areas where surface water is over-appropriated. Another RAC member expressed uncertainty about the definition of “economic pumping level” and suggested it be dropped if it is not used.

### **690-008-0001(10) “Reasonably Stable Groundwater Levels”:**

OWRD staff presented a set of goals for the definition of “Reasonably Stable Groundwater Levels” and solicited feedback from the RAC on whether those goals seem appropriate. One RAC member responded that the proposed limit of 10 years of rapid decline seemed like a long time, and another suggested alternate language to limiting the burden of data collection. Another RAC member requested an option to adopt basin-specific rules and allow for greater flexibility in the statewide rule. Another RAC member supported the application of the precautionary principle to making water not available if sufficient data are not available. OWRD staff noted that they pursued an unstated goal of keeping the definition mathematically simple enough to be implemented in a spreadsheet without advanced mathematics.

To explain the development of the proposed definition of “Reasonably Stable Groundwater Levels”, OWRD staff presented a time series of groundwater levels in well HARN 1387 and asked RAC members to indicate where they think that the declines begin. RAC members offered a range of reasonably consistent suggestions and expressed different views about whether the cause of declining groundwater levels was important. OWRD staff then stepped through a series of example graphs of groundwater levels and explained how the proposed definition of “Reasonably Stable Groundwater Levels” helped to achieve the stated goals. Finally, the proposed definition language was presented with an invitation for feedback from the RAC.

RAC members expressed appreciation for the clear explanation and offered an array of feedback on the proposed definition. Some RAC members suggested that a more sophisticated definition could be more rigorous, while others expressed concern that the proposed definition is already too complex and/or not appropriately described in the proposed language. OWRD staff solicited specific feedback and committed to considering alternatives. One RAC member proposed making a presumptive finding that groundwater is not available, then allowing for site-specific data by requiring “clear and convincing evidence” that water is available. With respect to the test for total declines from first annual high, some RAC members suggested that the 25-foot limit is too strict in some hydrogeologic settings, proposing to consider a percentage of the aquifer’s saturated thickness where it was known. Other RAC members suggested that 25 feet of decline is not “reasonably stable,” considering the difficulty of reversing declines once they hit 25 feet. RAC members discussed the role of attributing declines to groundwater



pumping, canal lining, commingling wells, and climate, and how those attributions should impact the definition of “reasonably stable” through expectations about whether the declining levels will continue declining, level off at a new equilibrium, or recover to pre-decline levels. Another RAC member appreciated that the definition was agnostic to the cause of declines.

### **Public Comment**

John Short (consultant, Water Rights Services, LLC) expressed general approval for the approach, limited by concerns over the potential for instream water rights to protect flows beyond what is normal. Mr. Short asked for clarification about application of these rules to applications already submitted to OWRD, and staff responded that the applications already submitted will be evaluated using current rules. Mr. Short sought clarification about how a new groundwater right could be applied for in areas with insufficient data.

**Noting there was not enough time left in the meeting to review 690-008-0001(5) (“Declining Groundwater Levels”), the RAC then returned to the discussion concerning 690-008-0001(10) (“Reasonably Stable Groundwater Levels”).**

RAC members resumed discussion of concerns about continuing to issue water rights until declines reach 25 feet, and OWRD staff pointed out that water would only be available if water level declines were also limited in rate, not just magnitude. RAC members commented about attributing the cause of groundwater level declines to commingling wells and when OWRD began requiring commingling wells to be sealed, and another RAC member and OWRD staff responded. A RAC member commented about the expectation for declining groundwater levels to stabilize at a new equilibrium level when the aquifer is hydraulically connected with surface water. RAC members asked about drilling wells before applying for a permit and whether water level data from nearby wells could be used to establish water levels as reasonably stable for a nearby proposed groundwater application. A RAC member noted the complexity of the Water Availability Reporting System for surface water, and OWRD staff offered to present an informational primer in RAC meeting #3.

### **Wrap- Up and Next Steps**

OWRD staff requested feedback on rules discussed during the RAC meeting (i.e., Divisions 300, 400 and 8) by May 17, 2023. (Post-meeting follow up: OWRD staff emailed RAC members on May 12 to notify them that the third RAC meeting scheduled for May 31 would cover Divisions 410 and 9, and that staff would return to Divisions 300, 400, and 8 during the 4th RAC meeting scheduled for June 21. Therefore, feedback was no longer needed prior to May 17. This same email correspondence also asked for RAC members to respond to availability for a July/August and a September RAC meeting, in the event either or both are needed). Staff asked whether RAC





# Oregon

Tina Kotek, Governor

## Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

members were interested in learning more about the Water Availability Reporting System (WARS) at the 3<sup>rd</sup> RAC meeting on May 31<sup>st</sup>, from 8:30am to noon.

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