

March 20, 2024

Oregon Water Resources Commission  
Attn: Chair Eric Quaempts  
725 Summer St NE Ste A  
Salem, OR 97301

RE: Section 512 Rules and Rules Advisory Committee Process

In August of last year representatives of the community requested the Department secure independent third-party facilitation to support the Division 512 rulemaking process. We greatly appreciate the Department acting on that request but remain concerned about the approach the Department is taking with the rules advisory committee (RAC). The RAC meetings are perceived by some participants and observers as a forum for the Department to tell the community what is going to happen. There remains a failure to fully engage the RAC members and broader community in any meaningful dialogue to build understanding of the assumptions and logic of the regulatory approach proposed by the Department let alone any consideration of constructive dialog to examine the consequences of the proposed approach as well as explore alternative approaches.

The Harney Basin will be the first basin in the state to have a critical groundwater area designation using the updated critical groundwater area statutes and Division 10 rules. This will be a defining moment for the state and for our basin. This process presents an opportunity for the Commission to set the course for the future of water management in the state. We are invested in the Department's success and offer the following observations and recommendations based on our individual and collective experiences and expertise working through complex natural resources issues in the Harney Basin.

When the Commission last approved updated Division 512 rules in April 2016, the Department's message to the community throughout the rulemaking process was more hopeful. The Department indicated that, depending on the outcome of the groundwater study, the Department might reopen portions of the Basin for additional groundwater development. This is the primary reason that community members advocated for a rulemaking process to begin within a year of the groundwater study being completed "to explore whether there is a need for updates or changes to these rules." At that time there was no indication that we would be facing basin-wide reductions in groundwater use. In the five years that it took to publish the groundwater study, the Department delivered contradictory messages to individuals and organizations within the community about what might occur. At the same time, Department staff and leadership consistently made commitments to engage the community in a collaborative process.

As a result of our participation on the Groundwater Study Advisory Committee, community leaders now know and accept that most of the basin cannot sustain additional groundwater development and that, in order to achieve sustainability, reductions in groundwater use are necessary. We were led to believe through many conversations with Department leadership and staff over the years that the process to determine the amount and timing of reductions as well as how to achieve the reductions, would be a collective effort. Based on the last year of the Division 512 rulemaking process, we now feel that the Department is making these decisions for the basin rather than *with* the basin. We are concerned that the Department views this rulemaking as a project to be completed rather than a collective effort to identify what success looks like and chart out how we will all work together to achieve that success.

Since place-based planning was initiated in 2016 through funding and support from the Department, community members and stakeholders have devoted thousands of hours towards devising and coming to consensus on holistic solutions that can help to achieve sustainable groundwater management in a way that balances the social, ecological, and economic needs of our basin. While we did not have the benefit of the groundwater study results or significant technical support from the Department, we have done the difficult work of developing a shared understanding of groundwater issues and identifying areas of agreement, including actions that can and should be implemented in the near-term. We understand that a mix of regulatory and voluntary approaches are needed to achieve sustainability and that the Department has a responsibility to use its authority to ensure outcomes are achieved. The Department has, on numerous occasions, committed that they would seek to actively support voluntary efforts and other creative approaches that have not been tried in other basins before.

Now with the groundwater study published and the imminent release of the groundwater model, we finally have the information and tools we need to get serious about what the future of our basin looks like. We also have the attention of many groundwater users who will be affected by any decisions made through the rulemaking process. Unfortunately, the Department is putting us in a position where we are forced to react to its proposed regulatory approach on a tight timeline rather than engaging us as partners in solving a problem created by over-appropriation. Furthermore, many RAC members and the public at large are not yet informed enough to be effective participants in the process.

As water leaders in the Harney Basin, we have worked tirelessly over the past eight years to build a strong working relationship with the Department and establish trust between the Department and the community. Department staff, including the former Director as well as the current staff overseeing the rulemaking process, have given us reassurances and made commitments that are not currently being upheld. We understand that the Department has undergone significant changes over the past several years with many new faces at the table, but the Department must be accountable to past commitments. We continue to believe that a better outcome is possible if we work together as partners.

In light of these concerns, we urge the Commission to consider the following requests:

- Continue to track Division 512 rulemaking as it progresses in the Harney Basin by including it as an agenda topic at each upcoming Commission meeting and inviting comments from RAC members at those meetings.
- Identify a Commissioner to participate in the Division 512 RAC meetings going forward.
- Direct the Department to follow its own process as outlined in the adopted Division 10 rules by providing a draft report for public comment (see OAR 690-010-0130(4)(c)), as was indicated in presentations to the community, prior to holding additional RAC meetings.
- Focus on enacting rules in the near-term that address the most acute issues or areas of agreement while simultaneously allowing for more time in areas where issues are less acute and/or more complex to determine the appropriate path forward for establishing and achieving necessary reductions.
- Direct the Department to use the forthcoming Harney Basin groundwater study model with the RAC and community to examine the anticipated response of various management actions devised by the RAC and allow for time for this to occur.
- Direct the Department to develop a road map for how they will engage the broader community and water users throughout the basin in conversations to understand the groundwater system and define desired outcomes and management objectives.

- Consider how policy decisions made in the Harney Basin may set precedent and affect groundwater management in other basins and how that may affect the Department's legal budget and capacity to effectively manage water resources across the state.

It is important to note that we, like the Department, have a sense of urgency and believe that there are some issues and areas that warrant more immediate attention and action. We also share a desire to devise an efficient and effective regulatory framework that will not overburden the Department and will hold water users accountable to a desired outcome. We believe that this can be achieved while also fostering cooperation and working with groundwater users to achieve voluntary reductions in groundwater use.

Success of this rulemaking process should not be measured by whether the rules are adopted "on time" as determined by the Department's ambitious schedule, but whether the rules set us up for long-term success, which has yet to be discussed and defined.

We appreciate you taking our concerns and recommendations into consideration and look forward to continued conversations.

Sincerely,

Mark Owens

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