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Groundwater Allocation Rules Advisory Committee (RAC)
RAC and Public Comments and Responses (through July 7, 2023)

Division 300

690-300-0010(57) "Water is Available" - Revised Definition

Adam Sussman (GSI Water Solutions, Inc./ Central Oregon Cities Organization) has raised concerns regarding implications of the proposed definition on the Deschutes Basin Mitigation Program as outlined in Division 505 rules. He has concerns with (d), (e), and (f) which in concert he states will "create a new pathway to considering impacts to surface water outside the context of Division 9 and associated Division 33, 310, 400, and 410." He suggested eliminating 690-300-0010(57)(f), to remove the definitions of "capacity of the resource" in Division 400 and "overdraw/overdrawing" in Division 8:

> ~~*(f)The proposed use is available within the capacity of the resource as defined in OAR 690-400-0010(4).*~~

OWRD: Reject the proposal to delete 690-300-0010(57)(f) because several statutory resource protection goals, such as protecting the thermal characteristics of groundwater, are incorporated within the capacity of the resource definition. We have proposed rule text changes to 690-400-0010(4) "Capacity of the Resource" and 690-008-0001(8) (July 7, 2023, draft as 690-008-0001(9)) "Overdrawn or Overdrawing" to address Deschutes Basins Mitigation Program concerns.

Division 8

690-008-0001(1) "Annual high water level"

Bill Jaeger (OSU/Economics) stated that "may be assumed" in the last sentence of (1) was vague and should be modified, possibly to "may be estimated." Sarah Liljefelt (Dunn Carney/Oregon Cattleman's Association) thought the language in the second sentence of (1) violated the Oregon Administrative Procedure Act. Casey McClellan suggested removing the last two sentences altogether. Here is the proposed rule language (as of July 7, 2023):

(1) "Annual high water level" in a groundwater reservoir or part thereof means the highest elevation (shallowest depth) groundwater level that exists in a year. In the absence of detailed analysis, the annual high water level may be assumed to be represented by the highest water level measured during the period from January through April. For some purposes and in some cases the annual high may be estimated using measurements made during other parts of the year. OWRD: Accept the proposal to delete the last two sentences as follows, with one slight modification:

(1) "Annual high water level" in a groundwater reservoir or part thereof means the highest elevation (shallowest depth) <u>static</u> groundwater level that exists in a year. ~~In the absence of detailed analysis, the annual high water level may be assumed to be represented by the highest water level measured during the period from January through April. For some purposes and in some cases the annual high may be estimated using measurements made during other parts of the year.~~

690-008-0001(10) (July 7, 2023, draft as 690-008-0001(8)) "Substantial interference," "substantially interfere," "undue interference," or "unduly interfere" – Modified Definition

During prior RAC meetings, Robyn Cook (GSI Water Solutions) and Gen Hubert (Deschutes River Conservancy) requested a definition for "economic level" in 690-008-0001(10)(b).

OWRD: "Economic pumping level" is defined in OAR 690-008-0001(5) and is not proposed to be changed during this rulemaking. The proposed language for OAR 690-008-0001(10)(b) has been modified to reference "economic pumping level."

Greg Kupillas (Pacific Hydro-Geology Inc./OGWA) stated that 690-008-0001(10)(a) should specify an amount of depletion and suggested inserting "Measurable":

(a) <u>Measurable</u> depletion of a surface water source that:

OWRD: Reject the proposed language because it does not meet the rulemaking objectives of protecting existing water rights holders and managing water resources more sustainably. An individual well may not produce depletion that is measurable given the precision of available stream gaging and flow modeling methods, particularly for large rivers (Barlow and Leake, 2012). However, cumulative streamflow depletion caused by pumping from many wells may still be significant. Allowing additional groundwater appropriations because their individual effects on streamflow cannot practically be measured will still potentially interfere with senior surface water rights' ability to use their permitted or customary quantity of water due to the cumulative effect of multiple groundwater appropriations.

Greg Kupillas also questioned the different standard for issuing instream water rights (based on 50% exceedance flows) compared to reviewing groundwater rights applications (based on 80% exceedance flows) and suggested deleting "instream water right" from 690-008-0001(10)(a)(E):

(a)(E) has a minimum perennial streamflow ~~or instream water right~~ that is unmet during any period of the year.

OWRD: Reject the proposed language. OAR 690-077-0000 (Purpose of Instream Water Rights) establishes the following: (5) instream water rights differ from other water rights because control or diversion of the water is not required; and (6) instream water rights do not take away or impact any legally established right to the use of water having an earlier priority date than the instream right. These characteristics distinguish instream water rights from groundwater rights. Furthermore, OAR 690-077-0015 (General Statements regarding Instream Water Rights) establishes the following: (2) The implementation of the instream water rights law is a means of achieving an equitable allocation of water between instream public uses and other water uses. When instream water rights are set at levels that exceed current unappropriated water available the water right not only protects remaining supplies from future appropriation but establishes a management objective for achieving the amounts of instream flows necessary to support the identified public uses; and (3) the amount of appropriation for out-of-stream purposes shall not be a factor in determining the amount of an instream water right. Given the nature of instream water rights and the purpose of their establishment, use of the 50%, as opposed to the 80%, exceedance natural stream flow in their establishment is justified. Finally, ORS 537.350(1) establishes that an "in-stream water right shall have the same legal status as any other water right for which a certificate has been issued." Therefore, protection of instream water rights from adverse impacts of junior water rights is statutorily required.

Lisa Brown (WaterWatch of Oregon) also commented on 690-008-0001(10)(a)(E), asking why not consider whether an instream water right will become unmet because of additional use. Zach Freed (The Nature Conservancy offered the following suggested language:

(a)(E) has a minimum perennial streamflow or instream water right that is unmet during any period of the year <u>or would be unmet if additional water were allocated</u>.

OWRD: Reject the proposed language, because current proposed language in 690-009-0040(5) should prevent issuance of a permit when instream water rights will become unmet (emphasis added):

*For the purposes of issuing a permit for a proposed groundwater use, a finding of potential for substantial interference with a surface water source may mean that water is not available for the proposed groundwater use if the use **will** substantially interfere or unduly interfere with a surface water source as per the definitions in OAR 690-008-0001 and OAR 690-300-0010.*

Dominic Carollo (Carollo Law Group) submitted comments on behalf of Sprague River Resource Foundation, Inc., Fort Klamath Critical Habitat Landowners, Inc., Productive Timberland LLC, Mosby Family Trust, and Sprague River Cattle Company. Mr. Carollo noted the nexus between some of the Division 8 rule definitions and the current Division 10 rulemaking (describing the process for Critical Groundwater Area designation) and requested the

definitions of "declined excessively" and "substantial interference" contain references to the primacy of senior water rights.

OWRD: The draft proposed (modified) definition of declined excessively now points to the definition of substantial interference. The definition of substantial interference has been modified to include language acknowledging the relative dates of priority between rights.

Lisa Brown also commented that 690-008-0001(10)(c) is inconsistent with the Ground Water Act because requiring "full penetration" of the aquifer (i.e., drilling to the bottom of the aquifer) is contrary to maintaining reasonable stable groundwater levels and allocation within the capacity of the resource. She suggests the following language instead:

> (c) One or more of the senior ground water appropriators being unable to obtain either the permitted or the customary quantity of ground water, whichever is less, from a reasonably efficient well that <u>adequately accesses the aquifer</u> ~~fully *penetrates the aquifer where the aquifer is relatively uniformly permeable. However, in aquifers where flow is predominantly through fractures, full penetration may not be required as a condition of substantial or undue interference*~~.

OWRD: Reject the proposed language. Reasonably stable water levels pertain to the multi-year stability of annual high water levels as addressed by the proposed draft rule language in OAR 690-008-0001(9)(c) (July 7, 2023, draft as 690-008-0001(10)(c)) defining "reasonably stable groundwater levels." OAR 690-008-0001(9)(c) applies to assessments of acute, seasonal pumping interference impacting a senior groundwater right holder, who must first meet the conditions of a reasonably efficient well that fully penetrates the aquifer before an injury finding is made.

690-008-0001(8) (July 7, 2023, draft as 690-008-0001(9)) "Overdrawn" or "Overdrawing"

Adam Sussman (GSI Water Solutions, Inc./ Central Oregon Cities Organization) has raised concerns regarding implications of the proposed definition on the Deschutes Basin Mitigation Program as outlined in Division 505 rules. He has concerns with (d), (e), and (f) which in concert he states will "create a new pathway to considering impacts to surface water outside the context of Division 9 and associated Division 33, 310, 400, and 410." He suggested eliminating 690-300-0010(57)(f), to remove the definitions of "capacity of the resource" in Division 400 and "overdraw/overdrawing" in Division 8:

OWRD: A new definition of "overdrawn" has been incorporated into the proposed draft Division 8 rules to address Deschutes Basins Mitigation Program concerns. Reject the proposal to eliminate capacity of the resource from definition of water is available because several statutory resource protection goals, such as protecting groundwater quality, are incorporated within the capacity of the resource definition.

690-008-0001(9) (July 7, 2023, draft as 690-008-0001(10)) "Reasonably Stable Groundwater Levels" – New Definition

Regarding 690-008-0001(9)(a), Zach Freed (The Nature Conservancy) expressed support for the overall scientific approach but noted that environmental impacts may occur at less than 25 feet of decline, citing thresholds as little as < 1 foot. To limit ecological harm, he recommends changing the "reasonably stable" criterion from the proposed 25-foot decline to a 10-foot decline:

> *(a)(B) Compared with the highest known water level, have not declined or have declined by less than the smaller of 10~~25~~ feet and 8% of the greatest known saturated thickness of the ground water reservoir.*

OWRD: Reject the proposed language, because 10 feet of water level change is less than the observed amount of water level change that has been attributed to approximately decadal climate cycles in some parts of the state. Using a maximum threshold of 10 feet of water level change would likely cause more oscillation in the determination of whether a groundwater reservoir is or is not reasonably stable. Such oscillation would more likely be a result of cyclical climatic variance as opposed to the effects of groundwater pumping, thus unnecessarily limiting development of the groundwater resource and undermining public confidence in the Department's determination. The definition of "reasonably stable groundwater levels" is intended to address the storage component of the source of water to wells in allocating new groundwater rights. Division 9 is intended to address the surface water capture component of the source of water wells in allocating new groundwater rights.

Greg Kupillas (Pacific Hydro-Geology/OGWA) expressed concerns that the rules are not flexible in instances where data may be lacking to support an otherwise complete and adequate application. He recommended an interim approach, giving applicants five-years to collect the necessary groundwater level data (as outlined in the proposed language in 690-008-0001(9)) to support their applications.

OWRD: We are evaluating this recommendation. Statutory authority does not authorize time-limited permits for irrigation, so we anticipate any future approach will only apply to non-irrigation uses.

Sarah Liljefelt (Dunn Carney/Oregon Cattleman's Association) commented that OWRD has not implemented House Bill 2018 (2021), which directs OWRD to fill in data gaps.

OWRD: Please see email response to Sarah Liljefelt et al. (7/20/23).

Regarding 690-008-0001(9)(a)(A), Nick Siler (OSU/Atmospheric Science) requested more clarity around "reasonably stable" in the context of decadal climate variability and climate change—i.e., what if new water rights are granted during a period over which aquifer levels appear stable but 20 or more years later less water is available due to natural variability or climate change.

OWRD: The Department acknowledges that this scenario is possible under the proposed definition. Such persistent, reduced recharge would cause groundwater levels to decline. A first step in mitigating persistent declines is to stop issuing new groundwater rights, and the proposed definition is designed to support detecting such persistent declines and to make groundwater

unavailable for new allocation. The implication of the question is that such a solution may be incomplete because the existing water rights would already be a part of the water budget and unbalance it with persistently reduced recharge, preventing water levels from stabilizing in the long run. This is true in some cases, especially in aquifers where the time to full capture occurs on relatively long timescales. However, in aquifers that are hydraulically connected to surface water sources, the Department expects declines to abate on their own over some timescale in the absence of additional groundwater discharge, due to increased surface water capture (recharge). Either way, the Department will seek to support mitigation measures (voluntary agreements, aquifer storage and recovery, aquifer recharge, etc.) that can stabilize groundwater levels more rapidly, with the goal of preventing groundwater reservoirs from becoming "declined excessively".

Adam Sussman (GSI Water Solutions/Central Oregon Cities Organization), reiterated concerns that the proposed rule changes may not be appropriate for the Deschutes Aquifer, which is typically over 1000 feet thick. He offered the following language substitution for 690-008-0001(9)(a):

> (*a) The annual high water levels as measured at one or more representative wells in a groundwater reservoir or part thereof <u>meets (A) and (B) OR it meets (C):</u>*
>
> *(A) indicate no decline or an average rate of decline of less than 0.5 feet per year over any immediately preceding averaging period with duration between 5 and 20 years. If data are insufficient to perform this test. Then the Department will presume that water levels are not reasonably stable; and*
>
> *(B) compared with the highest known water level, have not declined or have declined by less than the smaller of 25 feet and 8% of the greatest known saturated thickness of the ground water reservoir; OR*
>
> *<u>(C) for aquifers that can be ascertained or reasonably inferred to have a saturated thickness of 500 feet or greater, the representative high water level is 15 percent or less than the saturated thickness of the subject groundwater reservoir.</u>*

OWRD: Reject the proposed language. Sustainable use of groundwater resources requires that groundwater levels remain in dynamic equilibrium over time. This is commonly assessed by comparing annual high water levels measured in late spring after winter recharge has occurred and before large-scale irrigation pumping creates seasonal drawdown effects. Thicker aquifers can support a larger magnitude of seasonal drawdown, but this greater magnitude is only sustainable where water levels return to dynamic equilibrium annually. Therefore, percentage of aquifer thickness is not a pertinent factor in sustainable groundwater use with respect to the range of water levels defined as representative of dynamic equilibrium.

Several RAC members have asked for clarification concerning the impacts of the proposed rules on future Aquifer Recharge/Aquifer Storage and Recovery Projects.

OWRD: The proposed groundwater allocation rules are expected to have a minimal nexus with ASR and AR rules where surface water is the source of water for underground storage. Several ASR and AR projects utilizing surface water as source water have been implemented in Critical Groundwater Areas, where groundwater is not available for further appropriation, and the current draft rules would not prevent similar projects from being developed in the future.

The new rules could impact proposed ASR or AR projects where groundwater is the proposed source water to be stored in a deeper confined aquifer. In cases where surface water is not available for all months of the year at the 50% exceedance level (because the proposed use is storage), a currently available, two-step permitting pathway will remain viable. (1) Apply for a surface water right to appropriate water for subsurface storage during times when surface water is available (assessed at the 50% exceedance streamflow level in WARS). (2) Apply for a surface water to groundwater transfer, where the transfer would be addressed against the "similarly" criteria in OAR 690-380-2130. The Department should be involved in assessing this proposed source water permitting pathway in the early stages of development of an ASR or AR program (during the required pre-application meeting, if not before), so that the proposed permitting process could be assessed with input from OHA-DWS regarding their rules related to Groundwater Under the Direct Influence of Surface Water, or GWUDI.

Division 9

690-009-0010 "Basis for Regulatory Authority, Purpose, and Applicability" - Modified

Lisa Brown (WaterWatch of Oregon) noted that "proposed groundwater uses" do not include exempt use and suggested modifying 690-009-0010(2) as follows:

> *(2) These rules establish criteria to guide the Department in determining whether a proposed or existing groundwater use will impair, substantially interfere, or unduly interfere with a surface water source. These rules apply to all wells, as defined in ORS 537.515 (9), and to all proposed and existing appropriations of groundwater except where otherwise stated ~~the exempt uses under ORS 537.545. The authority under these rules may be locally superseded where more specific direction is provided by the Commission after the effective date of adoption of these rules~~.*

OWRD: Reject the proposed language because exempt groundwater uses are exempt under statute.

690-009-0020 Definitions

Lisa Brown (WaterWatch of Oregon) suggested modifying the preamble statement in 690-009-0020 for clarity as follows:

> *Unless stated ~~the context requires~~ otherwise, as used in these rules:*

OWRD: Accept the proposed rule language.

690-009-0020(4) "Potential for Substantial Interference," or "PSI" – New Definition

Tammy Wood (Oregon Lakes Association) suggested use of the term "water feature" instead of "water source," to include impacts to all streams, lakes, and wetlands. RAC members also have discussed whether "water body" or "water source" is more appropriate here and elsewhere in the rules.

OWRD: Reject the proposed language because "water feature" could include artificial water features such as canals and reservoirs, which are not subject to appropriation. "Water source" indicates waters subject to appropriation and is more consistent with other rules and statute.

690-009-0040 "Determination of Hydraulic Connection and Potential for Substantial Interference" – Significant Revision

Lisa Brown (WaterWatch of Oregon) objected to the inclusion of "parties" in 690-009-0040(1)(a):

> *(1)(a) Any information that is provided by potentially affected **parties** shall be considered in the process of making these determinations.*

She noted that parties do not exist at the application stage and suggested rewriting "broadly enough to include comments that WRD receives during the public comment period (from the applicant or others)." Dave Wildman (Anderson Perry and Associated) however expressed preference for inclusion of the term "parties."

OWRD: Accept the proposal to revise the language to address the comment because the intent of the rule is to ensure that the Department considers all available data, including data provided during the application review stage by the applicant and other interested people. Note that findings will be based on a preponderance of the evidence using best available information. Proposed revised language is as follows:

> *(1)(a) Appropriate i~~I~~nformation that is provided in the application or in the public comment period for the application ~~by potentially affected parties~~ shall be considered in the process of making these determinations.*

Zach Freed (The Nature Conservancy) expressed support for 690-009-0040(1)-(6), noting that the rules were consistent with decades of research regarding interference between groundwater use and surface water rights.

Greg Kupillas (Pacific Hydro-Geology Inc/OGWA) asked that we specify a time period for 690-009-0040(4) with respect to "over the full term of the proposed or authorized groundwater use." Robyn Cook (GSI Water Solutions, Inc.) has made similar comments regarding the meaning of "full term."

OWRD: The intention of the new rules is to evaluate the impact of proposed new groundwater uses on hydraulically connected surface water over the full period of use of the requested water right. This may be a relatively short duration for a time-limited right (e.g., a limited license for

use of groundwater for 5 years or less) or may essentially be "forever" for a groundwater right capable of being certificated. Therefore, "over the full term of the right" is defined by the application, up to and including "forever" for a standard groundwater permit.

Division 400

690-400-0010(11) "Over-Appropriated" – Modified Definition

Greg Kupillas (Pacific Hydro-Geology, Inc.) commented that because most groundwater sources would likely meet OWRD's proposed definition for "hydraulic connection" to surface water sources and given that most surface water sources in Oregon meet the proposed definition of "over-appropriated," OWRD would issue few new groundwater permits. He asked for a list of possible scenarios or conditions under which OWRD believes it could approve a new groundwater permit.

His comments are indicative of general concerns raised by other RAC members, i.e., the perception that these rules establish a moratorium on new groundwater rights by de fault.

OWRD: The proposed rules are designed to protect existing water rights holders and manage water resources more sustainably. If a new application satisfies the criteria for receiving a new water right, a new water right will be issued. There remain areas in the state where surface water is available for additional appropriation during all months of the year and groundwater levels are likely to be reasonably stable. There are also areas in the state where data concerning surface water availability may be lacking, but groundwater may be available if there are no authorized groundwater uses in the area or if data is collected to show reasonable stability.

690-400-0010(4) "Capacity of the Resource" – Modified Definition

Lisa Brown (WaterWatch of Oregon) suggested adding a criterion (d) to 690-400-0010(4) to address impacts to the ecological function of groundwater.

OWRD: Impacts to ecological function of groundwater is best addressed through establishment of an instream water right (see comment on "Substantial Interference" above), because ODFW has the necessary expertise to identify ecological needs in terms of streamflow or water level elevation and can best evaluate whether a proposed use may impact that streamflow or water level elevation. However, we welcome more input on the language further specifying what criteria may be suitable.

Adam Sussman (GSI Water Solutions, Inc./ Central Oregon Cities Organization) has raised concerns regarding implications of the proposed definition on the Deschutes Basin Mitigation Program as outlined in Division 505 rules. He has concerns with the proposed definition of 690-400-0010(4) "capacity of the resource", which now references the definition of "overdrawn" in Division 8, which he believes will "create a new pathway to considering impacts to surface water outside the context of Division 9 and associated Division 33, 310, 400, and 410."

OWRD: The Department has proposed an updated definition for "overdrawn" in Division 8 to address Deschutes Basins Mitigation Program concerns.

Division 410

690-410-0070 "Water Allocation" Principles – Modified

Lisa Brown (WaterWatch of Oregon) noted that other standards may apply and suggested modifying 690-400-0010(4)(b) as follows:

> *(b) The groundwater of the state shall be allocated to new beneficial uses ~~when~~ only if water is available for a proposed use as per the definitions in OAR 690-300-0010, OAR 690-400-0010, and OAR 690-008-0001, and subject to other applicable standards. Restrictions on allocations of water for exempt groundwater uses may be considered when a groundwater source is overdrawn;*

OWRD: The proposed language does not provide more clarity with respect to what other standards may apply. We welcome more input on the language further specifying standards that may apply.

Need for Rulemaking

Some RAC members questioned whether the rulemaking was authorized by statute. Some members also suggested that the rulemaking was going beyond the directive of the Commission.

OWRD: Please see email response to Sarah Liljefelt et al. (7/20/23).

Racial Equity/Fiscal & Economic Impacts

Susan Smith (Willamette University/Environmental Law) stated that based on her experience, the Klamath Tribes and the Confederated Tribes of Warm Springs Tribes view prior appropriation positively because of case law reserving, establishing or otherwise recognizing Tribal water rights as senior water rights. However, she also noted that white settlers generally were granted senior water rights while black, brown, and other people of color generally were not, and therefore past inequities persist in the prior-appropriation system for most people of color.

OWRD: Acknowledged, and we welcome further input from RAC members on this very complex issue.

Bill Jaeger (OSU/Economics) asked for sources of information concerning racial equity impacts in the context of water allocation.

OWRD: Please see

- Oregon Environmental Council & Oregon Water Futures, 2022, State of Water Justice in Oregon: A Primer on How Oregon Water Infrastructure Challenges Affect Frontline

Communities Across the State. Available at https://www.oregonwaterfutures.org/water-justice-report.

- Oregon Secretary of State, 2023, Advisory Report: State Leadership Must Take Action to Protect Water Security for All Oregonians (Report 2023-04). Available at https://sos.oregon.gov/audits/documents/2023-04.pdf?utm_source=SOS&utm_medium=egov_redirect&utm_campaign=https%3A%2F%2Fsos.oregon.gov%2Fwater.

These references also have been added to our Rulemaking website: https://www.oregon.gov/owrd/programs/GWWL/GW/Pages/Groundwater-Rulemaking.aspx. We welcome further input from RAC members on this issue.

Sarah Liljefelt (Dunn Carney/Oregon Cattleman's Association) noted that everyone benefits from a robust agricultural industry and urged us to include that qualitive positive impact in our assessment of racial equity impacts associated with protecting senior water rights holders.

OWRD: Acknowledged and will incorporate in our revised statement.

Lisa Brown (WaterWatch of Oregon) noted that although statewide information may not be readily available to assess racial equity impacts associated with this rulemaking, a case study, examining areas such as the Klamath Basin and Lower Umatilla Basin where more information should be available, may be viable.

OWRD: We will explore this possibility and welcome any specific information RAC members may have on this issue.

Lisa Brown also urged us to include the economic value of supporting sport and commercial fishing, river-related recreation, and the travel economy in our assessment of economic benefits associated with improved surface water flows and water quality.

OWRD: Acknowledged and will incorporate in our revised statement.

Lisa Brown suggested consideration of the economic savings from avoiding the need to spend money to address declining groundwater levels, e.g., impacts to domestic and irrigation well owners. She pointed to the Harney Basin CREP program and it's $60 million price tag as an example of potential savings.

Zach Freed (The Nature Conservancy) made a similar comment, urging us to consider the adverse economic impacts of not proceeding with our rulemaking to manage groundwater resources sustainably. He also referenced the need for domestic well relief and incentives for reduced groundwater use in the Harney Basin.

OWRD: Acknowledged and will incorporate in our revised statement.

Lisa Brown pointed out that economic benefits are derived from maintaining water quality through groundwater discharges to stream and rivers, thereby avoiding costs of compliance and restoration.

OWRD: Acknowledged and will incorporate in our revised statement.

Lisa Brown noted there are economic benefits to senior surface water rights holders which should be included in the economic impacts discussion.

OWRD: Acknowledged and will incorporate in our revised statement.

Written Public Comments Received

Dominic Carollo (Carollo Law Group) submitted comments on behalf of Sprague River Resource Foundation, Inc., Fort Klamath Critical Habitat Landowners, Inc., Productive Timberland LLC, Mosby Family Trust, and Sprague River Cattle Company. Most of these comments mirrored those of RAC members, except for the Groundwater Controls and Critical Groundwater Area issues:

- Scientific validity: questioned the science underlying drawdown limits and urged postponement until a systematic study of groundwater systems is complete.
- Modification of Existing Rights: found rules unclear as to what impacts are to modification of existing rights through transfers in the place of use, point of diversion, or manner of use.
- Groundwater Controls (690-009-0050): stated that groundwater controls trigger a contested case process and language in rule should reflect that to preserve due process of existing groundwater rights holders.
- Division 9 nexus with Critical Groundwater Area (690-010-0120(1)(a)): stated Division 8 rules should clarify that definition of "declined excessively" and "substantial interference" do not apply to Division 10 to protect senior water rights holders.

OWRD: Our proposed definition of OAR 690-008-0001(10) (July 7, 2023, draft as 690-008-0001(8)) "Substantial interference", "substantially interfere", "undue interference", or "unduly interfere" has been updated to incorporate the consideration of seniority. The proposed definition for OAR 690-008-0001(5) "Declined excessively" references OAR 690-008-0001(10), so the proposed seniority language should equally apply to OAR 690-008-0001(5).

Representative Emily McIntire submitted questions through the Zoom meeting chat as follows:

- Each basin and region are different- how do you plan to address those differences in this rule making?
- How will you work with community leaders to understand each area and its needs both environmentally and physiologically?
- How do these rules or rule making apply to areas going through the adjudication process?
- Why now?
- Is this more about the environment and climate… as opposed people and balance?

OWRD: Please see email response to Representative McIntire (7/11/23).