



Oregon Ground Water Association

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www.ogwa.org

September 26, 2023

Oregon Water Resources Commission
Oregon Water Resources Department
725 Summer St. N.E. Ste. A
Salem, Oregon 97301

RE: Comments on Proposed Groundwater Allocation Rules

Dear Chair Reeves, Members of the Commission:

On behalf of the Oregon Ground Water Association, I am providing comments previously submitted to the Oregon Water Resources Department as a member of the Rules Advisory Committee for the Groundwater Allocation Rulemaking, along with some additional supporting information.

Qualifications

I am a hydrogeologist with professional licenses in Oregon as a Registered Geologist (G-1384) and Certified Water Rights Examiner (432CWRE). I live in Mulino, Oregon, and have been providing water right consulting services primarily in the Willamette Valley for over 20 years. I also worked for many years as a contractor to the Oregon Water Resources Department assisting with the processing of extension applications, transfer applications, and water right certificates through the Department's Reimbursement Authority Program. As such, I have gained considerable knowledge about Oregon water rights and the operations of the Oregon Water Resources Department. My abbreviated resume is provided as an attachment to this letter.

Comments on the Proposed Groundwater Allocation Rules

As a member of the Rules Advisory Committee (RAC) for the Groundwater Allocation Rulemaking process, representing the Oregon Groundwater Association (OGWA), I participated actively in all meetings and made extensive comments both verbally during the meetings and in writing. Most of the concerns of the OGWA are incorporated within two letters I submitted to the OWRD following the fourth and fifth RAC meetings, respectively. Copies of those letters are provided as attachments to this letter.

A Broader View

The OGWA urges the Commission to take a broader view for management of Oregon's water resources than is implicit in the proposed Groundwater Allocation Rulemaking process. As stated in the attached comment letters, the proposed rules represent an effective moratorium on new groundwater permits throughout Oregon, and will result in the denial of applications in areas where groundwater is available for further development. We acknowledge the need for better options for managing Oregon's water resources, which is why we believe these rules need to be reconsidered in the context of a broader view of what is possible. In fact, these rules might not be necessary at all if the

State could adopt new strategies aimed at promoting natural and artificial recharge of our aquifers while managing both groundwater and surface water conjunctively according to the specific needs and conditions within each basin.

One of several strategies for promoting natural recharge would be to re-introduce beavers into areas they formerly inhabited. The impact that beaver dams can have on the local hydrogeology is illustrated by a case in Harney County described in the story entitled "Beaver on Trial." A copy of this story, as published in 1941, is provided as an attachment to this letter. The story makes for entertaining and informative reading.

Artificial recharge (AR) should be an important component of our future water management strategy. One method of AR could involve recharging a shallow aquifer in the winter either naturally or artificially and simultaneously withdrawing some of the recharged water for an aquifer storage and recovery project in a deeper aquifer. However, these proposed rules could preclude the issuance of the groundwater rights needed to use the recharged water from the shallow aquifer.

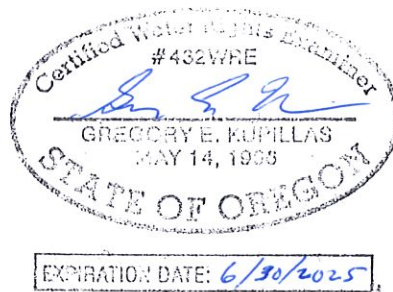
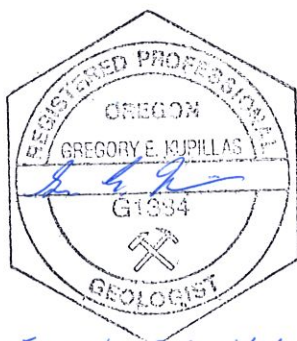
My business partner and wife, Malia Kupillas (resume attached), is currently working on her PhD in Water Resource Science at Oregon State University. The topic of her dissertation is a strategy for management of water resources that could be applied almost anywhere. That strategy, as focused on Oregon, is summarized in the attached document entitled "A Vision for Managing Water in Oregon." This plan, or some variation of it, would allow for a more dynamic and flexible system of water resources management, adaptable to the various characteristics of each basin and to changing conditions over time. The proposed rules, which will effectively shut down further groundwater development and thereby eliminate management options (e.g., prevent the use of recharged shallow groundwater, as discussed above), seem reactive and short-sighted in comparison.

We therefore urge the Commission to put a pause on this rulemaking process and allow more time for development of an approach better suited for the long-term sustainable management of the water resources everywhere in Oregon. In the short term, we believe that some simple changes to the existing rules could be made to better evaluate groundwater availability for new groundwater permit applications, as discussed in the attached comment letter dated July 7, 2023.

Respectfully,



Gregory E. Kupillas, R.G., C.W.R.E.
Pacific Hydro-Geology Inc.
Chair, Government Affairs Committee
Oregon Ground Water Association



Attachments

- Resume, Gregory E. Kupillas
- Letter from OGWA re. Comments on Proposed Groundwater Allocation Rules, July 7, 2023
- Letter from OGWA re. Comments on Proposed Groundwater Allocation Rules, August 11, 2023
- Beaver on Trial by Paul Schaffer, December 22 1941
- Resume, Malia Rosner Kupillas
- A Vision for Managing Water in Oregon

Comments to Oregon Water Resources Commission and the Oregon Water Resources Department on the current draft of the proposed groundwater allocation rules

September 29, 2023

Good afternoon,

It has been my pleasure to serve on the rulemaking advisory committee (RAC) for this rulemaking. I want to begin by complimenting the Oregon Water Resources Department (OWRD) staff for the selection of the RAC and the manner they have utilized the diverse expertise and perspectives of RAC members to improve their initial version of these proposed rules. Staff choose to add disinterested experts such as Bill Jaeger and me to a long roster of interested parties. All of the RAC members devoted considerable time and thought to this work, and I hope Bill and I occasionally added value. Staff have carefully considered every comment and point of view in preparing the proposed rules, while remaining laser-focused on the Commission's charge to enhance the sustainability of groundwater use in the state and to protect the existing rights of senior surface and groundwater users.

One outcome I sought in serving on the RAC was to assure that citizens, water users, hydrological consultants, and water lawyers would be able to understand the proposed rules. Both the initial draft and some portions of the interim drafts of the proposed rules were nearly incomprehensible. However, the process worked, due to the many hours spent by OWRD in trying to simplify the proposed rules. I believe that the proposed rules are still very complex and technical, but represent an excellent attempt to define how OWRD staff makes the water availability determination required by statute.

I teach water law at Willamette University and direct the certificate program in Environmental Law, Justice, and Sustainability. Although I am no longer a practicing water lawyer, I began my journey with water at Holland & Hart in 1980. Under the tutelage of Jerome C. Muys, who had been involved in the *Arizona v. California* case in the U.S. Supreme Court for 25 years at that point, I ended up representing irrigation districts and electric utilities on FERC water issues and contract issues, and ultimately helping brief the Indian reservation boundary issues before the U.S. Supreme Court. One thing I learned from Jerry was that litigation is a time-consuming and costly method to allocate water. He thought better decisions about water allocation can be made that are more conducive to the long-term public interest through collaborative adaptive management. Perhaps the Commission's renewed emphasis on basin planning can bring this vision to pass.

The Commission is now trying to adjust its inappropriate practice over some years of granting new groundwater rights in situations in which water is not available, and the exercise of those new rights leads to substantial interference with existing surface and groundwater rights, including plummeting groundwater tables. With or without these rule changes, the Commission should not be granting such applications. Granting rights that interfere with senior water rights is contrary to fundamental principles of prior appropriation. The Commission deserves to be commended for undertaking this rulemaking to assure that OWRD affirmatively determines that water is available before granting new groundwater permits.

One difficulty that RAC encountered throughout the development of these proposed rules is natural difficulty of trying to change just one aspect of the water allocation system because of the interlocking nature of that system. It is critical that OWRD and the Commission clearly identify results that it does

not want, unintended consequences, and explicitly exclude them in the proposed rules. For example, OWRD staff repeatedly assured RAC members that existing groundwater users and currently pending groundwater permit applicants would not be affected by these rule changes. So, the proposed rules should expressly state that these proposed rules only apply to groundwater permit applications submitted after the effective date of the rule changes and do not apply to existing groundwater rights or currently pending permit applications. The difficulty, of course, is that groundwater rights have been previously granted that do substantially interfere with more senior water rights. So, the applicability provision should be narrowly formulated in a way that does not preclude senior existing water right holders from arguing on their own behalf that they are injured by uses being made of junior groundwater or surface rights.

Some RAC members have argued that in many parts of the state, these rules amount to a moratorium on the issuance of new groundwater permits. The term “moratorium” suggests that the Commission would be making an artificial policy decision to prevent new uses of groundwater. This rule doesn’t reflect an artificial policy decision, it reflects the very concrete reality that both surface and ground waters are precious and scarce – and in many parts of the state, there is no water available for new groundwater permits.

Bill Jaeger’s comments on this question should be borne in mind. Assuming the Commission adopts some version of the proposed rules, it will not be preventing new uses of groundwater. New users will simply need to purchase existing water rights and transfer them for the new use. As RAC members have pointed out, transfers are difficult and time-consuming – given the long queue of contested cases. The legislature needs to fund the Commission to do its job, including reducing the time required to complete contested cases. In the meantime, the Commission needs to do whatever is possible to allow new uses of existing rights, to allow temporary transfers and to facilitate marketing and transfer of existing rights, in situations where the new use will not injure other right holders or adversely affect instream flows.

Together with OWRD and the Oregon Water Resources Congress, I hosted the first conference on water marketing at Willamette in 1991. I firmly believe that state-sponsored water markets or water banks, with clear rules, are necessary to help perfect the market for water in Oregon. As the Commission seeks to ease the transfer of existing rights to new uses, it should hold fast onto one historical principle of the prior appropriation system: no speculation. We should create and systematically enforce a rule forbidding ownership of interests in water rights, including futures contracts, by other than water users.

OWRD staff have done everything possible to give permit applicants some certainty about how the Department will undertake the technical analysis of whether water is available for new groundwater permits. While I applaud that transparency, I am concerned that the proposed rules may lock the OWRD staff into details that are inappropriate in some circumstances such as how many measurements are necessary to establish a trend as to reasonably stable groundwater levels. It might be wise to include a provision that allows the OWRD staff to deviate from those sorts of details to the extent necessary to accurately determine whether water is available.

Some whose business involves either securing new groundwater rights or preparing permit applications for such rights have either forthrightly objected to these proposed rules or suggested that the proposed rules are just not ready to propose. I don’t agree. I think in the past some groundwater applicants relied on the prior and inappropriate ODWR laxity in determining whether water was available before issuing a new water right. Prior ODWR practices essentially created a lucrative loophole in the prior

appropriation system that could be exploited to the detriment of senior water rights holders. Closing the loophole, ending the lax OWRD practices, is appropriate – and should not be delayed.

I'd like to make one final observation. If new groundwater permits cannot not be secured because water is not available, those who would seek such permits may instead attempt to inappropriately claim their use is an exempt use. The OWRC staff and the Commission should review new users utilizing those exemptions carefully to make certain that the 3% use by exempt groundwater users does not skyrocket.

Thank you very much for the opportunity to be part of this important process of assuring Oregon is making sustainable use of its waters.

With warm regards,

Susan Lea Smith

Susan Lea Smith, Professor of Law, Willamette University



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

September 29, 2023

OWRD Groundwater Allocation Rules Coordinator Laura Hartt
Via: laura.a.hartt@water.oregon.gov

Dear Ms. Hartt:

Thank you for the opportunity to submit final comments in the RAC process for the Groundwater Allocation

We want to thank the Department for taking on the critically important work of revising Oregon's groundwater allocation rules. The urgency and importance of this effort cannot be overstated – it is long-overdue and badly needed.

WaterWatch is very supportive of the draft rules, which will move Oregon to a science based, and much more sustainable system – and will finally meet the requirements of Oregon's forward looking 1955 Groundwater Act, which the current system does not

The existing rules allowed WRD to over-issue groundwater permits in the Harney Basin for pumping of 110,000 acre-feet per year in excess of recharge, dropping groundwater levels in some areas by more than 100 feet. This has adversely impacted domestic wells users, senior irrigators and groundwater dependent ecosystems alike. What's more - there is now so much excessive groundwater pumping there that while groundwater used to naturally flow to a low point in the aquifer under Malheur and Harney Lakes, new low points have been created at the bottoms of enormous cones of depression – created by pumping – under the Weaver Springs and Crane/Buchanan areas, to which groundwater now flows. That is truly astounding. And this is not some problem from the distant past - the unfettered frenzy of groundwater permit issuance in the Harney Basin was occurring as recently as 2015. This highlights the urgency of fixing the system before groundwater permit issuance creates additional impacts across the state.

Regarding the Draft Notice of Proposed GW Allocation Rulemaking - FEI Statement, we do not support inclusion of the compiled information examining the range of potential economic impacts on well construction arising from issuance of fewer new groundwater rights supporting irrigation use (p. 3) unless WRD is also going to include the known and estimated impacts of *not* taking action. Some of these are known: \$43 million for Harney Basin CREP and the statewide and Harney Basin specific domestic well funds. We think it is unbalanced to only provide numbers for one aspect of the FEI. Further, the “potential” costs from reduced well construction seems highly speculative in any case, given that transfers would no doubt markedly increase under the rules (as they clearly have in the Harney Basin since the Div. 512 rule revision in 2016), and many permits have undeveloped wells that may be drilled) without the added information.

WaterWatch of Oregon
Main Office: 213 SW Ash St. Suite 208 Portland, OR 97204
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To briefly address the Deschutes Basin, we highlight that the Deschutes Mitigation program, which WaterWatch has been involved in since the beginning, was created to address the impact of groundwater pumping on Scenic Waterway flows. This program does not address reasonably stable groundwater levels, or other important components of the Groundwater Act, which is as critical in that basin as it is elsewhere. Nothing in the Deschutes Mitigation program excuses the basin from meeting these requirements of the Groundwater Act.

Although we think the rules could be stronger in some places, we will not reiterate those points here given they were part of the thorough RAC discussions. The one exception is to highlight again the need to fix the “race to the bottom” rule (OAR 690-008-0001(8)(c)), which is not addressed in the draft rules and on which I have previously offered edits. It is inconsistent with the requirement to maintain reasonably stable groundwater levels and should be amended in this rulemaking process.

Regardless of these differences, **we support the draft rules because they would create a groundwater allocation system that is in-line with science, sustainability and statute.** We appreciate the thoughtful, science-based work done by the Department on this and the comprehensive and thorough, long-running public and RAC process that the Department has provided. We urge that the rulemaking move forward expeditiously. Please do not let shortsighted arguments or pleas for the status quo slow the process or weaken the draft rules.

Though it would have been better to do this before the Harney Basin and other places in Oregon were been impacted –getting these rules in place is critical and urgent for the people and the environment of Oregon.

For additional comments, please see the letter that has been submitted from the Oregon Water Partnership.

Thank you for your work on this rulemaking and for considering these comments.

Sincerely,

Lisa A. Brown

Lisa A. Brown
Staff Attorney

cc: Annette Liebe, Annette.I.LIEBE@water.oregon.gov
Justin Iverson, Justin.T.IVERSON@water.oregon.gov

DATE: September 25, 2023

VIA EMAIL: mindy.j.lane@water.oregon.gov



TO: Oregon Water Resources Commission

FROM: Oregon Water Partnership

RE: Comments on Agenda Item B, **Groundwater Allocation Rulemaking Update**

Chair Reeves and Members of the Commission,

Oregon Water Partnership supports the proposed science-based rules, which will benefit people and nature by limiting further unsustainable over-allocation of groundwater in Oregon.

Oregon Water Partnership is a diverse group of statewide conservation organizations with a common goal: to advocate for balanced water policies that ensure cold clean water to sustain healthy communities, livelihoods, and ecosystems. Our priorities are to build resilience for Oregon's water future, bring water data into the 21st century, support smart water management, and protect and restore our waters. We collectively have tens of thousands of members in Oregon communities across the state, and our organizations work collaboratively with cities, counties, Tribes, farmers, ranchers, and forest owners to restore habitat and improve watershed function.

Over-extraction of groundwater is a substantial threat to Oregon's aquifers and rivers, and the communities and economies reliant upon them. Declining groundwater levels threaten water accessibility and reliability for agricultural production, drinking water security for rural communities, and existence of important recreational and cultural resources. Unsustainable groundwater use due to over-allocation of groundwater rights is already happening in many parts of the state. Chronic well level declines have been identified in state agency reports¹, peer-reviewed literature², and a recent investigative report in The New York Times.³ Unsustainable groundwater use affects hydrologically connected surface water⁴, which can injure senior surface water rights supplied by streams and rivers. More than 36,000 miles of streams, nearly half of all wetlands, and almost two-thirds of all lakes in Oregon rely on groundwater to persist⁵. These are some of Oregon's most charismatic, biodiverse, and climate-resilient habitats, and they are threatened by the over-allocation of groundwater rights.

Oregon is facing a future with more frequent, intense, and widespread drought⁶;



¹ Scandella, B., & Iverson, J. 2021. Oregon groundwater resource concerns assessment. Oregon Water Resources Department, Salem, OR.

² Saito, L., Freed, Z., Byer, S., & Schindel, M. 2022. The vulnerability of springs and phreatophyte communities to groundwater level declines in Oregon and Nevada, 2002-2021. *Frontiers in Environmental Science* 10:1007114.

³ New York Times. 2023. Uncharted Waters: America is Using Up Its Groundwater Like There is No Tomorrow. Available at: <https://www.nytimes.com/interactive/2023/08/28/climate/groundwater-drying-climate-change.html>

⁴ Barlow, P.M., & Leake, S.A. 2012. Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow. U.S. Geological Survey Circular 1376, 84p.

⁵ Freed, Z., Schindel, M., Ruffing, C., & Scott, S. 2022. Oregon Atlas of Groundwater-Dependent Ecosystems. The Nature Conservancy, Portland, OR.

⁶ Ahmadalipour, A., Moradkhani, H., & Svoboda, M. 2016. Centennial drought outlook over CONUS using NASA-NEX downscaled climate ensemble. *International Journal of Climatology* 37:2477-2491.

increased evapotranspiration⁷; and a shift in winter precipitation from snow to rain⁸—all of which will affect groundwater supply and demand. These climate trends intensify the need for the Oregon Water Resources Department (OWRD) to follow a rigorous, science-based process when evaluating applications for new groundwater rights. Oregonians are already suffering the consequences of past allocation decisions⁹, and allocations made today will affect aquifer sustainability in future decades.

The existing groundwater allocation rules are not sufficiently protective of the resource, do not align with statutory directives governing groundwater allocation, and have resulted in unsustainable groundwater use—leading, for example, to the ongoing groundwater crisis in the Harney Basin. The existing rules also fail to fully account for reductions in surface water resulting from groundwater allocation decisions. Changes to the existing groundwater allocation policy are long overdue. Oregon Water Partnership appreciates the extensive public outreach and stakeholder engagement that OWRD staff have undertaken in working on this critical issue, from holding facilitated public meetings starting in September 2022 to convening a diverse and representative rules advisory committee through September 2023.

Oregon Water Partnership also appreciates the significant progress that OWRD has made in recent years in characterizing the state’s groundwater resources, such as cooperative studies in the Harney and Walla Walla basins, the installation of new observation wells to augment the existing statewide network of more than 1200 wells, and the 2021 Oregon Groundwater Resource Concerns Assessment. These efforts, combined with ongoing and future projects like the Statewide Recharge Project, continue to provide evidence indicating that groundwater has been overallocated throughout much of the state (Fig. 1).

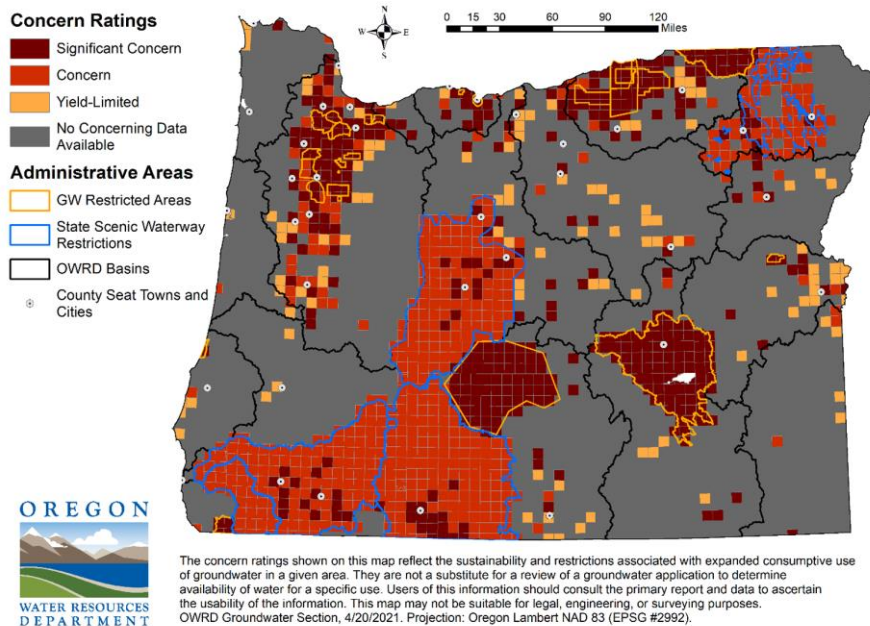


Figure 1: Map of concern ratings for groundwater in Oregon from the 2021 Oregon Groundwater Resource Concerns Assessment. The Assessment noted that concern ratings often underestimate likely long-term impacts on surface water from increased groundwater development.

In particular, the Groundwater Resources Concerns Assessment found that over 80% of applications for groundwater permits since 2010 are in areas of concern or significant concern, and about 80% of those applications were either approved or proposed for approval. This growing body of evidence compels more

⁷ Oregon Water Resources Department. 2015. Oregon Statewide Long-Term Water Demand Forecast. Salem, OR. 76p.

⁸ Nolin, A.W., & Daly, C. 2006. Mapping “at risk” snow in the Pacific Northwest. *Journal of Hydrometeorology* 7:1164-1171.

⁹ Oregon Public Broadcasting. 2022. Race to the Bottom: How Big Business Took Over Oregon’s First Protected Aquifer. Available at: <https://www.ijpr.org/environment-energy-and-transportation/2022-03-19/race-to-the-bottom-how-big-business-took-over-oregons-first-protected-aquifer>

sustainable and protective resource management.

Oregon Water Partnership supports the draft proposed rules because they meet the stated objective of the rulemaking: updating OWRD’s rules for evaluating and issuing new groundwater rights to protect existing water rights and manage Oregon's finite water resources sustainably. They are science-based and utilize the precautionary principle by only allocating new groundwater rights when sufficient evidence exists that the resource can sustainably support that use. We urge the Commission to adopt these draft rules in a timely manner to avoid further over-allocation of Oregon’s aquifers. The draft proposed rules align the state’s groundwater allocation policy with statute and will help the Oregon Water Resources Department achieve its mission to “**ensure the long-term sustainability** of Oregon’s ecosystems, economy, and quality of life¹⁰.”

Thank you for considering Oregon Water Partnership’s comments and please reach out to the organizational contacts below if you have any questions.

Oregon Water Partnership

Zach Freed, The Nature Conservancy in Oregon, zach.freed@tnc.org

Kimberley Priestley, WaterWatch of Oregon, kjp@waterwatch.org

Karen Lewotsky, Oregon Environmental Council, karenl@oeonline.org

Caylin Barter, Wild Salmon Center, cbarter@wildsalmoncenter.org

James Fraser, Trout Unlimited, james.fraser@tu.org

Dylan Kruse, Sustainable Northwest, dkruse@sustainablenorthwest.org

Rachel O’Connor, Environmental Defense Fund, roconnor@edf.org

cc: Doug Woodcock, OWRD Acting Director (WRD_DL_Director@water.oregon.gov); Ivan Gall, OWRD Interim Deputy Director (Ivan.K.Gall@water.oregon.gov); Annette Liebe, OWRD Technical Services Division Administrator (Annette.I.Liebe@water.oregon.gov); Laura Hartt, OWRD Water Policy Analyst (Laura.A.Hartt@water.oregon.gov); Geoff Huntington, Senior Natural Resources Advisor to Governor Kotek (geoff.huntington@oregon.gov)

¹⁰ Oregon Water Resources Department. 2019. Strategic Plan 2019-2024. Salem, OR.



Subject: Concerns Regarding Ground Water Allocation Rules – Lack of Stakeholder Involvement and Housing Goals Conflict

September 27, 2023

Dear Chair Reeves and Members of the Oregon Water Resources Commission,

We write on behalf of the Special Districts Association of Oregon, Oregon Association of Water Utilities, Oregon Water Utility Council, and the League of Oregon Cities to express our deep concerns about the Ground Water Allocation rules development. Our concerns center on the lack of robust stakeholder engagement, including cities and districts, and the timing of the rule making effort. We believe that the result of this will hinder some of our member's ability to plan for and secure water for our growing communities and will directly conflict with the Governor's housing production goals.

Lack of Stakeholder Involvement: The development of the Ground Water Allocation rules lacks sufficient involvement from cities and special districts. Collaborative input from all stakeholders is crucial for effective water management policies. The absence of this engagement jeopardizes our ability to adequately plan for water resources in the coming decades.

Timing of Rule Making: The development of these rules took place during the 82nd Legislative Assembly when many of the stakeholders were involved with and consumed by the business taking place in the State Capitol. This session saw an unusually high number of water-related legislative bills that received a great amount of attention by the assembly. The result of this legislative activity required stakeholders, who have limited resources, to focus on the activities taking place in the Capitol rather than the rule making that took place and conflicted with many of the activities taking place in the Capitol.

Conflict with Governor's Housing Goals and House Bill 2001 (2023): We believe that the current direction of Ground Water Allocation rules contradicts the Governor's housing objectives and the legislative requirements in House Bill 2001 (2023). Access to adequate water resources is crucial for addressing the state's housing production challenges, and the existing misalignment between water planning and housing goals is a significant concern.

We kindly request an opportunity for direct dialogue with the Water Resources Department before the Ground Water Allocation rules go out for public comment in early November. Collaborative engagement can lead to rules that are protective of our natural resources while supporting responsible growth and addressing our long-term water resource planning needs.

We appreciate your attention and look forward to your prompt response. Please contact us at mmartin@orcities.org and Mark@mjlconsulting.com to schedule a meeting for further discussion of these concerns.

Sincerely,

Mark Landauer, SDAO

Michael Martin, LOC

Kari Duncan, OWUC

Jason Green, OAWU

HARTT Laura A * WRD

From: Adam Sussman <asussman@gsiws.com>
Sent: Friday, September 29, 2023 11:42 AM
To: HARTT Laura A * WRD
Cc: LIEBE Annette I * WRD; IVERSON Justin T * WRD; Michael Buettner; Doug Riggs
Subject: COCO input on fiscal impact statement
Attachments: Statement of Cost of Compliance_COCO_9_25_2023.docx

Hi:

Here is some input on the fiscal impact statement for the current draft of the rules. Let me know if you have any questions or want to discuss further.

Sincerely,

Adam

Adam Sussman

Principal Water Resources Consultant

direct: 541.257.9001 | mobile: 541.602.5188

1600 SW Western Boulevard, Suite 240, Corvallis, OR 97333

GSI Water Solutions, Inc. | www.gsiws.com

Statement of Cost of Compliance:

- (1) Identify any state agencies, units of local government, and members of the public likely to be affected by the rule(s).

Current text:

Also, some municipalities may need to develop and implement additional water conservation and efficiency measures and/or acquire existing water rights through the transfer process rather than develop new rights to meet future demands.

Comment from COCO - This text does not acknowledge the tremendous amount of water conservation efforts already underway in Central Oregon and assumes that the acquisition and transfer of an existing groundwater right is a simple option and that such water rights are available for purchase – neither of which are accurate.

Suggested text:

In the Upper Deschutes Basin of Central Oregon (Bend, Redmond, Sisters) adoption of the proposed rules will result in a moratorium on the issuance of new groundwater permits. As a result, some municipal water providers would not be able to obtain the requisite water rights to meet projected water supply demands over the next 20 years. This will impair Central Oregon cities' ability to meet housing goals established by the Governor, land use planning, and other legal responsibilities of cities, including providing water for the health, safety, and welfare of current and future residents.

Small reductions in Central Oregon cities' projected demands may be achieved by expanding existing water conservation efforts. It may be possible to acquire and transfer existing groundwater rights but at a great cost to rate payers. For example, in Central Oregon, to obtain a water right that would provide 3,000 gallons per minute of water supply (typical rate from a new municipal supply well), would require the acquisition of over 500 acres of groundwater irrigation water rights at an estimated cost of \$12.5 million.



Bend, Culver, La Pine, Madras, Maupin
Metolius, Prineville, Redmond, Sisters

September 21, 2023

Douglas Woodcock
Acting Director, Oregon Water Resources Department

Doug:

As OWRD has worked to develop draft groundwater allocation rules, Central Oregon Cities Organization (COCO) has been actively engaged with staff to come to a common understanding of the Upper Deschutes Basin hydrogeology and how the proposed rules will affect the basin's municipal water suppliers. COCO was dismayed to see that in the Staff Report for the Groundwater Allocation Rulemaking Update (Agenda Item B), OWRD staff misrepresented data COCO shared in the context of historic well construction practices and mischaracterized COCO's rule suggestions regarding groundwater level declines. Given the potential for this erroneous information to misinform the Water Resources Commission and the public, COCO requests that OWRD immediately amend the staff report and issue notice of a formal correction for the record.

The most egregious statement in the staff report states that:

Allowing up to 150 feet of total decline in the Deschutes Basin would likely allow most wells there to go dry. An assessment of water well depths in the central part of the Deschutes Basin, conducted by COCO and presented to Department staff in July, indicated that approximately 55% of water wells would go dry given 75 feet of water level decline (3,619 of 6,557 water wells constructed between 1967 and 2022 in their area of assessment).

OWRD staff were and are aware that COCO's well-depth evaluation pertained to how well construction practices have changed over time within the Deschutes Basin. The data were specifically collected and discussed with OWRD in the context of legacy well construction practices in the basin that have resulted in the unfortunate scenario of some shallow constructed wells going dry. OWRD staff were and are aware that COCO made no effort to remove wells from the sample that have already been abandoned, replaced, or that are no longer in use because that is not salient to an evaluation of well construction practices. It is irresponsible and inflammatory to imply that these data show thousands of water supply wells would be impacted by continued groundwater level declines. More troubling is that the staff report implies that COCO is advocating for such a scenario.

COCO is not advocating for a 150-foot total decline in the Upper Deschutes Aquifer. We are advocating for OWRD to consider an approach other than the one-size-fits-all approach in the current draft rules. Given the hydrogeologic framework of the Upper Deschutes Basin we are suggesting OWRD consider a percentage of the aquifer that can be allocated to beneficial uses.

This approach is consistent with OWRD's legislative mandate under ORS 537.525(3) that, *"Beneficial use without waste within the capacity of the available sources, be the balance measure and extent of the right to appropriate groundwater."* This approach makes sense given that COCO and OWRD technical staff agree on the science-fluctuations in recharge are the main driver of groundwater level changes in the Upper Deschutes Basin.

COCO has approached this rulemaking in an open and collaborative way. It is unfortunate that staff have chosen this approach instead of seeking to better understand COCO's concerns and engaging in problem solving.

Sincerely,



Michael Preedin
Mayor, City of Sisters
COCO Chair



Mike Buettner
Utility Director, City of Bend
COCO Water Subcommittee Co-Chair.

Cc: Ed Fitch, Mayor City of Redmond
Melanie Kebler, Mayor City of Bend
COCO members
Doug Riggs, COCO Government Affairs



Bend, Culver, La Pine, Madras, Maupin
Metolius, Prineville, Redmond, Sisters

PROPOSED GROUNDWATER ALLOCATION RULES 9/28/2023

REQUEST

The current draft rules, specifically the definition of “Water is Available” under OAR 690-300-0010 (57), which includes “Reasonably Stable Water Levels” defined in OAR 690-008-0001 (9) are of great concern to Central Oregon Cities Organization (COCO). In particular, the one-size-fits-all criteria for determining “reasonably stable groundwater levels” (0.5 feet per year of decline and total decline of 25 feet) are not appropriate for the Upper Deschutes Basin Aquifer and will have a disproportionate impact on the basin’s municipal water providers. As currently written, the draft rules will result in a moratorium on issuance of new groundwater permits in the Upper Deschutes Basin.

COCO is requesting that the Commission support development of administrative rules that ensure the basin’s municipal water providers can meet land use, housing, and other legal responsibilities and that recognize the unique hydrogeologic framework of the Deschutes Aquifer.

SOLUTIONS

COCO urges the Commission to recognize the unique requirements placed on cities to plan for and provide water and to develop rules that incorporate the abundant data and reports that document the hydrogeologic framework of the Upper Deschutes Basin. COCO is providing the following rule revision concepts for the Commission’s consideration.

- (1) Specifically **adding** the following text to the draft rule definition of “Water is Available” in OAR 690-300-0010(57) to allow the basin’s cities to plan for and meet water supply obligations while further rulemaking discussions in a basin program are underway. The suggested time frame of a sunset is also consistent with the current “sunset” on the Deschutes Basin Groundwater Mitigation Rules. This would provide a “bridge” to allow continued municipal water supply planning and for additional rulemaking under a Deschutes Basin-specific process that will address a basin-specific definition of “Reasonably Stable Water Levels” in Division 8 and refinements to the mitigation program rules.

(x) Water is available for a municipal water use groundwater permit application submitted by a city, a franchisee thereof, or other entity that provides water to a city to appropriate groundwater within the Deschutes Groundwater Study Area and is processed under the Deschutes Basin Groundwater Mitigation Rules. This rule shall sunset on January 1, 2029.

- (2) In combination with (1) above, COCO urges the Commission to revise draft rule 698-008-001 (9)(d) regarding “Reasonably Stable Water Levels” to not bind future basin-specific Commission rulemaking outcomes. This provides basin stakeholders the flexibility needed to develop place-based solutions in the context of all the basin water planning efforts underway.

(d) The limits in part (a) of this definition may be superseded by limits defined in a basin program rule adopted pursuant to the Commission’s authority in ORS 536.300 and 536.310. However, the

maximum allowable rate of decline in the revised part (a)(A) may not exceed 3 feet per year, and the maximum allowable total decline in part (a)(B) may not exceed the smaller of 50 feet and 15% of the greatest known saturated thickness of the groundwater reservoir.

BACKGROUND

Groundwater is a major source of water supply for COCO's member cities. COCO members have a strong interest in this water source and take pride in being responsible stewards of the resource. COCO supports OWRD's efforts to manage and protect the groundwater resource in the Upper Deschutes Basin. However, OWRD's current draft Groundwater Allocation administrative rules fail to consider:

- Long-term planning needs and legal requirements placed on cities to plan for and provide water to meet land use objectives, to protect public health, safety, and welfare and to meet the Governor's affordable housing goals;
- The explosive population growth and demands for affordable housing in Central Oregon;
- The well documented hydrogeologic framework of the Upper Deschutes Basin; and
- More than 25 years of Upper Deschutes Basin planning and collaboration which has led to measurable improvements to streamflow, increased efficiency for cities and irrigation districts and a mitigation program to offset the impact on surface water from groundwater pumping.

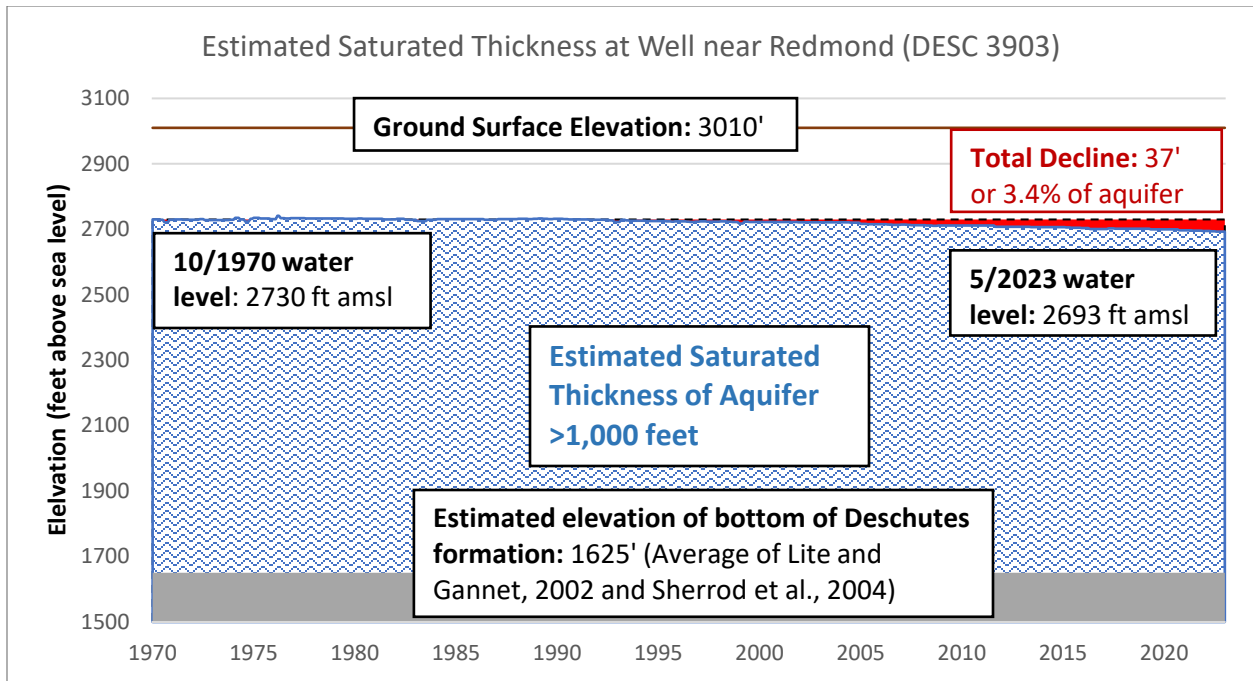
The draft rules also fail to consider the well documented attributes of the Upper Deschutes Basin, including:

Deschutes Basin Groundwater Mitigation Rules. The Deschutes Basin Groundwater Mitigation Rules, which have been in place since 2002, were developed to address impacts on surface water from groundwater pumping. These mitigation rules, which include a cap and a current sunset of 2029, provide a unique limitation on groundwater allocation that can be used by the Department for additional groundwater management if needed. COCO welcomes the opportunity to continue efforts to improve the mitigation program and associated rules.

The groundwater flow system is not over-appropriated in the Upper Deschutes Basin. The Upper Deschutes Basin receives over 4,000 cubic feet per second (cfs) of annual recharge. Groundwater pumping is equivalent to approximately 2 percent of the annual groundwater recharge (Gannett et al., 2017).

Precipitation drives the groundwater flow system in the Upper Deschutes Basin. Groundwater levels in wells near the Cascades closely reflect variability in annual precipitation. In wells more distant from the Cascades, the response of groundwater levels to precipitation is attenuated. Recent groundwater level trends seen at these wells are the result of an ongoing decrease in precipitation that is not without historical precedent. Precipitation data shows similar patterns that occurred in the 1930's, with similar effects on the groundwater system. An estimated 75 percent of groundwater declines were, and continue to be, caused by an extended period of lower precipitation that began in the early 1990s. While climate models predict a decline in snowpack because of climate change, they predict a small *increase* in precipitation. Due to the high permeability of the Deschutes Aquifer, a shift from snowmelt to rainfall will not have a significant impact on groundwater levels in areas distant from the Cascades.

The Deschutes aquifer is very thick. The central part of the Deschutes Aquifer has a saturated thickness of approximately 1,000 feet within a single geologic formation. In the Redmond area, observed declines of 37 feet over the entire period of record from well DESC 3903 amount to less than 3.5 percent of the saturated thickness of the aquifer. Moreover, using the ratio of contributing factors (aquifer stressors) from Gannett and Lite (2013), 29.5 feet of this decline is from reduced precipitation and irrigation district canal piping. The figure below shows groundwater level declines in the central part of the basin in the context of the estimated saturated thickness of the aquifer.



Imposing a moratorium on the issuance of new water rights to municipal water suppliers in the Upper Deschutes Basin does not achieve the Commission’s policy objectives. COCO understands that the Commission’s policy objective is to protect existing groundwater users and to manage the state’s groundwater resources in a sustainable fashion. However, given the hydrogeologic framework of the Upper Deschutes Basin described above, a moratorium will do little to help the Commission achieve its policy objectives and would have disproportionate consequences for municipal water suppliers’ ability to plan for and secure needed water supply.

We look forward to discussing COCO’s rule concepts with the Commission and OWRD staff.
Sincerely,

Michael Preedin, Mayor of Sisters, and Chair of Central Oregon Cities Organization

Cc: COCO Members



CITY OF REDMOND
Office of the Mayor

411 SW 9th St
Redmond OR 97756

September 18, 2023

Via Email and First Class Mail

The Oregon Water Resources Commission
725 Summer Street NE, Suite A
Salem, Oregon 97301
Email attn: mindy.j.lane@water.oregon.gov

On behalf of the Redmond City Council, this letter is intended to let you know the City has a pending water permit application with the Oregon Water Resources Department (OWRD). To meet the needs of our municipality, we believe the application must be approved under the current rules of the Department. Parallel with our need to provide water are our efforts to conserve this precious resource.

This letter explains those initiatives in further detail.

Approval of our application helps Redmond protect the health, safety and welfare of our current and future residents. Of equal importance, it also helps us meet the housing goals, land use objectives, and the myriad of other legal responsibilities placed upon cities by the State of Oregon and the Federal Government.

Redmond is among Oregon's and even the nation's fastest growing cities. Over the past decade the city's population has increased from around 26,000 to nearly 38,000. The annual growth rate continues in the 2% – 4% range.

The pending water permit application requests an additional 5.12 cubic feet per second (cfs). It was submitted to the Oregon Water Resources Department in December 2022. In conjunction with the submittal the City will comply with the State's current mitigation rules and will transfer surface water rights permanently back into the Deschutes River. The current groundwater application must be reviewed under the State's current rules.

An approval would allow Redmond sufficient water through 2043, when our forecasted population is 56,810. Over this time period Redmond is expected to add approximately 6,500 housing units.

Concurrent with our increasing population and our need for water, the City implements substantive conservation programs, and has for some time. We recognize water is an increasingly precious resource. Over the years, as land has been annexed into the city for development, the City has returned a large portion of the undeveloped lands' water rights back to the Deschutes River, effectively using less water than the land would have used for irrigation based on the underlying water right on the land. As such, Redmond has provided more water in-stream (in the Deschutes River) than is required for its mitigation obligation. It is also noteworthy that collectively, the cities of Central Oregon consume less than 4% of all the water appropriated in the Deschutes Basin.

Additionally, based on the findings published in the White Paper, "*Understanding Upper Deschutes Basin Groundwater Levels*," the City's application for an additional 5.12 cfs will not cause the resource to be over-appropriated, as the study shows that the aquifer recharge is much greater than the demand seen by the additional pumping of groundwater.

We have been good stewards and take conservation seriously. Below are a list of initiatives we have championed either at the national, state, or regional level:

- Proactively installed remote pressure and leak detection throughout the distribution system using dry barrel fire hydrants to more efficiently find and repair water losses that might have otherwise not been seen in our distribution piping.
- Early adopter of fully metered AMI system to record and track every drop out of every endpoint, including hydrants.
- Early adopter of custom water engagement software (AquaHawk) that is publicly facing, to inform and engage residents of their water use on an hourly basis.
- Early adopter of a Water Conservation Rebate program, (which is now being utilized by other cities in the Deschutes basin). We also have a robust conservation program including free water fixtures and showerheads as well as outdoor hardware. We utilize public information campaign tools including billing inserts, mailers, social media, and outdoor events such as The Home and Garden Show, Farmers Markets, and other community gatherings.

We also work closely with our partners at the Redmond School District to bring awareness of conservation into the classrooms as part of the curriculum.

Public policy is also driving change. In early 2023, the Redmond City Council authorized staff to move forward with City Development Code changes that will allow and encourage more water friendly landscaping such as xeriscaping and artificial turf, rather than grass. Our Parks Division is also evaluating the feasibility of artificially turfing our most heavily used soccer fields.

Additionally, we are embarking on a comprehensive rate study to incentivize reduced water usage by way of a tiered rate structure, where higher volume users are billed at a higher rate.

We have been a responsible partner to the state's water objectives and have managed the resource with a philosophy and an investment approach that parallels that of the Water Commission. We understand the Commission will be looking at updated rules regarding groundwater appropriation. We appreciate the need for that review in light of the drought conditions over recent years.

From our perspective, those rules should take the following into consideration:

1. That each water basin and each aquifer in the state should be evaluated individually based on the unique characteristics and science specific to each basin. For example, a 1,000' deep aquifer over a large geographic basin is not the same as a 300' deep aquifer.
2. Because of the unique political, public policy and legal requirements cities have, their use of groundwater must be evaluated differently than other users.

We look forward to continuing to work with the Commission and the Department to provide water to our increasing population to ensure the preservation of the public welfare, safety and health of our community. We are planning to attend the upcoming Commission meeting in Burns on September 28 to discuss this further during public testimony.

Thank you in advance for your partnership.

With warm regards,



Edward Fitch
Mayor
Redmond, Oregon

cc: City Council



To: Members of the Oregon Water Resources Commission

From: Deschutes County Commissioner Phil Chang

Re: Groundwater Allocation Rulemaking

September 26, 2023

Dear Oregon Water Resource Commissioners,

Thank you for your stewardship of Oregon's water resources and your efforts to slow or reverse the decline of groundwater levels across the state. I would like to share some thoughts on how to accomplish those goals within the fast growing communities and unique hydro-geologic setting of the upper Deschutes Basin. I offer these comments both as a County Commissioner and as a natural resource professional who has worked in water resources for over 25 years.

The new groundwater allocation rules being drafted by OWRD may put the agency on a collision course with other state agencies charged with advancing the Governor's ambitious housing production goals and with managing Oregon's unique land use planning system. Governor Kotek has set a target of producing 36,000 additional housing units per year to address dire shortages in our state and Oregon's land use planning system directs most growth and housing development to occur within incorporated cities through Urban Growth Boundary (UGB) expansions.

As drafted, the new groundwater allocation rules would treat any new permit application for groundwater extraction in the Deschutes Basin the same whether that application came from an incorporated city, a new rural residential subdivision, or a proposed destination resort. This would be like using an axe on new applications when a scalpel is what is needed. Incorporated cities are the place where the Governor's housing goals will need to be met and they are required by state statute to maintain a 20 year supply of buildable land to accommodate anticipated future growth. As drafted, these new rules could make it extremely difficult for incorporated cities to line up an adequate supply of water to match the required land supply.

Cities need to be prioritized over other applicants for new groundwater permits for residential development. This prioritization also makes sense because urban homes - with smaller landscaped area and access to municipal utility efficiency programs - typically use less water than rural homes. If we need to dedicate additional water to future housing to accommodate growth, that housing should be as water efficient as possible. We can learn important lessons about efficiency from the City of Bend whose service population grew by over 26,169 people (34%) in the past 18 years but has only increased its annual surface and groundwater extraction by 8.5% in that time. Prioritizing incorporated cities for new groundwater allocations could be coupled with requirements to pursue ambitious municipal conservation and efficiency programs and also with supportive technical and financial assistance.

Besides differentiating between homes in incorporated cities and homes in rural subdivisions or resort communities, groundwater policy needs to address individual rural residential homes on exempt wells. With very high daily use





thresholds, no metering to determine whether those thresholds are being observed, and up to a half acre of irrigated landscape allowed, exempt well homes are some of the least water efficient households in the Oregon high desert. But if the new groundwater allocation rules make it very difficult for any community water system to get a permit for additional groundwater utilization, and if Deschutes County faces tremendous growth pressure in the coming decades, the new rules could have the perverse outcome of channeling more future growth into exempt well properties which are not addressed by the draft rules. We currently have 17,000 exempt wells in Deschutes County. Adding thousands of additional exempt wells – even as many existing exempt wells are currently going dry – would not be water smart.

I very much appreciate the Department and the Commission's intent with this rule making process and want to suggest that to meaningfully slow the decline of groundwater levels in the Deschutes Basin it will likely take more than denying future groundwater rights applications. A massive amount of groundwater moves through the Deschutes Basin. Historically, this has been replenished by a massive amount of precipitation in the Central Cascades. After many years of below historic average precipitation we should be asking whether this is the 'new normal' and whether we need to adjust our overall water usage accordingly.

So beyond constraining additional groundwater permits we need to get current groundwater rights holders to become more efficient so that as a basin we can maintain the current benefits of water use while using less. Incorporated cities, unincorporated communities, resort communities, and our 17,000 exempt well properties all need to be incentivized and encouraged to reduce their per household consumption of groundwater. A broad scale efficiency initiative could provide a significant portion of the 'new' water we need to accommodate future growth in Deschutes County without placing additional strain on our declining groundwater resources.

OWRD staff have mentioned the possibility of a local planning process or designation of a critical groundwater area to address our unique needs and unique resource in the Deschutes Basin. This is a community that is capable of such sophisticated analysis, planning, and allocation and we do have a substantial amount of the required data already. But these processes are also huge undertakings and financial and technical assistance from the state would likely be needed to make one of these processes possible.

In summary, I would like to ask that as the Water Resources Commission considers new groundwater allocation policies that you:

- 1) Provide special consideration and priority for incorporated cities for new groundwater allocations which can be paired with ambitious conservation and efficiency requirements
- 2) Address exempt wells in your rule making to avoid the perverse outcome of directing more future growth into very water-inefficient exempt well home development
- 3) Consider how to motivate and incentivize conservation and efficiency among current groundwater users as a way to make 'new' supply available.
- 4) Provide technical and financial assistance for local planning processes or critical groundwater area designation processes.



COMMISSIONER PHIL CHANG

The Commission has a greater role to play in achieving a sustainable groundwater future than just saying no to new permits and depending on water users to figure it out. The Commission can play a proactive role in ensuring that key water users get the water they need and that existing water users are using groundwater as efficiently as possible and then sharing any savings to stretch our limited water resources further.

Thank you for your consideration. If you would like to discuss the upper Deschutes basin or any of the suggestions in this letter further please do not hesitate to contact me.

Sincerely,

Phil Chang
Deschutes County Commissioner





To: Oregon Water Resources Commission
Eric Quaempts, Chair
Kathy Kihara
Jan Lee-Weinberg
Joe Moll
Meg Reeves
Julie Smitherman
Woody Wolfe

From: Caylin Barter, Oregon Water Policy Program

Date: September 28, 2023

RE: Support for Groundwater Allocation Rules: *Protect Existing Rights, Manage Water Sustainably*

Chair Quaempts and Members of the Commission,

Thank you for the opportunity to provide comments on the proposed groundwater allocation rules, which we support as a long-overdue step toward ensuring the long-term sustainability of Oregon's ecosystems, economy, and quality of life.¹

Wild Salmon Center is an international nonprofit headquartered in Oregon that has worked with local partners since 1992 to protect and restore the strongest remaining runs of Wild Pacific Salmon. We use science to drive policy, lead planning processes, and support implementation, and we know that the health of our water resources is directly linked not only to the recovery of our iconic wild fish but also the vitality of our communities and economy.

We believe Oregon simply is not Oregon without clean, abundant water. And the way to ensure that is through water policy that is balanced, proactive, science-driven, and regionally-informed. So we work with partners at agencies, through coalitions, and in local communities to improve stewardship of this life-sustaining resource.

Why does Wild Salmon Center care about how groundwater is allocated? Because **maintaining sustainable groundwater supplies is critical to the health of Oregon's fish, rivers, and the communities they sustain.** Having stable, healthy groundwater levels contributes cold reliable water—even in the middle of a summer heat wave—that can mean the difference between life and death for coldwater fish. Freshwater-dependent fishing contributes \$2.5 billion in net economic value and half a billion dollars in direct spending on recreational fishing opportunities in Oregon, with much of that spending benefitting resource-dependent rural communities.² Those fish sustain deep cultural connections, including those of tribal communities who have stewarded these places and beings since time immemorial. And these coldwater seeps and springs may be the only water flowing in a stream during hot

¹ Oregon Water Resources Department, *Strategic Plan 2019-2024* (2019).

² Pilz, D., Kruse S., Raucher R., Clements J., Gardner T., Odefey J., Madsen T., Purkey A., Sheridan C., McCoy A., Ehrens A., *The Business Case for Investing in Water in Oregon* (June 2023).

INTERNATIONAL HEADQUARTERS

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dry summers—streams that are the source of existing water rights for families, communities, farms, fish, and industries.

As you have heard today and for many years before this, **the existing rules have failed to prevent overallocation of Oregon’s groundwater and related harm to connected surface water.** In fact, the existing rules were structured in a way that forced the Department to put its head in the sand and only consider impacts of any proposed new extraction within a mile and within a year. Worse yet, in cases where the Department could not determine whether groundwater was available to support further allocation, these groundwater applications were approved.

In 2021, you issued clear policy direction: “if you don’t know, the answer is no.” And recognizing that the existing rules were fatally flawed, you directed the Department to draft rules for evaluating and issuing new groundwater rights that are protective of existing rights and manage Oregon’s finite water resources sustainably. You knew this was going to be a paradigm shift in how we steward our publicly owned water supplies, but it was necessary to stop the bleeding. And with your leadership and direction, the Department convened the top-notch Groundwater Allocation Rules Advisory Committee whose hard work has generated the proposed rules you have heard about today—rules that will position Oregon as a leader in sustainably managing its waters, rules that recognize our waters are finite and connected, and rules that will lead to innovation and attract investment.

When it comes time to adopt these proposed rules in March 2024,³ Wild Salmon Center urges you to adopt them, to celebrate this watershed moment, and to double down on your leadership role in making policies that maintain reasonably stable ground water levels, that allocate within the capacity of the resource, and that are protective of existing water rights and the public interest.

Thank you for this opportunity to offer comments and please reach out if you have questions.



Caylin Barter
Senior Program Manager
cbarter@wildsalmoncenter.org

³ See Staff Report for Agenda Item B, Groundwater Allocation Rulemaking Update, September 28, 2023, Water Resources Commission Meeting, *available at* https://apps.wrd.state.or.us/apps/misc/vault/vault.aspx?Type=WrdNotice¬ice_item_id=11328.



Oregon Water Resources Department
Laura Hartt, Water Policy Analyst/Rules Coordinator
725 Summer Street NE, Suite A
Salem, OR 97301
Laura.A.Hartt@water.oregon.gov

Re: Comments on the Groundwater Allocation Rulemaking

Central Oregon LandWatch (“LandWatch”) appreciates the Oregon Water Resource Department’s (“OWRD”) rulemaking process to modernize and move toward a more sustainable groundwater allocation policy. As part of this process, LandWatch submitted general feedback on the rulemaking in October 2022, via OWRD’s online survey. We submit this letter as additional comments on the rulemaking process to highlight considerations related to incorporated cities in the Upper Deschutes Basin, above Lake Billy Chinook.

LandWatch generally supports the draft rules’ approach of only allocating new beneficial uses when OWRD makes a finding that water is available. However, we see a need to reconsider how a moratorium on new wells might impact future growth and the land use planning responsibilities of incorporated cities in the Upper Deschutes Basin, which could lead to incentivizing increased development outside of urban growth boundaries (“UGBs”). Whereas cities have legal responsibilities to plan for and accommodate future employment¹ and residential² growth, counties do not. In other words, Oregon land use law requires planning for and accommodating growth inside, but not outside, UGBs.

LandWatch recommends the Rules Advisory Committee consider a narrow exception for incorporated cities in the Upper Deschutes Basin to access new groundwater where OWRD has otherwise closed off an area to new beneficial uses. As discussed further below, we recommend that this exemption for incorporated cities follow a robust analysis of site-specific ecological impacts, the development of a data-driven mitigation strategy to address site-specific ecological impacts, and adoption of a new water conservation plan with specific, required water conservation actions.

A significant concern with new groundwater allocation in the Upper Deschutes Basin is the potential for impacts to surface water resources. The connection between groundwater and surface water in the Upper Deschutes Basin is well established and basin-wide, groundwater is estimated to make up 73% of streamflow (Gannett et al. 2017). The connection between

¹ Oregon statewide land use planning Goal 9 requires planning for economic development opportunities only in urban areas. *Port of St. Helens v. Land Conservation & Development Comm'n*, 165 Or App 487,996 P2d 1014 (2000), rev den,330 Or 363 (2000)

² Similarly, statewide land use planning Goal 10 requires planning for housing needs on lands within urban growth boundaries. ORS I97.295(1), OAR 660-008-0005(2).



groundwater and surface water in the Deschutes Basin in part led to the development of the Deschutes Basin Groundwater Mitigation Program in 2002, where new groundwater uses are only permitted if the impacts to streams are mitigated.

In considering an exception for incorporated cities, LandWatch also recommends that OWRD update the Deschutes Basin Groundwater Mitigation Program in tandem to this rulemaking process, to focus mitigation and associated ecological benefits to the appropriate site-specific locations within the Upper Deschutes Basin. While groundwater pumping is a small fraction of the basin's hydrologic budget, it can have major impacts at the local scale (Gannett et al. 2017). Because of this, it is critical that any exception provided for incorporated cities is paired with a geographically appropriate, site-specific mitigation strategy.

Lastly, we want to stress the importance of addressing all impacts to groundwater and urge OWRD to include regulation of exempt wells in the rulemaking framework. Regulating cities but not exempt wells creates a troublesome incentive for growth and development outside of UGBs, with localized impacts the state has little regulatory authority to address. This incentive would be counter to the spirit and letter of Oregon land use planning, which promotes growth inside UGBs while discouraging residential growth outside UGBs for the sake of preserving farmlands, forests, and natural resources.

Outlined below are several key points the Rules Advisory Committee should consider in developing a narrow exception for incorporated cities in the Upper Deschutes Basin when new groundwater allocations are otherwise prohibited:

- 1) Incorporated cities must develop a water conservation plan that includes mandatory conservation measures to reduce water use. Including, but not limited to:
 - a. Required updates to city code to constrain certain water uses, including eliminating irrigation of median grass, curbside grass, and other aesthetic vegetation in and abutting public rights-of-ways.
 - b. A demonstrated ability to “flatten” the demand curve, where every 10% increase in an incorporated city's population corresponds to a maximum increase in annual water use (surface and groundwater) of 3%.
 - c. Monitoring and reporting of use to demonstrate how an incorporated city is meeting demand curve requirements described above, and to identify additional areas for water conservation improvements. Incorporated cities shall provide a yearly report summarizing findings and opportunities for improvement.

- 2) Establish a process to determine the site-specific ecological impact of a proposed well location. This process should rely on the hydrologic model described in Gannett et al. 2017—which used the U.S. Geological Survey's integrated Groundwater and Surface-water Flow model (GSFLOW)—or future update to this model. Important questions to consider in this process:



- a. The impacts of allocating additional groundwater uses on groundwater, surface water, and water quality at site-specific locations where impacts are expected.
 - b. How well location and depth influence the degree of ecological impacts (both to surface and groundwater resources) when allocating additional groundwater uses.
 - c. Opportunities for groundwater recharge in the Deschutes Basin, especially considering the significant artificial recharge from leaky irrigation canals, and the ongoing and necessary efforts to pipe them.
- 3) Utilize findings from the process described in recommendation 2 to develop a site-specific mitigation plan. The mitigation plan must ultimately be a refinement of the current Deschutes Basin Groundwater Mitigation Program, providing a more precise strategy based on location analysis, and focusing mitigation on the Upper Deschutes Basin. Key areas of the Deschutes Basin Groundwater Mitigation Program that should be updated include:
- a. Zones of impact
 - b. Seasonality
 - c. Requiring mitigation for exempt wells
 - d. Establishing higher sufficiency standards for water rights used for mitigation
 - e. Establishing a site-specific threshold that if reached would result in no new groundwater for incorporated cities and the need to seek alternative water resources to support growth inside cities.
- 4) Apply the new groundwater allocation rules to exempt uses under ORS 537.545. Allowing exempt wells to continue to use groundwater in an area that is otherwise not available for new groundwater uses fails to address all impacts and creates a perverse incentive for additional development outside of incorporated cities.
- 5) Establish a monetary mitigation fund that incorporated cities are required to contribute to when the analysis under recommendation 2 indicates new wells will impact private well owners. Allocation of mitigation program funds should prioritize compensation for impacted wells, considering the date a well was established and other factors.

We commend OWRD for taking on this rulemaking to modernize how we allocate groundwater in the state. However, additional considerations for incorporated cities in the Upper Deschutes Basin are warranted, particularly due to the fast pace of growth, the legal duties placed on cities to accommodate that growth, groundwater-surface water connection, and the differences in the regional aquifer compared to other areas around the state. While we strongly recommend a narrow exception for incorporated cities in the Upper Deschutes Basin, it must be predicated on a robust site-specific analysis, mitigation strategy, and conservation plan.





2843 NW Lolo Drive, Ste. 200 | Bend, OR 97703

Phone (541) 647-2930

www.colw.org

Sincerely,

A handwritten signature in black ink, appearing to read "Jeremy Austin".

Jeremy Austin
Wild Lands & Water Program Director
Central Oregon LandWatch
2843 NW Lolo Dr St. 200
Bend, OR 97703
Jeremy@colw.org

CC: Ben Gordon
Executive Director
Central Oregon LandWatch
Ben@colw.org

REFERENCES

Gannett, M.W., Lite Jr, K.E., Risley, J.C., Pischel, E.M. and La Marche, J.L., 2017. *Simulation of groundwater and surface-water flow in the upper Deschutes Basin, Oregon* (No. 2017-5097). US Geological Survey.



WE DEFEND AND PLAN FOR CENTRAL OREGON'S LIVABLE FUTURE