



# Oregon

Tina Kotek, Governor

## Water Resources Department

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## MEMORANDUM

**TO:** Water Resources Commission

**FROM:** Annette Liebe, Technical Services Division Administrator  
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**SUBJECT:** Agenda Item K, June 14, 2024  
Water Resources Commission

### Groundwater Allocation Rulemaking Update

#### I. Introduction

This report provides an update on the Department's rulemaking efforts pertaining to the allocation of new groundwater rights. Public comments received during this agenda item will be included in the rulemaking record. *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. Signs of overallocation are seen throughout the state, including groundwater levels with excessive declines, dry water wells, and surface water flows that are insufficient to meet the needs of existing consumptive and instream water rights during the dryer parts of the year when groundwater contributes to stream flow. The proposed rules modernize the criteria for allocating new groundwater rights to better protect existing users and sustainably manage the resource.

#### IV. Key Rulemaking Issues

The proposed rules will not impact existing water rights or groundwater uses exempt from the permitting process. The rules are intended to reduce additional overallocation by re-defining how the Department determines whether groundwater is available for new water right permit applications.

The proposed rule changes focus on establishing new definitions for two key terms: Reasonably Stable Water Levels and Potential for Substantial Interference.

*Reasonably Stable Water Levels:* Groundwater levels are a directly measurable parameter that can be used to determine whether groundwater is overallocated. The Legislature declared in the Groundwater Act of 1955 that “Reasonably stable water levels be determined and maintained.” (ORS 537.522(7)). However, the term has remained undefined to date, and therefore has not been functional in making groundwater management decisions. This rulemaking utilized a statistical assessment of historic observation well data to define a dynamically stable range of groundwater levels exhibited by more than 90% of wells state-wide with long-term records responding to climate variability. The proposed rules define a quantitative threshold for determining the availability of groundwater for new appropriation given observed water level trends.

*Potential for Substantial Interference:* Groundwater and surface water are hydrologically connected components of the water cycle. The Water Resources Commission adopted the Division 9 rules in the late-1980s to govern groundwater interference with surface water. The rules prevented short-term impacts of groundwater development on surface water, while allowing continued groundwater development that cumulatively and over longer time periods resulted in the further depletion of already over-appropriated surface water supplies. The proposed rules replace thresholds for *de minimis* impacts with an assessment of surface water capacity to meet existing rights to define whether tributary groundwater supplies are available for further appropriation. The proposed rules also maintain the existing definition of substantial interference for purposes of regulating interference with surface water by existing groundwater rights.

## **V. Rulemaking Process to Date**

In Fall 2022, the Department held four hybrid meetings around the state (Bend, Central Point, La Grande, Salem) to collect input and answer questions concerning the need for updating the groundwater allocation process. The Department assembled a Rules Advisory Committee (RAC) consisting of 30 members representing a broad range of interests across the state. The Department drafted proposed rules for updating the groundwater allocation process which were shared with the RAC for input. The Department convened eight RAC meetings between April 2023 and January 2024. All RAC meetings were hybrid, recorded, and open to the public. Throughout the process, the RAC and members of the public provided input on the draft rules as well as the draft statements of Need, Racial Equity Impacts, and Fiscal and Economic Impacts.

The Department also discussed efforts to modernize the groundwater allocation process at every Groundwater Advisory Committee meeting held since March 2022. Additional presentations have been given to Tribes, local governments, state legislators, water utilities, irrigators, agricultural groups, and conservation organizations. Input from the RAC and others informed and helped the Department to improve the proposed rule language.

The Department published the [Notice of Proposed Rulemaking](#) on March 1, 2024, in the Oregon Bulletin. The Department scheduled four public informational sessions and rule hearings held in Bend (April 4), La Grande (April 18), Central Point (May 16), and Salem (May 21). The original public comment period ran through May 31, 2024; the Department has extended the public comment period through June 14, 2024.

## **VI. Next Steps**

During late June and July, the rulemaking team will review public comments prior to finalizing the draft rules for Commission consideration for adoption in September.

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