



Oregon

Tina Kotek, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904
www.Oregon.gov/OWRD

MEMORANDUM

TO: Water Resources Commission

FROM: Annette Liebe, Technical Services Division Administrator
Justin Iverson, Groundwater Section Manager
Laura Hartt, Water Policy Analyst
Emelie McKain, Senior Water Advisor

SUBJECT: Agenda Item I, November 17, 2023
Water Resources Commission

Groundwater Allocation Rulemaking Update

I. Introduction

This report provides information on the Department's ongoing efforts to update rules for allocating new groundwater rights. *This is an informational report.*

II. Integrated Water Resources Strategy Recommended Action

- 10.G – Strengthen water quantity and water quality permitting programs
- 11.E – Develop additional groundwater protections

III. Background

Statewide monitoring data indicates that in many parts of the state groundwater levels are declining and surface waters are overallocated. In 2023, the Department initiated rulemaking to modernize the criteria for allocating new groundwater rights to better protect existing water users and sustainably manage the resource. The Department's proposed rules are designed to fulfill our statutory obligations to preserve the public welfare, safety, and health as per ORS 537.525 and 537.621.

In evaluating an application for a new groundwater permit, the Department currently applies the following statutory "four-part test": (1) is the proposed use allowed in the basin, (2) is water is available, (3) will other water rights be injured, and (4) does the proposed use meet additional Commission standards and rules (e.g., well construction rules, state scenic water ways requirements, etc.). This rulemaking proposes to modify the assessment and determination of "water is available."

At the September 2023 Commission meeting, the Department presented an overview of the rulemaking process to date and discussed key issues associated with the two major policy

proposals in the draft rules: (1) defining and expecting that reasonably stable (i.e., sustainable) water levels exist when evaluating an application for a new groundwater permit, and (2) expanding protection from the impacts of groundwater pumping on hydraulically connected surface water sources that are already over-appropriated. The Commission also heard public comments from several parties.

At the November 2023 Commission meeting, the Department will share additional information about the consequences of not sustainably managing groundwater resources and the impacts on existing water users, provide more detail on the scientific foundation for the proposed rule language, provide a rulemaking update, summarize feedback received to date, and provide an overview of the existing and potential future opportunities for securing future water supplies in the event groundwater is not available for further appropriation.

IV. Discussion

In response to Rules Advisory Committee (RAC) and public input, as well as Commission feedback, the RAC will be reconvened for two additional meetings. The Department is also pursuing opportunities to provide an update and solicit input from Tribes as well as organizations representing local governments and water utilities (e.g., League of Oregon Cities, Association of Oregon Counties, Oregon Association of Water Utilities, and Oregon Water Utilities Council). The Department also continues to discuss the rulemaking with the Groundwater Advisory Committee. These additional meetings and related outreach efforts will require extending the timeline for the overall rulemaking process, with the Notice of Proposed Rulemaking now anticipated sometime early in 2024.

The Department anticipates using these additional meetings to present and explore revisions related to two topics of concern: (1) the policy and scientific foundation of the proposed rules and (2) the implications of the proposed rules. With respect to the former, discussion will focus on:

- reviewing the Department’s rationale for proposing statewide rule changes to the definition of “water is available;”
- presenting results from assessments used to inform the proposed definition of “reasonably stable water levels;” and
- describing why the Department is recommending that future assessments of the “potential for substantial interference” with surface water be based on the application of generally accepted hydrogeological principals.

The Department intends to continue to explore options with local governments to ensure that there are a viable set of solutions to meet future water needs.

V. Conclusion

The groundwater allocation rulemaking has generated significant public interest and comment. The Department looks forward to presenting additional detail on the need for, and assessments

underlying, the proposed rules, as well as to engaging in further discussion with the Commission and other interested parties.

Justin Iverson
503-302-9728

Annette Liebe
971-375-7322

Laura Hartt
971-720-0963

Emelie McKain
971-375-5477