

Deschutes Land Trust

210 NW IRVING AVENUE, SUITE 102
BEND, OREGON 97703
OFFICE: (541) 330-0017
DESCHUTESLANDTRUST.ORG



CONSERVATION. COMMUNITY. CARING FOR THE LAND.

June 11, 2024

Chair Quaempts, Vice-Chair Smitherman and Members of the Commission,

The Deschutes Land Trust (Land Trust) conserves and cares for the lands and waters that sustain Central Oregon so that local communities and the natural world can flourish together for generations to come. The Land Trust's Ochoco Preserve is located at the confluence of McKay Creek and the Crooked River in recognition of the extraordinary potential this tributary represents to the viability of the salmon and steelhead population reintroduced to this basin by the Confederated Tribes of the Warm Springs and Portland General Electric almost twenty years ago. We strongly support Oregon Water Resources Department's increase in funding for the Deschutes River Conservancy's (DRC) McKay Creek Water Rights Switch project (Project) which will enhance streamflow and habitat along the lower 11 miles of this important creek.

The Land Trust has been a member of the Deschutes Partnership (Partnership) for past two decades, working collaboratively with three other organizations to specifically restore the conditions necessary to support the successful reintroduction of salmon and steelhead to the Upper Deschutes Basin. DRC's Project has long been a priority for the Partnership due to its significant ecological outcomes—including restoration and legal protection of the Creek's natural hydrograph—and community benefits—including enhancing the economic viability of local agriculture by providing a more reliable irrigation water. The Project is truly a win-win and fits with the collaborative approach of the Partnership.

The Project will provide broader reaching benefits for the Land Trust's work specifically by providing additional, cooler streamflows to the lower reaches of McKay Creek, enhancing the habitat restoration work the Land Trust is implementing on Ochoco Preserve and providing migrating salmon and steelhead better access to McKay Creek. In addition, because landowners will no longer need diversion infrastructures, the Project introduces future opportunities for the Land Trust and the Crooked River Watershed Council to partner on habitat restoration projects with willing landowners in the Project reach.

Due to current construction costs and procurement timelines, the Project needs immediate additional funding. Without additional funding, the Project risks losing already secured funding and landowner participation, jeopardizing the full ecological benefits this Project provides. The Land Trust urges this Commission to increase funding for this innovative project.

Sincerely,



Rika Ayotte

Executive Director



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

Executive Summary

June 6, 2024

The nine cities that make up Central Oregon Cities Organization (COCO) have a combined population of over 150,000 and rely largely on groundwater to meet their water supply needs. COCO is disappointed that the Oregon Water Resources Department's (OWRD) proposed Groundwater Allocation rules do not address the obligations and requirements for municipal water providers as well as the unique hydrogeologic framework of the Upper Deschutes Basin. Below are a few highlights of COCO's concerns followed by detailed comments:

- **COCO has heard repeatedly that even though groundwater pumping is a small part of the puzzle in the Upper Deschutes, it's the only element of the water budget OWRD staff feel as though they control. COCO's question is: to what benefit and at what cost?** In the Upper Deschutes basin, a moratorium on the issuance of new groundwater permits and cessation of groundwater pumping will do little to help achieve the Commission's desired policy objective to "arrest or reverse groundwater level declines." And over the next 20 years, new canal piping projects, funded in part by OWRD, will eliminate more artificial recharge in the central part of the Upper Deschutes Basin than all the groundwater pumping in the Upper Deschutes Basin for all purposes combined. The Commission is poised to make the future water supply for Central Oregon's growing communities beholden to artificially elevated groundwater levels benefitting from a century of artificial recharge.
- **The proposed rules, as currently written, are ambiguous and do not provide certainty with respect to implementation.** For example, the proposed rules provide no framework for how OWRD will account for the impacts of human activities on groundwater levels and contain several terms and criteria that are not defined and without examples. The proposed rules do provide an off-ramp to develop basin-specific rules, however, the proposed rules offer a pathway burdened with vague and inappropriate criteria and no commitment to staffing and funding.
- **Despite COCO's requests, there remains no accounting of the cost of alternatives to obtaining new groundwater rights under the terms of the Deschutes Basin mitigation program.** And OWRD continues to erroneously identify, as the primary alternative to obtaining new groundwater rights, the acquisition of other existing groundwater rights for transfer, despite there being no pathway for the approval of a groundwater right transfer in the Upper Deschutes basin.
- **OWRD and the Commission have not adequately addressed the impact of the rules in the context of Oregon's statewide planning goals and acknowledged comprehensive plans.**

Introduction

Groundwater from the Upper Deschutes Basin is a major source of water supply for members of the Central Oregon Cities Organization (COCO), established in 1998. COCO member cities have a strong interest in this water source and take pride in being responsible stewards of the resource. The nine member cities have a combined population of over 150,000 people. COCO's purpose is to promote common interests of the cities in Central Oregon, including issues related to water. For over 25 years COCO has been an active participant in basin-wide collaboratives, including the Deschutes Water Alliance, the Basin Study Work Group, and the current Deschutes Basin Water Collaborative. Through this active collaboration COCO has demonstrated its commitment to finding basin-wide solutions and has spearheaded numerous successful legislative efforts to improve Deschutes Basin water management. It is with this foundation of experience and spirit of collaboration that COCO provides the following comments on the Oregon Water Resources Department's (OWRD) hearing draft rules issued March 1, 2024.

In April 2023, OWRD initiated a rulemaking with the objective of updating groundwater allocation rules to be more sustainable and protective of existing water users, both instream and out-of-stream. OWRD's proposed rules address two key considerations relating to groundwater resources in Oregon: interactions between groundwater and surface water, and groundwater level declines. With respect to the latter, OWRD staff expressed on numerous occasions that the Water Resources Commission identified domestic water supply wells going dry as a major concern and that their goal is to adopt rules that will "arrest or reverse" groundwater declines statewide.

COCO supports OWRD's efforts to manage and protect the groundwater resource in the Upper Deschutes Basin. COCO understands that losing the use of domestic water supply wells is devastating to those who depend on them for water. And COCO's member cities are all too familiar with the increased cost of drilling water supply wells. However, COCO is concerned that—**in the Deschutes Basin specifically—the Department's proposed rules will have little or no impact on groundwater levels, while putting at risk the ability of COCO's members to meet their obligations to plan for the water supply needs of the fastest growing region in the State.**

COCO has four major points of concern, including the unsuitability of the rules in the Deschutes Basin, uncertainty about how the rules will be implemented, the impact on the ability of cities to plan for their future water needs, and the restrictions the rules impose on a basin specific groundwater allocation rulemaking.

- 1) **The Deschutes Basin is unique. Unlike in other basins around the state, applying the proposed one-size-fits-all rules to the Upper Deschutes Basin will have little impact on groundwater levels.**

One of COCO's overarching criticisms of the proposed rules and associated rulemaking process is that OWRD has walked back its commitment to place-based planning. Rather than relying on numerous peer-reviewed studies and hydrologic models developed for the Upper Deschutes Basin, the proposed groundwater allocation rules are a one-size-fits-all, state-wide approach. The result will be a set of groundwater allocation rules that do not make sense for the Upper Deschutes Basin, and it will require multiple years of locally driven rulemaking to get it right.

Groundwater levels in wells near the Cascades, upgradient of irrigation canals, 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 reflect a long-term precipitation deficit. In the center of the Deschutes Basin, where groundwater level declines are most significant, at least 75 percent (an overwhelming majority) of groundwater declines have been caused by an extended period of lower precipitation that began in the early 1990s. 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. Moreover, the Deschutes aquifer has a saturated thickness of approximately 1,000 feet within a single geologic formation. (Gannett et al., 2017). **This is fundamentally different from other basins in Oregon, where groundwater declines are occurring because pumping exceeds annual recharge.**

The abundance of available research on the Deschutes Aquifer is the result of an investment the state made over 20 years ago to engage in an in-depth study of the aquifer. While OWRD has come under criticism for failing to collect, analyze, and use groundwater data in its groundwater allocation decisions, the Upper Deschutes is a shining counterexample: the State worked with the USGS to develop a comprehensive model of the aquifer and developed a regulatory program to ensure that the effects of groundwater pumping on the basin's Scenic Waterways would be offset through a program to mitigate the impact of pumping on surface water for new permits.

Despite all that work, the Upper Deschutes Basin will now be subject to limits on the issuance of new groundwater permits which do not make sense for the Basin's massive, unconfined aquifer. The publications from OWRD's own studies illustrate the futility of regulating groundwater pumping as a tool for managing groundwater levels. Figure 16, from Gannett and Lite 2013, one of multiple follow-up studies to the work of USGS and OWRD, shows effects of increases in groundwater pumping from 1994 through 2008 on water levels at a well in the La Pine subbasin. The Commission should take note that Figure 16 shows that there was no discernable impact of increased groundwater pumping from 1994 through 2008 in this area. There hasn't been a significant increase in groundwater pumping since 2008, either. Had OWRD acted earlier to stop issuance of all new groundwater permits, disallowed new exempt water supply wells—and even curtailed all existing pumping—water levels would be the same as they are today.

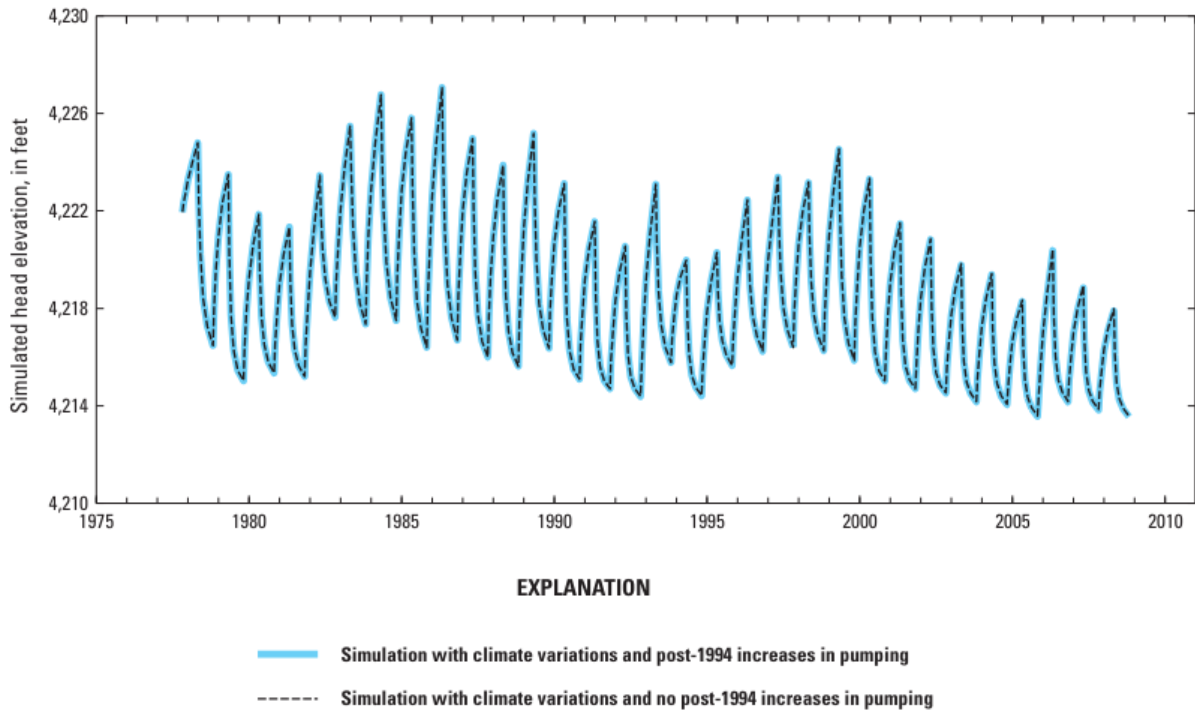


Figure 16. Simulated head elevations in observation well 21S/11E-19CCC, a 100-foot deep well in the La Pine subbasin, central Oregon. Lines showing simulated head elevations with and without post-1994 pumping increases are coincident on the graph, indicating very limited impact from post-1994 pumping increases. Effects of post-1994 canal lining are too small to show at the scale of this graph. Location of observation well is shown in [figure 4](#).

Likewise, Figure 24 shows the impacts of increased groundwater pumping from 1994 through 2008 on water levels in a well near Redmond. Again, there have not been significant increases in groundwater pumping since 2008, as COCO members have aggressively ramped up water conservation efforts. Moreover, there has been little increase in groundwater pumping for other uses either, as the scarcity and cost of mitigation credits under the Deschutes Basin Groundwater Mitigation program *already acts as a significant constraint on new groundwater appropriations*. As shown in the chart, had the Department acted to freeze groundwater pumping at 1994 levels water levels would only be a few feet higher than they are now.

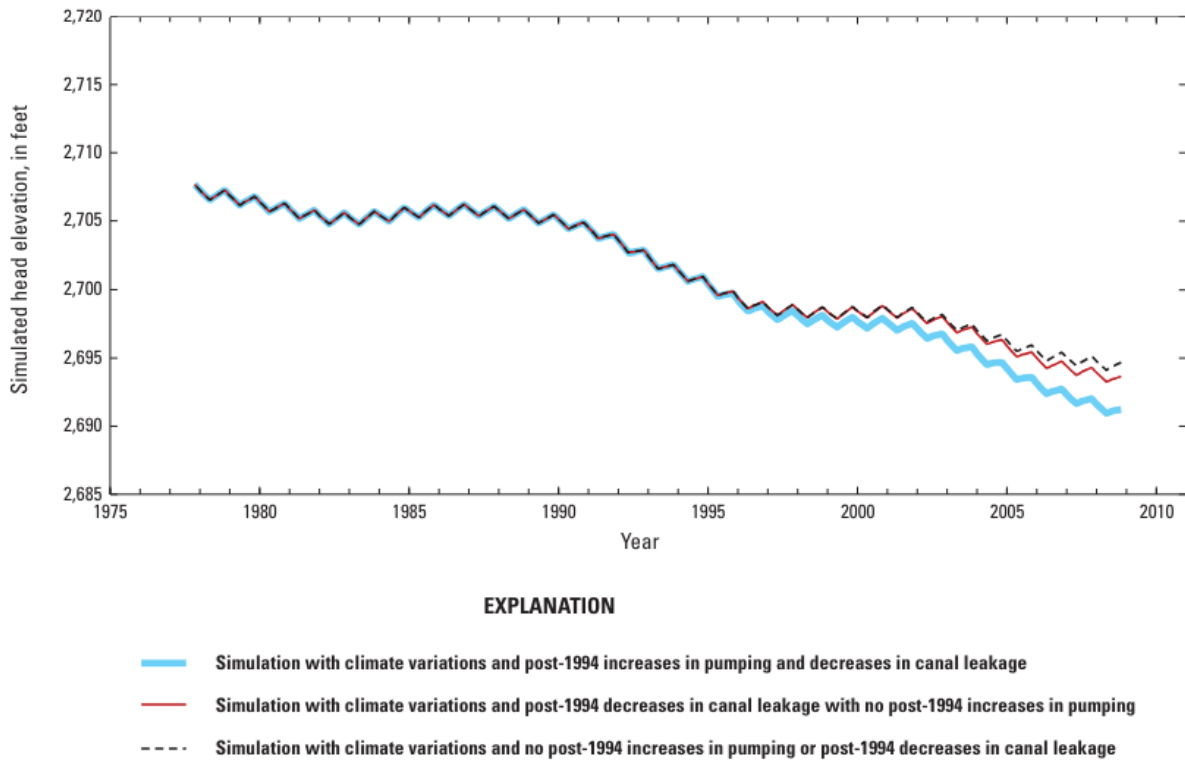
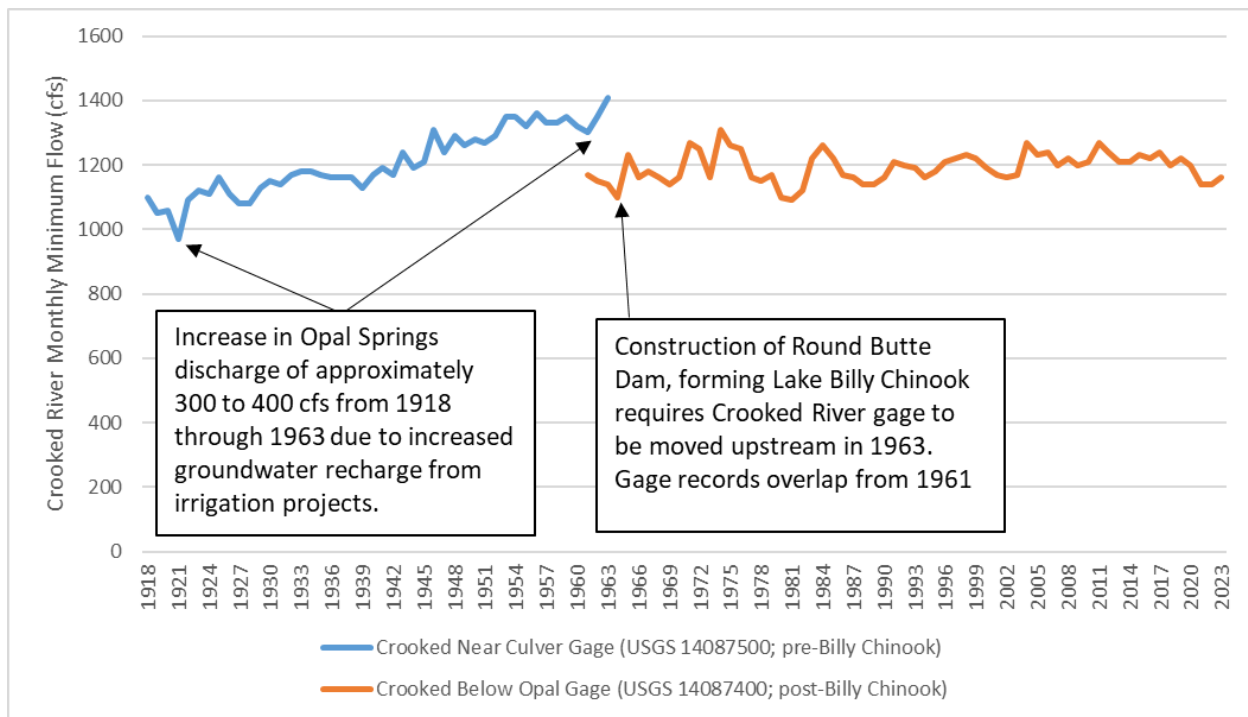


Figure 24. Simulated head elevations in well 15S/13E-18ADD1 near Redmond, Oregon.

In fact, groundwater levels remain much higher now than they were over a century ago. The figure below shows the discharge of the Crooked River above Lake Billy Chinook from 1918 through the present. This data documents the significant increase in spring discharges in the Lower Crooked River that have resulted from canal construction and associated leakage and on-farm losses. According to OWRD's own study, total groundwater pumping in the entirety of the Upper Deschutes Basin averages 76 cfs per year. As shown in the figure, increased discharge just to the Crooked River between Osborne Canyon and Opal Springs increased by 4 to 5 times that amount from 1918 through 1963.



Since 2008, OWRD has funded the piping of many miles of irrigation canals up-gradient of the Redmond well in Figure 24. These projects, some of which have been completed and some of which are in progress, will eliminate over 50,000 acre-feet of recharge annually, equivalent to the total volume of all groundwater pumping in the Upper Deschutes basin—including exempt wells, permits that pre-date the mitigation program, and permits that require mitigation. COCO supports piping irrigation canals and using those improvements in efficiency to shore-up water supplies for instream use and junior water users, as COCO’s partners at the Deschutes Basin Board of Control are doing. Funding canal piping projects in Central Oregon is critical. But for OWRD to use entirely foreseeable declines in groundwater levels due to canal piping as the basis for limiting the ability of the fastest growing cities in the state to obtain new groundwater rights is unacceptable.

2) There is considerable uncertainty about how the proposed rules would be interpreted by OWRD staff.

Throughout the Rules Advisory Committee (RAC) process, COCO heard from OWRD staff that one of their goals was to provide clear, consistent, and quantitative criteria for establishing if water is available for new groundwater allocations. While COCO appreciates this goal, several of the proposed rule provisions are ambiguous and it is unclear how the rules will be applied in the Upper Deschutes Basin. For example, the proposed definition of “Reasonably Stable Groundwater Levels” (proposed 690-008-0001(9)) indicates that annual high-water levels are to be measured at “one or more representative wells in a groundwater reservoir or part thereof...”

COCO has received mixed messages from OWRD staff regarding how they plan to identify “representative wells” when calculating Annual High Water Levels. COCO has heard that OWRD intends to limit its analysis to “spatially relevant wells,” which seems to imply certain limitations on proximity. The significance of such limitations on proximity are unclear in the Upper Deschutes, where OWRD has, until recently, recognized that there is a single, large, hydraulically connected aquifer. That finding was the basis for the Deschutes Basin

Groundwater Mitigation Program. The potential for individual OWRD staff members to interpret the rules differently and introduce dramatic shifts in how water availability is analyzed creates an unacceptable level of uncertainty for COCO.

Similarly, the same definition indicates that, to measure total decline, the “reference level shall be the highest known water level unless Annual High Water Levels have been increased measurably by human activity, in which case the department may set a different reference level using best available information,” again without definition or example. COCO assumed, in previous comments, that the rule reference to “human activity” referred to cases exactly like those in the Upper Deschutes Basin, where OWRD is supporting efforts to eliminate long-standing sources of artificial recharge that have elevated groundwater levels and spring discharges. But during discussion with COCO, and at a recent Groundwater Advisory Committee (GWAC) meeting OWRD cited a desire for the rules to accommodate the influence of surface water reservoir management on adjacent wells, and that staff do not have any framework in mind for evaluating cases like those in the Upper Deschutes Basin.

Secretary of State auditors and the public have identified a lack of information about groundwater systems as a primary reason for the over-allocation of groundwater resources in other parts of the State. Policymakers and the public have argued in support of funding groundwater studies to provide sufficient information for OWRD staff to make scientifically sound decisions about how to allocate scarce groundwater resources. It is discouraging that, in a basin where we have already funded so much research and collaboratively developed regulatory programs in response to that information, there remains so much ambiguity in how that science is interpreted and how the proposed rules will be implemented.

Proposed rule revisions: The proposed rules should be revised to include examples and eliminate ambiguity in terms and concepts under the proposed definition of “Reasonably Stable Groundwater Levels,” (proposed 690-008-0001(9)) including “representative wells” and “increased measurably by human activity.” Definitions should recognize that “human activity” that increases or decreases water levels can also affect the *rate* of water level decline. These terms and concepts are uniquely relevant in the Upper Deschutes Basin. It is astonishing that after multiple years of effort, eight RAC meetings, and over ten months that we are without concrete examples of how the rules will be implemented, and that the impact of the proposed rules on COCO members remains unclear.

COCO requests that the proposed rules under 690-008-0001(9)(a)B specifically address how “human activity” will be considered in establishing Annual High Water Levels in order to address and acknowledge the long-term effects of artificial recharge and canal piping on water levels in the Upper Deschutes Basin. COCO’s access to groundwater supplies in the future should not be subject to maintaining artificially elevated water levels. The proposed rules currently put that burden on the applicant. The impacts of “human activity” should also be considered in the rate of decline considerations in 690-008-0001(9)(a)(A).

3) While doing little to influence groundwater levels, the proposed rules will impose significant costs for COCO members.

A. OWRD’s analysis of the costs to municipal water suppliers; and identification of water supply alternatives are not adequate.

The Cost of Compliance statement that accompanies the public notice of the proposed rulemaking describes but does not quantify the potential costs that municipalities will bear because of the proposed groundwater allocation rules. The cost of compliance statement identifies challenges like the “need to explore additional water conservation and efficiency measures and/or acquire existing water rights through the transfer process.” No attempt is made to quantify the ‘how’ and ‘why’ of these costs or to recognize the unique challenges in the Upper Deschutes Basin faced by COCO members. This demonstrates an unwillingness to fully consider municipal water issues in this rulemaking.

The success of water conservation efforts is typically measured in reductions in *per capita* demands on an *annual* basis. But COCO members’ operations are constrained by the *maximum instantaneous* rates of their water rights. Water conservation measures may help to realize small reductions in the maximum instantaneous rate of demand, but due to the nuances of the timing of customer water use and water system operations, water suppliers can’t rely on the implementation of specific water conservation measures to obviate the need for a new water right in all circumstances. In short, cities will not be able to conserve their way out of this situation.

Without the ability to pump at a higher rate, under a future permit, continuing to meet peak water demands and retain sufficient reservoir storage to meet fire flow needs will require a significant expansion of treated water storage infrastructure. Reservoirs are expensive to construct and maintain. One COCO city recently spent over \$20 million to construct a new treated water storage facility. Storage reservoirs also require significant amounts of land and need to be paired with booster pumps. In short, expansion of finished water storage is an expensive and inefficient way for cities to limit the maximum instantaneous rate of their demands. Importantly, this approach won’t result in any reduction in groundwater pumping demands. It will only shift the timing of those demands.

As an alternative, OWRD suggests that cities can acquire other existing groundwater rights for transfer to municipal use. But OWRD doesn’t identify how many other groundwater rights are available, who owns them, or what they are for. Nor has anyone identified whether any such rights are subject to transfer. Based on OWRD’s own study of the Deschutes Aquifer, OWRD’s hydrogeologists had previously approved transfers of groundwater rights over large distances. But OWRD’s recent technical findings now suggest that OWRD believes the Upper Deschutes Aquifer is not homogeneous, leaving a lack of clarity as to what water rights, if any, can actually be transferred to use by COCO cities. Even if there were such clarity, how much would these water rights cost to obtain?

OWRD’s suggestion that COCO members could transfer existing groundwater rights to municipal use also makes no mention of the fact that OWRD has completely ceased processing all groundwater transfers in the Upper Deschutes Basin at the request of the Confederated Tribes of the Warm Springs (CTWS) while CTWS and OWRD develop a process to review the impact of proposed transfers on CTWS’s treaty reserved water rights. In light of the concerns CTWS has raised, OWRD’s statement that COCO members can simply “acquire existing water rights through the transfer process rather than develop new rights to meet future demands” is not accurate and an oversimplification. COCO understands that CTWS’ concerns may lead to the creation of an intergovernmental panel to establish the criteria for evaluating injury to

CTWS' treaty reserved water rights. It has been suggested that this, in turn, may require additional study of the Upper Deschutes Aquifer. COCO supports CTWS efforts to ensure that OWRD evaluates the potential for injury to their water rights consistent with the language in their settlement agreement with the State. Nevertheless, COCO members will be wary to invest the time and resources to evaluate transfers of existing water rights to municipal use without a clear understanding of OWRD's hydrogeologic and legal framework for evaluating groundwater transfers in the Upper Deschutes Basin. The proposed rules appear to simply focus on how to say "no" without providing any clarity on potential, specific water supply alternatives such as transfers.

Specific requests: The Cost of Compliance statement provided with the public notice of the proposed rules (page 10 of 31) should be revised to: a) quantify the costs to water suppliers of re-engineering water systems to meet future demands without access to new water rights (e.g., expanding treated reservoir storage), and b) clearly state that OWRD does not currently have a process in place to approve the transfer of groundwater rights for other uses to municipal use in the Upper Deschutes Basin.

B. Increased housing density and associated reduction in irrigated area will not obviate the need for new water rights.

Over the past several years, the Legislature, Governor, and local officials have worked to remove artificial and costly barriers to expanding housing supply, including eliminating limitations on density, parking minimums, height restrictions, and even relaxing the constraints of Urban Growth Boundaries (UGBs) in specific cases. These policy changes are intended to help cities build *more housing units more quickly*. This is urgently needed, and COCO cities welcome the expansion of housing supplies. With such high demand for housing, COCO cities had already begun to experience a shift toward higher density residential unit construction.

During a Water Resources Commission meeting in November 2023, both an OWRD staff member from Central Oregon and the Department of Land Conservation and Development (DLCD) told the Commission that anticipated higher density, multi-family development patterns would reduce irrigated area in Central Oregon cities, in turn reducing municipal water demands and eliminating the need for new water rights. While COCO members appreciate the impact of increased density on *per capita* water demands, the OWRD and DLCD commenters misapplied this metric when they implied that reductions in per capita water use would significantly reduce cities' 20-year projected demands at buildout of their existing UGBs, the metric of interest when requesting a new water right.

A more appropriate unit for evaluating water demands at buildout of the existing UGB is *gallons per acre*. Charts in the attached **Appendix** show water use at several housing developments in Redmond on a per unit and per acre basis, respectively.

In short, if recent housing reforms are successful in encouraging both more rapid construction of new housing units and construction of a greater number of housing units within the existing UGB, that will likely have meaningful positive impacts on housing affordability, but it will result in COCO cities growing more rapidly than previously projected. Because water demands on a per-acre basis will increase, water demands at buildout of the existing UGB will likely be higher than forecast, all other things being equal.

This is exactly the pattern that has already begun to appear in Redmond’s population and water demand data. In its 2015 forecast Portland State University projected that Redmond’s population would grow to 39,812 by 2035, an average annual growth rate of 1.81 percent. Redmond expects to exceed that population within a year, having grown nearly three times as quickly as projected over the past decade, even as total water demands have grown at one-third the rate of the water service population. In the end, demands grew at about the same rate as projected, even as per-capita demands were reduced by nearly 20 percent.

Year	Total Annual Demand (MG)	Estimated Water Service Population	Gallons Per Capita Per Day (gpcd)
2014	2093.7	26770	214
2023	2439.1	38208	175
Annualized Growth Rate (%)	1.70%	5.08%	-2.90%

To reiterate: over the past several years, there has been much hard work to remove artificial and costly barriers to expanding housing supply, including eliminating limitations on density, parking minimums, height restrictions, and even relaxing the constraints of UGBs in specific cases. The Commission’s application of the proposed ‘one-size fits all’ groundwater allocation rules to the Upper Deschutes Basin—where they will have little impact on groundwater levels—stands in opposition to all those efforts.

Specific Requests: The Cost of Compliance statement that accompanies the public notice of the proposed rulemaking includes the following language: “Rising costs also may require local governments to revise their comprehensive plans by rebalancing projected water supply needs to ensure they are able to meet conflicting demands, including provision of affordable housing.” COCO requests that OWRD revisit this language in light of the more rigorous evaluation of the relationship between housing supply and water demand shown in the Appendix.

C. The proposed rules fail to consider the legal and state-policy requirements placed on cities.

Both the Water Resources Commission and the Department have an obligation as described in its 1990 State Agency Coordination Program and associated administrative rules in OAR Chapter 690, Division 5 to “comply with the statewide planning goals by taking actions which are compatible with acknowledged comprehensive plans....” (OAR 690-005-0030). This rulemaking has not addressed planning goals relevant to COCO members, including:

Goal 9, which requires cities to plan for adequate land and public services for economic growth and development opportunities over the next 20 years.

Goal 10, which requires cities to provide adequate housing and provide for the appropriate public facilities to support housing development.

Goal 11, which requires the cities to provide public services, including water service and plan for long range public service needs.

Goal 14, which requires cities to plan for increased urbanization.

COCO remains deeply disappointed that neither the OWRD staff nor the Commission have addressed in any meaningful manner these unique legal requirements on cities as the proposed rules were developed. At no point during the rulemaking process did the RAC or OWRD staff focus on these respective Goals and whether the new rules were in alignment with statewide planning goals

COCO members are already subject to myriad forms of OWRD oversight. We measure and report water use, static water levels in wells, and are required to develop and implement Water Management and Conservation Plans (WMCPs), which are approved by OWRD. The WMCP rules impose requirements that limit water loss, require specific kinds of fee structures, conservation messaging, and implementation of other kinds of conservation programs.

Specific Requests: The proposed rules should also acknowledge that cities will require access to additional water rights to meet the needs of growing populations and to comply with their own acknowledged comprehensive plans. COCO is not seeking a free pass; we are seeking rules that acknowledge the science of the Upper Deschutes Basin, as well as the economic, social (housing) policy objectives of the Legislature and the Governor. As stated previously, COCO members understand that meeting the legal and policy objectives placed on COCO cities through the allocation of additional groundwater will require careful consideration of place-based and relevant resource concerns, rigorous requirements for water conservation and management, and rigorous conditions for long-term monitoring. The Commission must direct staff to evaluate the proposed rules in light of the legal requirement to comply with statewide planning goals and each city's acknowledged comprehensive plan.

- 4) **While COCO recognizes that OWRD tried to provide an opportunity for basin-specific rulemaking to supersede the statewide rules, this element of the proposed rules is not adequate.**

After multiple comments by COCO, OWRD staff included a provision allowing for the Commission to adopt a basin-specific definition of “Reasonably Stable Groundwater Levels” through a basin program rule. Initially, this basin specific opportunity included various caveats as to maximum allowable groundwater decline and rates of decline. After considering RAC input from COCO and others that these caveats and sidebars would hamper, not enhance, a locally-drive place-based planning approach (especially in the Deschutes Basin, given the hydrogeologic framework and the need for basin stakeholders to have the flexibility to develop place-based solutions in the context of all the basin water planning efforts already underway), OWRD staff provided draft rules at RAC meeting #7 and the final RAC meeting #8 without the previous stipulations.

Unfortunately, without any additional discussion or process OWRD staff inserted into the public hearing draft rules language making specific stipulations about future basin-program

rulemakings. This language, which was never discussed with the RAC, requires that basin program rules “must consider...the anticipated impacts” of the new definition on:

- A) The number of wells that may go dry; and
- B) The character and function of springs and groundwater dependent ecosystem; and
- C) The long term, efficient and sustainable use of groundwater for multiple beneficial purposes.

COCO members have numerous questions about these required elements. What do B) and C) mean? What kind of analysis will be required? Does the information even exist? How would a place-based planning group use this “guidance” in developing rules? In the Deschutes Basin are these questions not already part of the discussion on how to improve the Deschutes Basin Groundwater Mitigation Program?

Moreover, with respect to criteria A), requiring consideration of “the number of wells that may go dry” would require an Upper Deschutes Basin specific rulemaking process to engage in a misleading analysis of local conditions.

The Department’s intent in referencing “the number of wells that may go dry” will perpetuate disinformation about how the proposed rules will affect water levels in the Upper Deschutes Basin. The language of Criteria A is a reference to the Department’s February 10, 2024, memo, “Susceptibility of Oregon wells to being dried by water level declines.” Table 1 of the memo identifies thousands of wells that “would be dried” by declines of various thresholds, including some 8,000 wells in Deschutes County that “would be dried” by declines of 50 feet. **The discussion states that “[the] analysis helps to illuminate the cost of increasing the allowable total decline in the proposed definition of Reasonably Stable Groundwater Levels.”**

The reality is that in the Upper Deschutes Basin the Commission’s adoption of updated groundwater allocation rules will have little or no influence on the number of wells that would go dry. The analysis in the memo does not consider at all whether pumping of groundwater, or regulation thereof, would or even could have any influence on groundwater levels. Indeed, of the 8,000 wells the Department identifies that “would be dried by a decline of 50 feet,” in Deschutes County it appears that the overwhelming majority are located in the La Pine Subbasin in Townships 20 to 22 South, Range 9 to 11 East. There are 6600 wells in this area that were completed less than 50 feet into the saturated section of the aquifer. Yet OWRD’s own research shows that pumping is such a small part of the water budget in this area that it has no influence on water levels (again, see figure 16 from Gannett and Lite 2013, above)

This illustrates one of the key missteps in the analysis described in the Department’s memo: an extensive history of the aquifer provides little reason for a well driller to penetrate the aquifer by more than 50 feet. By counting all wells that *don’t* penetrate the aquifer by 50 feet or more as “susceptible to declines of 50 feet,” the analysis also so labels any well deliberately constructed to reasonable depths within *aquifers reasonably assumed not to be susceptible to declines of 50 feet*. As a result, this methodology inevitably vastly overstates the real potential for wells to go dry as a result of increasing the total decline threshold in the proposed definition of Reasonably Stable Groundwater Levels.

Given the lack of applicability to criteria (A) in the upper Deschutes Basin and the ambiguity of criteria (B), these last-minute rule additions—which were inserted without adequate

stakeholder vetting in the RAC process—are a significant rulemaking process misstep that needs to be addressed. More importantly, for OWRD to require such elements in a basin program rulemaking unnecessarily binds future Commissions and presupposes that the Department’s own place-based planning process would otherwise be deficient at identifying and navigating stakeholder concerns. COCO continues to believe that such sideboards for a place-based groundwater allocation rulemaking are not needed; however, if the Commission desires “guidance” for a future locally based rulemaking option under proposed 690-008-0001(9)(d), COCO requests that the Commission adopt the following considerations in lieu of what is currently proposed:

- (A) High public interest in potable water supply;
- (B) Whether other OWRD requirements already cap or otherwise limit groundwater allocations;
- (C) The existence of a mitigation program that offsets impacts of groundwater pumping on surface water;
- (D) The influence of human activities on groundwater levels;
- (E) Groundwater pumping as a share of the total water budget.

Specific Requests: The proposed rules impose unnecessary and unclear requirements on the basin program rulemaking process, requiring consideration of the anticipated impacts of the new definition on “the number of wells that may go dry” and character and function of springs and groundwater dependent ecosystems. This proposed rule language was added at the last minute without sufficient process and vetting, and needlessly binds future Commissions and placed-based planning efforts. These stipulations should be removed from any rules adopted by the Commission. However, if these sidebars remain, COCO requests that the Commission replace the currently proposed considerations with those suggested by COCO to better reflect the reality of an Upper Deschutes Basin place-based planning process. Specifically, COCO requests the following changes to OAR 690-008-0001(9)(d) as follows:

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. Any proposed superseding basin program definition must consider, at a minimum: ~~the anticipated impacts of the new definition on:~~

- (A) High public interest in potable water supply;**
- (B) Whether other OWRD requirements already cap or otherwise limit groundwater allocations;**
- (C) The existence of a mitigation program that offsets impacts of groundwater pumping on surface water;**
- (D) The influence of human activities on groundwater levels;**
- (E) Groundwater pumping as a share of the total water budget**

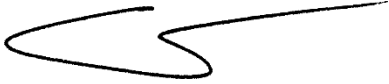
Summary

Groundwater from the Upper Deschutes Basin is a major source of water supply for COCO member cities. We have a strong interest in this water source and take pride in being responsible stewards of the resource. We support OWRD’s efforts to manage and protect the groundwater resource in the Upper Deschutes Basin. But it is disappointing that after multiple years of input to OWRD the proposed rules reflect little consideration of COCO’s concerns and suggestions. The fastest growing region in the state is left with no real alternatives for water

supply and can only pursue a vague framework for locally based groundwater allocation rulemaking that is without staffing, funding, and any timeline for initiation or completion.

Sincerely,

Ed Fitch
Chair, Central Oregon Cities Organization

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a long, horizontal stroke extending to the right.

Cc: COCO Members

**Appendix: Additional Discussion Regarding Relationship between Density,
Water Demand, and Population Growth**

The graphics below shows a few important trends:

- 1) Figure 1 shows that new housing developments subject to a recent development code modification that allow no more than 25 percent of irrigable area to be covered in turf reduce per unit (Prairie Crossing, Redtail Ridge, in part) reduced water use by 30 to 50 percent compared to similar developments that are approximately 20 years old (NW Rim Area).
- 2) Figure 1 shows that multi-family developments are even more efficient on a per-unit basis. Note that this analysis includes all common areas associated with each development, including irrigated areas around multi-family units, to ensure an apples-apples comparison of land use types.

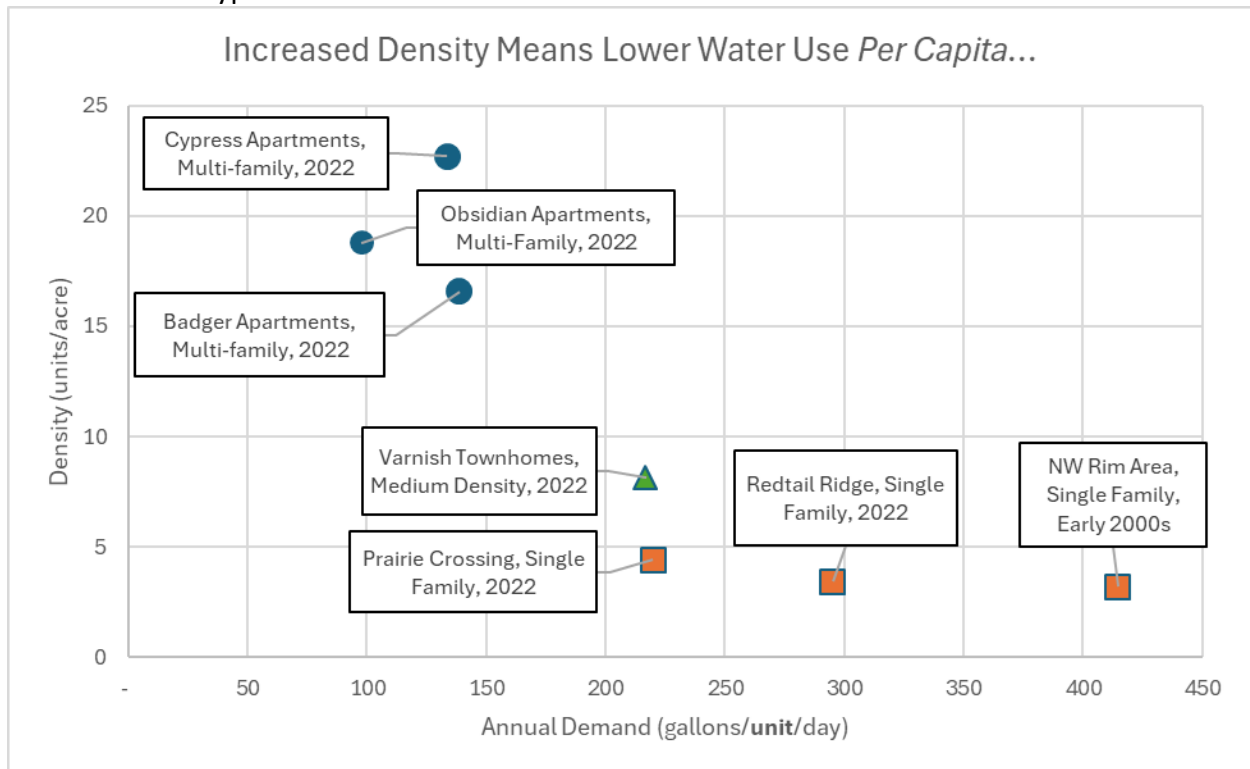


Figure 1: Housing density and water demand per unit in Redmond housing developments.

- 3) Figure 2 shows that water use is higher on a *per-acre* basis in dense developments.
- 4) Figure 3 shows the actual and projected rates of population growth in Redmond over the past decade. Central Oregon is a wonderful place to live. There is significant pent-up demand for new housing. Note that this chart is not intended to criticize the Portland State population forecasts, but it's important to recognize that they have consistently under-projected Redmond's population growth. It appears that, instead of just shifting forecast population growth from less dense to more dense housing types, adding more dense housing types accelerates population growth beyond initial projections. This reflects exactly the increase in housing supply that policies encouraging construction of denser housing types envisioned.

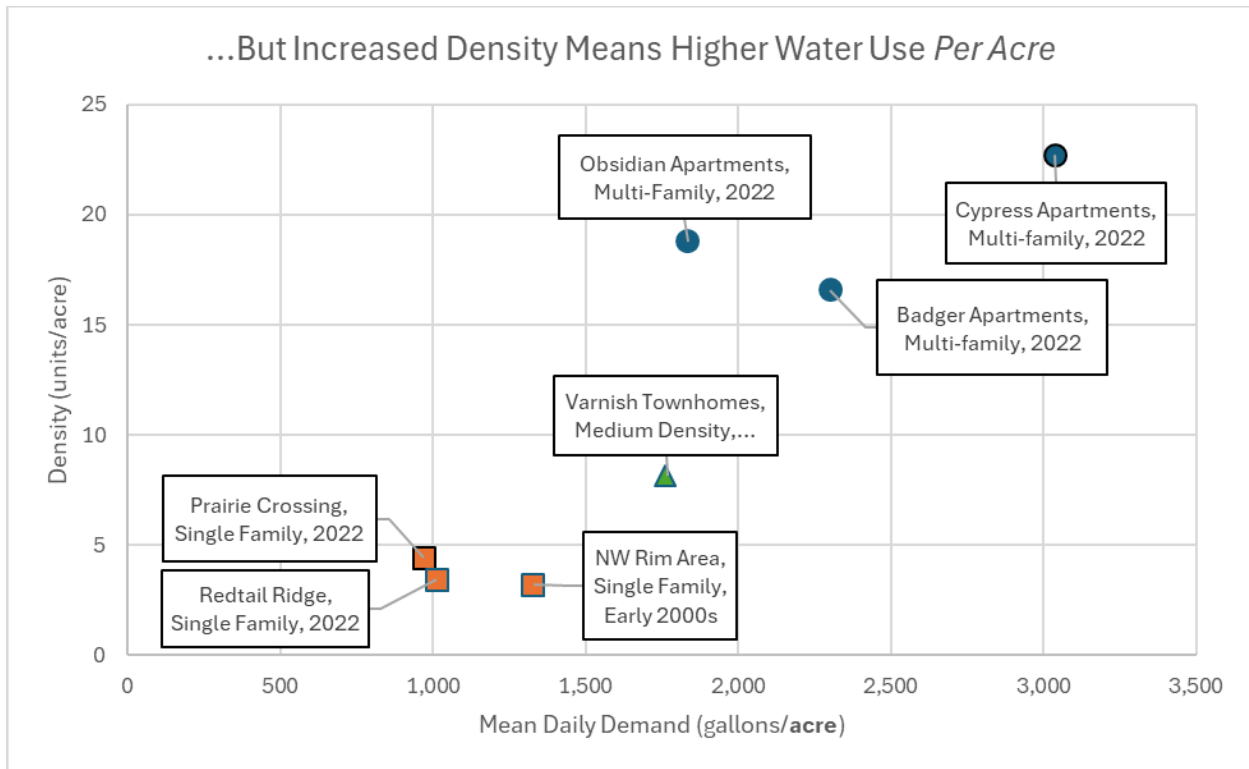


Figure 2: Housing density and water demand per acre in Redmond housing developments.

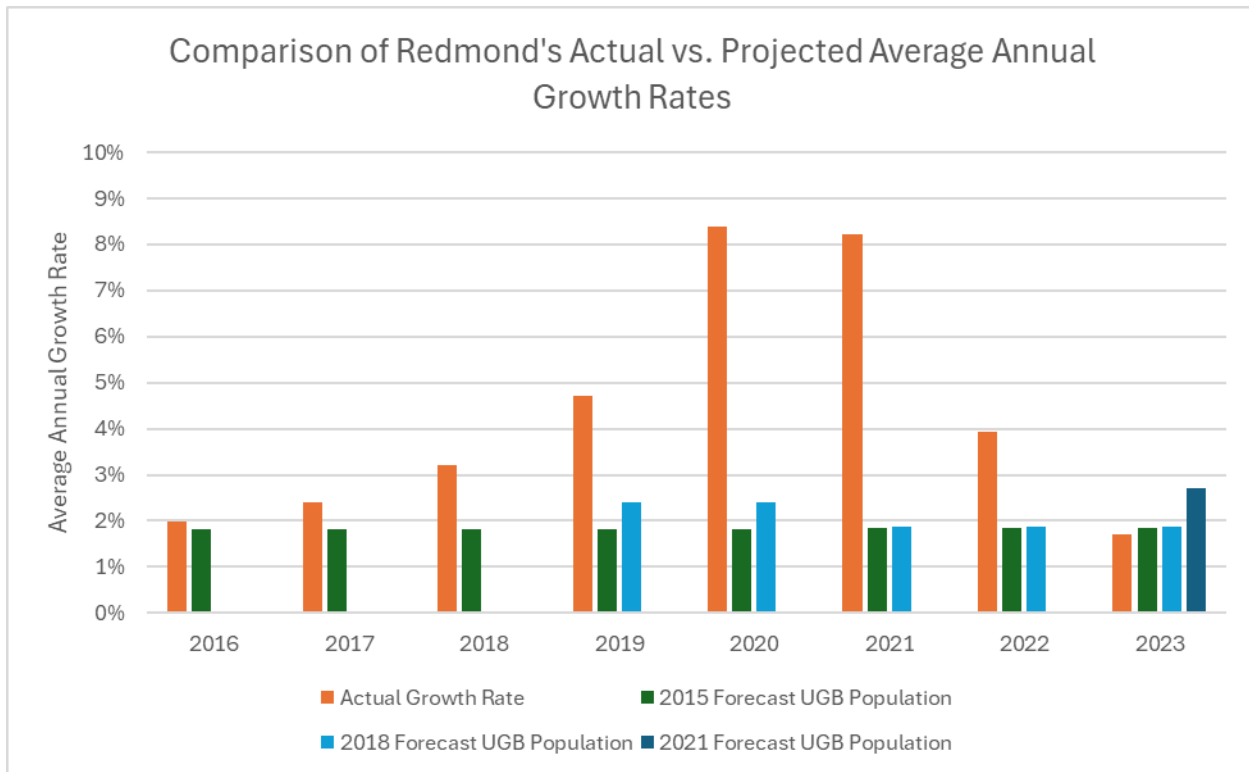


Figure 3: Forecast and actual rates of population growth in Redmond, 2016 – 2023.

5) Figure 4 illustrates the relationship of water demand and population growth to total and per-capita water demands. While water use is becoming more efficient *per capita*, owing in part to increases in density, total water demands have continued to grow at about the same rate the population had been forecast to grow a decade ago.

Year	Total Annual Demand (MG)	Estimated Water Service Population	Gallons Per Capita Per Day (gpcd)
2014	2093.7	26770	214
2023	2439.1	38208	175
Annualized Growth Rate (%)	1.70%	5.08%	-2.90%

Figure 4: Growth of Redmond’s water service population, annual water demand, and per-capita water demand, 2014 through 2023.



June 11, 2024

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

RE: Support for the McKay Creek Water Rights Switch Project Additional Funding Request

Dear Water Resources Commission,

Hello, my name is Bruce Scanlon and I'm the Manager for Ochoco Irrigation District located in Prineville Oregon. I appreciate the opportunity to share my support for the additional funds being requested for the McKay Switch Project. OID requests that the Commission carefully consider this unique and hugely significant project and provide the funding needed to ensure its success.

The McKay Switch project is a rare and revolutionary project that takes advantage of once in a generation federal funding to leverage private and state funding to achieve project outcomes that provide multiple benefits for all stakeholder groups. This truly is a win, win project. Not only does this project permanently restore 11.2 cfs to McKay Creek, it also delivers up to an additional 2750 acre feet of water to 685 acres of farmland in the McKay Valley.

To deliver that additional water, OID will need to replace two large pumping stations that were originally constructed in 1960. These pumps have served the District well for the past 60 plus years but they are increasingly difficult to operate and maintain. Servicing and repairing the pumps and motors is costly because all the parts have to be custom ordered or fabricated. New pumps provide benefits to the entire district through improved efficiency, reduced maintenance costs and greater reliability.

Additionally, this project has the potential to unite diverse interest groups. It sews collaboration instead of division at the right time. Steelhead reintroduction is entering another milestone with the expected change in status from "nonessential experimental" to "threatened" under the ESA on January 15, 2025. This project moving forward provides additional water in the creek for the fish, it extends the irrigation season for farmers in the

McKay Valley and provides necessary upgrades and modernization to OIDs aging infrastructure and improves efficiencies in water delivery.

The McKay Switch project is also an integral component of the Deschutes Basin Habitat Conservation Plan. The HCP includes language to incorporate the additional flows in McKay Creek after the project is complete. Measure CR-3 specifically addresses McKay Creek flows and incorporates the implementation of the benefits from this project. USFWS and NMFS have been avid supporters of the project.

The window of opportunity that currently exists for Oregon to capitalize on the multiple benefits of this project will not stay open indefinitely. OID requests that the Commission take extraordinary steps to ensure that this extraordinary project moves forward as quickly as possible.

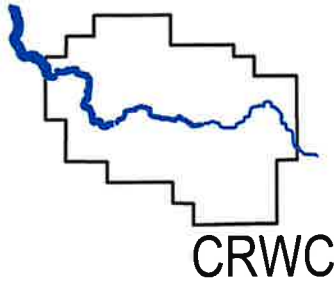
Thank you for this opportunity to share.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Scanlon". The signature is fluid and cursive, with a large initial "B" and "S".

Bruce Scanlon
Manager
Ochoco Irrigation District

It is OID's mission to effectively and efficiently serve the current and future irrigation needs of our patrons by economically operating and maintaining the districts resources with honesty and integrity.



CROOKED RIVER WATERSHED COUNCIL

Water Resources Commission
725 Summer Street NE, Suite A
Salem, OR 97301

498 SE Lynn Blvd.
Prineville, Oregon 97754

Phone: (541) 447-8567 Fax: (541) 416-2115

contact@crwc.info
www.crookedriver.deschutesriver.org

June 10, 2024

Greetings Commissioners,

I am Chris Gannon, the Director of the Crooked River Watershed Council. It is my pleasure and obligation, really, to offer this comment letter related directly to your June 13th meeting agenda item A, Irrigation Modernization Funding Recommendations. In summary, the council requests that the Commission provide additional project funding to the maximum extent possible to the McKay Water Switch proposal by Ochoco Irrigation District and the Deschutes River Conservancy. The council actively works with both organizations in our service area to advance habitat restoration and water quality projects and actions addressing some of Oregon's most precious resources.

For Steelhead reintroduction in the Deschutes basin, the McKay Water Switch is the second most important single project in the lower Crooked River after the Opal Springs fish ladder completed in late 2009. The reintroduction program is supported by ODFW, Tribes, PGE, federal land fisheries management agencies, OWEB, and fish interest groups such as Trout Unlimited.

Millions of dollars have been invested in the program and the Switch has been a high priority since 2015. In fact, the Deschutes Partnership committed over \$2 million to the project in 2017 and has held these funds in reserve while foregoing other important fish habitat work. These opportunity costs are acceptable given the positive impact levels of the Switch.

Our organization has developed plans and stands ready to take action on physical habitat needs in McKay when the Switch is complete. We have held these efforts to logically sequence them based on the outcomes of the Switch. New water delivery methods and return flow patterns will be established by the Switch and we would not want to implement restoration actions without this information fully understood and considered. Habitat project layout for example, could change dramatically from current conditions to incorporate changes made by the Switch. In terms of benefits, this project addresses all three benefit types expressed in this grant program's implementing statute (ORS 541.673).

Economically, the Switch enables the irrigated lands in the McKay Creek watershed to extend their irrigation season due to the new, more reliable and durable water source as compared to the current live flow rights which typically become unavailable each year in mid-July. The

extended production timeframe translates to increased crop yields, more sustainable working lands, increased economic activity in the watershed and increases the likelihood of these lands remaining in undeveloped, rural, resource lands status.

The McKay Water Switch project maximizes environmental benefits associated with water quantity and timing of water availability. By swapping out existing live flow, instream water rights for stored water rights met by Prineville Reservoir, the natural hydrograph can be returned to the creek. This outcome is critical in matching the life history needs of Middle Columbia steelhead (ESA-listed as Threatened) which historically thrived in this system. The natural hydrograph represents nature in terms of ecological and evolutionary influences on steelhead biology, adaptation, and resilience. Recreating these natural flows reconnects this species with its history and long-term needs.

Community benefits derived from the Switch are many, but center on community vitality, long term economic stability and predictability, and maintaining working lands in productive status as emblematic of the rural, self-sufficient, agricultural heritage and culture of Crook County. Prineville and its surrounding rural areas take great pride in conserving and promoting natural resources. The water switch fits this social context and supports ongoing agricultural uses of the land which make up the fabric of the area's identity, history, and future. While Prineville is changing relatively fast, this core expression of the service area will remain long after the last data center or brew pub is constructed.

The council understands and can relate to the challenge facing the commission relative to the funding decisions before you. We work in a similar environment with OWEB grants where steep competition and high application standards for limited resources means some proposals are not recommended for funding. These are not easy decisions in the spirit of funding more projects and 'spreading the resources' across the state. However, the council firmly believes in high standards in this context and thus we advise against lowering or reducing standards, even if temporary or one-time. It would set a poor precedent that others would inevitably want to follow in the future. Holding all applicants to the highest, reasonable application standards ensures Oregonians are investing public resources in the very best projects addressing statewide goals. It also ensures a transparent and influence-free process that citizens of the state can take pride in and support over time. While it might not satisfy those applicants whose projects were not selected, it is important to note that they have an opportunity to apply in the next 2024 cycle with an improved proposal based on TRT feedback or identified shortcomings that can be overcome.

The importance of fully funding the highest ranked projects if they are also ready to proceed is obvious. If the technical review process ranks projects by their beneficial impact and shovel-readiness, it stands to reason they should be the first projects to receive full funding.

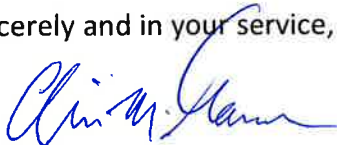
We have and continue to support the McKay Water Switch project on McKay Creek in the lower Crooked River watershed. It is known to be of great importance for successful steelhead reintroduction and historically produced the highest number of smolts in the entire upper

Deschutes basin. Reestablishing the natural hydrograph in this system addresses the most limiting habitat factor to steelhead production. While reintroduction efforts have not yielded the results hoped for to date, the fish themselves cannot hold on much longer without meaningful intervention to address their most critical needs. The McKay Water Switch project was conceived over 15 years ago and needs to be completed as soon as possible.

As you may be aware, construction of phase 1 of the overall Ochoco Irrigation District modernization project (required to support the McKay Switch) has already been completed. There is much momentum and efficiency now that can be captured by continuing the project unimpeded by financial limitations. Additionally, due to current construction costs and procurement timelines, funding is needed immediately to ensure all other secured funding is able to be spent within the eligible timeframe. Working in a timely manner ensures less risk of losing that funding and removes it from further jeopardy. Finally, and this is true of all our conservation work on private lands, landowner support is not a guarantee through time. Landowners can change or their circumstances can change which can lead to project delays, increased costs, or in some instances, cancellation of the project altogether. We have found through experience that to be successful, you have to 'strike while the iron is hot', so to speak. The iron is as hot as it will ever be for this project, in our opinion.

Alternatives presented in the OWRD staff report – 2, 3, 4 and 6 all address McKay project needs. The council can support any of these selections but places emphasis on alternative 4, as it fully funds the McKay water project needs and removes this project from future competitive applicant pools meaning other projects will naturally score higher and thus be considered for funding. We experience the same phenomenon in OWEB grant programs where from cycle to cycle the competition shifts based on which projects were previously funded.

Sincerely and in your service,



Chris Gannon
Director

Commissioners

Appreciation: Thank you for all the time and efforts you put into serving all of us by trying to find the best solutions to managing our essential water resource. The changes in scope and tenor of your commission and RAC discussions have been encouraging and welcomed:

- the inclusion of considerations posed by environmental, climate and use demands,
- the importance of ecological awareness and water actions – impact and consequences,
- the pursuit of more data driven administrative assessments,
- the realization that old practices may not serve us as previously and
- that collaboration and sharing water resources is more important than we might imagine

Thank you also for making the trips to various regions of the state, such as our Deschutes Basin, to experience and sample the different perspectives and perceived critical issues of the different geographical and ecological locations.

Groundwater Reallocation Rulemaking: This process has been a good example of prudent attempts to use location based data to make determinations of additional extraction permits rather than defaulting to a more convenient preordained conclusion which may or may not represent wise stewardship of a local water resource. The current database may be limited – but you already recognize the critical need for additional data collection across the water spectrum. The conservative methodology in application of the major metrics in the decision making process, especially for a non-mechanical ecological system undergoing stressful change, is a good first step in developing this new protocol. This additional tool will be very helpful as the recharge of groundwater is not linear across the basin. R Caldwell: *Chemical Study of Regional Ground-Water Flow and Ground-Water/Surface-Water Interaction in the Upper Deschutes Basin, Oregon, 1998*, though dated, supports the variability that the rulemaking seeks to address. COCO, despite its conservation efforts and concerns, cannot generate new water where it does not, or is not projected to, exist – and we have ample examples in Oregon and elsewhere that reveal the consequences of blindly continuing groundwater extraction when consistent signs of a diminishing resource appear.

Coordination and collaboration: In our basin with the emphasis on economic growth and tourism, better interactions and collaborations for land-use decision making would be extremely helpful. For decades, many of us who have served on planning commissions have wanted the Goal 5 elements to be better integrated in analysis and mitigation for certain types of land use decisions. For example with water, uses like data farms, resorts relying on groundwater for amenities and water utilities, mega-agriculture and development relying on new water extraction or marked increases in municipal or quasi-municipal water consumption should have collaboration to ensure that the resources are available and the new request does not compromise the existing or projected future resource need. The expertise in agencies like OWRD and ODFW are crucial for wise DLCD related decisions. And those agency evaluations and recommendations need to be supported by local governing bodies rather than be fodder for legal maneuvering or workarounds.

Mitigation and Recharge: We have been fortunate to have active mitigation requirements in this basin. Despite its limitations and nearing the end of its initial authorization, the program has been successful in supplying needs that might not have been possible otherwise while trying to preserve both surface and groundwater resources. COCO has used the program extensively but has hit the current limitations. Many of us would like to see the program continue with tweaks to protect mitigation water beyond the magic Madras gauge and to increase and incorporate groundwater monitoring from the proposed Groundwater Allocation Rule. The “zone of influence” has been an important component that perhaps can be refined, but like artificial recharge, we do not seem to have enough understanding of our aquifer to be certain our attempts are productive. We know our water tables are dropping in the basin and assume it is a primary function of climate

modulations – but is it ? The proposed increased groundwater monitoring may provide better answers to use and recharge effects. Prineville is experiencing groundwater contamination; allegedly, artificial recharge may be involved. Bend has not had any problems with its efforts to date of recycling its treated water.

Monetization of Water: One of the downsides that is appearing on our basin has been the introduction of “market-based” thinking into promoting mitigation credits and water transfers. While this practice fosters some positive results, the dangers are well illustrated in other states with control of water resources shifting to those with the assets to purchase rights. In Oregon, OWRD has not considered economics into its equations. Forgotten by many newcomers here is that the water belongs to the public. Additionally, land and water was “given” at minimal cost to entities that would promote agriculture and settlement in the late 19th century. Now we are using governmental (public) funding to undertake a massive piping conservation effort in our basin. And we remain a naïve and ill-equipped to resist the economic allure that has helped create distribution and affordability problems in other states. We desperately need to be ahead of this curve of water going to highest bidder irrespective of the larger public beneficial needs or anticipated availability elsewhere. This not just socio-economic disparity issue but relates to the essential nature of water to all species and processes that co-inhabit this planet.

Regional Planning: The Deschutes Basin has some unique appropriation, judicial, biological, geologic and hydrologic characteristics that make regional planning an even more important tool than other basins in the state. Those of us who have volunteered in water related planning appreciate the opportunities made available by OWRD’s adopting this approach and for having the fortune to work with Ms. Emelie McKain, the OWRD Senior Water Advisor/Central Oregon – an invaluable asset for this basin. The basin is no stranger to attempts at collaborative processes. The first in my history here was in 1986 by Deschutes County/City of Bend, resulting in requests and then legislation making instream use beneficial, allowing water transfers between land parcels and streams, and incentivizing water conservation. Collaborative efforts followed with the Deschutes Water Alliance – transformed into the now Deschutes River Conservancy – the Basin Work Group Study and the current Deschutes Basin Work Group. You are already familiar with the participants collaborating to find solutions that might improve water resources themselves and ways to equitably and sustainably share those resources. There are potential opportunities to solve issues for municipalities, districts, ecology and land use. Some ideas and proposed solutions may fall outside of existing statutes and rulemaking or may be unique to our basin. I hope the regional planning approach will incorporate enough latitude to allow trial or pilot projects, even those which may require moving beyond existing practice, on solutions that might gain consensus among collaborators and governing agencies.

Thank you for this opportunity to comment – and for your continued efforts to serve us all.

Respectfully,

Jim Powell
Bend, OR

June 11, 2024

To: Oregon Water Resources Commission

Submitted by: Zach Freed, Sustainable Water Program Director

Comments on Agenda Item K: **Groundwater Allocation Rulemaking Update**

Chair Quaempts and Members of the Commission,

Thank you for the opportunity to comment on the proposed rule changes to Division 8, 9, 300, and 410. **The Nature Conservancy urges you to adopt the proposed Groundwater Allocation Rules to prevent further over-allocation of Oregon's aquifers.**

The Nature Conservancy (TNC) is a science-based, non-partisan organization committed to conserving the lands and waters on which all life depends. In Oregon, TNC has over 80,000 supporters and members in every county. Based in communities around the state, we manage lands and waters in varied ecosystems and partner with ranchers, farmers, fishers, forest and environmental interests on some of the most challenging conservation issues facing people and nature.

We support the proposed rules. We believe they meet the Oregon Water Resources Department's rulemaking objective to **"be more sustainable and protective of existing water right holders."** There is abundant evidence that the existing allocation rules lead to aquifer depletion, streamflow reduction in over-appropriated rivers, and reduced access to drinking water for rural communities that rely on domestic wells. Oregon is already experiencing the impacts of over-allocation on declining groundwater levels, demonstrated by multiple statewide analyses^[1,2,3] and place-based studies in the Willamette⁴, Deschutes⁵, Klamath⁶, and Harney⁷ basins. A recent report by the Oregon Secretary of State⁸ noted the impact of dry wells and water scarcity on families, farmers, industry, and recreation.

¹ 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.

² Scandella, B., & Iverson, J. 2021. Oregon groundwater resource concerns assessment. Oregon Water Resources Department, Salem, OR.

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 Conlon, T.D., et al. 2005. Ground-Water Hydrology of the Willamette Basin, Oregon. USGS SIR 2005-5168.

⁵ Gannett, M.W., et al. 2001. Ground-Water Hydrology of the Upper Deschutes Basin, Oregon. USGS SIR 2000-4162.

⁶ Gannett, M.W., et al. 2007. Ground-Water Hydrology of the Upper Klamath Basin, Oregon and California. USGS SIR 2007-5050.

⁷ Gingerich, S.B., et al. 2022. Groundwater resources of the Harney Basin, southeastern Oregon. USGS SIR 2021-5103.

⁸ Oregon Secretary of State. 2023. Advisory Report: State leadership must take action to protect water security for all Oregonians. Report 2023-04.

The proposed approach to defining “reasonably stable” water levels is consistent with the most modern science on groundwater sustainability^{9,10}. Unlike outdated methods—such as “water budget” approaches with inaccurate volumetric estimates of recharge and discharge—the proposed rules use groundwater level trends as the key indicator of sustainability. While groundwater levels may fluctuate for other reasons (e.g., reducing recharge due to canal lining), the proposed rules allow for discretion by the Department to account for those fluctuations using the best available data¹¹.

The proposed rules are well-aligned with Oregon’s Integrated Water Resources Strategy, which identifies sustainable groundwater management a statewide priority and suggests Recommended Action 11.E: Develop Additional Groundwater Protections¹². Although the existing and proposed rules governing groundwater allocations are statewide in scope, there are processes already in place to help address regionally-specific groundwater concerns. To address concerns from stakeholders, the proposed rules allow for basin-specific definitions to be developed, as long as the basin-specific definitions consider impacts to wells, ecosystems, and long-sustainability of the resources¹¹. These common-sense considerations will ensure that basin-specific definitions are consistent with priorities in Oregon’s Integrated Water Resources Strategy and aligned with the mission of Oregon Water Resources Department “**to ensure the long-term sustainability of Oregon’s ecosystems, economy, and quality of life.**” The proposed rules are also compatible with current and future Place-Based Integrated Water Planning processes. That includes the pilot Place-Based Integrated Water Planning collaborative in the Harney Basin intended to address the consequences of groundwater over-allocation.

The Nature Conservancy supports the proposed rules because they meet the stated objective of the rulemaking: protecting existing water rights and sustainably managing Oregon’s finite water resources. We urge the Commission to adopt the proposed rules to avoid further over-allocation of Oregon’s aquifers.

Thank you for considering The Nature Conservancy’s comments.

⁹ Gleeson, T., et al. 2020. Global groundwater sustainability, resources, and systems in the Anthropocene. *Ann. Rev. Earth Sci.* 48: 431-463.

¹⁰ Cuthbert, M.O., et al. 2023. Defining renewable groundwater use and its relevance to sustainable groundwater management. *Water Resources Research* 59(9).

¹¹ Proposed rule: 690-008-0010(9)(d)

¹² Mucken, A., and Bateman, B. 2017. Oregon’s 2017 Integrated Water Resources Strategy. Oregon Water Resources Department. Salem, OR.



DESCHUTES RIVER
CONSERVANCY

June 11, 2024

Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301

RE: Support for the McKay Creek Water Rights Switch Project Additional Funding Request

Dear Water Resources Commission,

My name is Kate Fitzpatrick, and I serve as the Executive Director at the Deschutes River Conservancy. Thank you to the Commission for this opportunity to express support for the McKay Creek Water Rights Switch project. The DRC would like to request that the Commission, having reviewed the Department's recommendations, provide additional project funding to the maximum extent possible.

The McKay Switch has been in development for almost two decades, and as our original application describes, has multiple, significant benefits and diverse support across the broader community. This project permanently restores 11.2 cfs of irrigation water rights (essentially the natural hydrograph) to the 6 miles of McKay Creek that suffer from critical low flow due to irrigation withdrawals during a critical life cycle for fish. Flow is currently a primary limiting factor for the spawning and migration of reintroduced Mid-Columbia summer steelhead, listed as threatened under the Endangered Species Act. Flow restoration also improves water quality, including temperature and dissolved oxygen, both limiting factors for fish. Further, it creates opportunities for habitat restoration along the stream and adjacent riparian zones, enhancing the already substantial benefits provided by the Switch itself.

This project was developed in response to the reintroduction of anadromous fish above the Pelton Round Butte Dam Complex in 2007. Fish passage failed when the dam complex was completed in 1964 and anadromous runs in the Upper Deschutes Basin were extirpated. As part of the FERC relicensing, the Confederated Tribes of Warm Springs became co-owners of the dam complex in 2001 and the relicensing terms included the reintroduction

of salmon, steelhead, and sockeye, central to the Tribes' culture and of great interest to conservation partners. The coincident listing of summer steelhead as threatened under the ESA created great concern amongst Crook County irrigators, creating a high potential for conflict and divisiveness. The McKay Switch was conceived as a way to restore the most critical steelhead tributary in the Crooked River Sub-basin, while building support for the reintroduction effort and existing uses of water. Since then, the community has worked together to bring this to fruition and to collaboratively implement other watershed improvements that support the reintroduction.

The project improves agricultural opportunities for those in the project area by ensuring that participating McKay Creek landowners within the project area have access to pressurized water from Ochoco Irrigation District sourced from Prineville Reservoir, allowing for a longer growing season, increased on-farm efficiency, and ultimately improved agricultural economic output. All of Ochoco Irrigation District benefits from a modernized pumping and conveyance system. This is a rare win-win project that allows landowners in Crook Country to support and celebrate the reintroduction of anadromous fish into the community, while supporting the agriculture so important to the culture and economy of Crook County.

The McKay Switch has already received significant investment from various state, federal, and private funders, including OWEB, NRCS, and the Pelton Fund, totaling over \$40 million. Without this additional funding, the project and previously secured funding is put at risk. Further, with current construction and procurement timelines, additional state funding is needed now to ensure previously secured funds can be utilized within their eligible timeframes. Any further delays will engender significant risks of further inflation, landowner turnover, and expiration of secured grants. The DRC requests that the Commission move forward with providing additional funding to the maximum extent possible, so that this project does not risk failure. We believe the planning horizon, scale and complexity of this project, alongside its significant environmental, economic, and social benefits merits this unconventional ask.

Thank you again for this opportunity.

Sincerely,

A handwritten signature in cursive script that reads "Kate Fitzpatrick".

Kate Fitzpatrick
Executive Director

From: Jim Powell jhp@bendbroadband.com
Subject: Testimony for the record, OWRC, June 14th, 2024
Date: June 12, 2024 at 16:57
To: mindy.j.lane@water.oregon.gov
Bcc: Emelie McKain Emelie.L.MCKAIN@water.oregon.gov



Ms. Lane

I am sorry this is late but I thought it better to send it now than apply to present on Friday. Thank you for your efforts in administering the meeting in Bend. The time and effort that the Commission and Staff commit to reaching out to us all is greatly appreciated.

Kind Regards

Jim Powell
Bend, OR
541-389-5693



OWC
Comments.pdf

From: LANE Mindy J * WRD Mindy.J.Lane@stateoforegon.mail.onmicrosoft.com
Subject: Automatic reply: Testimony for the record, OWRC, June 14th, 2024
Date: June 12, 2024 at 16:58
To: Jim Powell jhp@bendbroadband.com



Hello,

During the week of June 10th, I will be out of the office most of the week for the quarterly Commission meeting.

During the week of June 17th, I will be in the office on Monday and Tuesday, then out for the remainder of the week.

If you need to submit a public records request, please email owrd.publicrecords@water.oregon.gov, but please note that your request may not be reviewed until the week of June 24th.

For **legislative inquiries**, please email Legislative Coordinator Bryn Hudson at Bryn.Hudson@water.oregon.gov and Policy Section Manager, Danielle Gonzalez at Danielle.L.Gonzalez@water.oregon.gov.

For **press inquiries**, please email WRD_DL_mediaquiries@water.oregon.gov with your questions and deadlines. Our staff will work diligently to address your request.

For **rulemaking** inquiries, please email WRD_DL_rule-coordinator@water.oregon.gov.

Thank you, and I will get back to you as soon as I can.

Commissioners

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Thank you also for making the trips to various regions of the state, such as our Deschutes Basin, to experience and sample the different perspectives and perceived critical issues of the different geographical and ecological locations.

Groundwater Reallocation Rulemaking: This process has been a good example of prudent attempts to use location based data to make determinations of additional extraction permits rather than defaulting to a more convenient preordained conclusion which may or may not represent wise stewardship of a local water resource. The current database may be limited – but you already recognize the critical need for additional data collection across the water spectrum. The conservative methodology in application of the major metrics in the decision making process, especially for a non-mechanical ecological system undergoing stressful change, is a good first step in developing this new protocol. This additional tool will be very helpful as the recharge of groundwater is not linear across the basin. R Caldwell: *Chemical Study of Regional Ground-Water Flow and Ground-Water/Surface-Water Interaction in the Upper Deschutes Basin, Oregon, 1998*, though dated, supports the variability that the rulemaking seeks to address. COCO, despite its conservation efforts and concerns, cannot generate new water where it does not, or is not projected to, exist – and we have ample examples in Oregon and elsewhere that reveal the consequences of blindly continuing groundwater extraction when consistent signs of a diminishing resource appear.

Coordination and collaboration: In our basin with the emphasis on economic growth and tourism, better interactions and collaborations for land-use decision making would be extremely helpful. For decades, many of us who have served on planning commissions have wanted the Goal 5 elements to be better integrated in analysis and mitigation for certain types of land use decisions. For example with water, uses like data farms, resorts relying on groundwater for amenities and water utilities, mega-agriculture and development relying on new water extraction or marked increases in municipal or quasi-municipal water consumption should have collaboration to ensure that the resources are available and the new request does not compromise the existing or projected future resource need. The expertise in agencies like OWRD and ODFW are crucial for wise DLCD related decisions. And those agency evaluations and recommendations need to be supported by local governing bodies rather than be fodder for legal maneuvering or workarounds.

Mitigation and Recharge: We have been fortunate to have active mitigation requirements in this basin. Despite its limitations and nearing the end of its initial authorization, the program has been successful in supplying needs that might not have been possible otherwise while trying to preserve both surface and groundwater resources. COCO has used the program extensively but has hit the current limitations. Many of us would like to see the program continue with tweaks to protect mitigation water beyond the magic Madras gauge and to increase and incorporate groundwater monitoring from the proposed Groundwater Allocation Rule. The “zone of influence” has been an important component that perhaps can be refined, but like artificial recharge, we do not seem to have enough understanding of our aquifer to be certain our attempts are productive. We know our water tables are dropping in the basin and assume it is a primary function of climate

modulations – but is it ? The proposed increased groundwater monitoring may provide better answers to use and recharge effects. Prineville is experiencing groundwater contamination; allegedly, artificial recharge may be involved. Bend has not had any problems with its efforts to date of recycling its treated water.

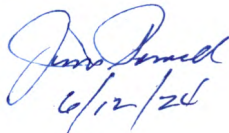
Monetization of Water: One of the downsides that is appearing on our basin has been the introduction of “market-based” thinking into promoting mitigation credits and water transfers. While this practice fosters some positive results, the dangers are well illustrated in other states with control of water resources shifting to those with the assets to purchase rights. In Oregon, OWRD has not considered economics into its equations. Forgotten by many newcomers here is that the water belongs to the public. Additionally, land and water was “given” at minimal cost to entities that would promote agriculture and settlement in the late 19th century. Now we are using governmental (public) funding to undertake a massive piping conservation effort in our basin. And we remain a naïve and ill-equipped to resist the economic allure that has helped create distribution and affordability problems in other states. We desperately need to be ahead of this curve of water going to highest bidder irrespective of the larger public beneficial needs or anticipated availability elsewhere. This not just socio-economic disparity issue but relates to the essential nature of water to all species and processes that co-inhabit this planet.

Regional Planning: The Deschutes Basin has some unique appropriation, judicial, biological, geologic and hydrologic characteristics that make regional planning an even more important tool than other basins in the state. Those of us who have volunteered in water related planning appreciate the opportunities made available by OWRD’s adopting this approach and for having the fortune to work with Ms. Emelie McKain, the OWRD Senior Water Advisor/Central Oregon – an invaluable asset for this basin. The basin is no stranger to attempts at collaborative processes. The first in my history here was in 1986 by Deschutes County/City of Bend, resulting in requests and then legislation making instream use beneficial, allowing water transfers between land parcels and streams, and incentivizing water conservation. Collaborative efforts followed with the Deschutes Water Alliance – transformed into the now Deschutes River Conservancy – the Basin Work Group Study and the current Deschutes Basin Work Group. You are already familiar with the participants collaborating to find solutions that might improve water resources themselves and ways to equitably and sustainably share those resources. There are potential opportunities to solve issues for municipalities, districts, ecology and land use. Some ideas and proposed solutions may fall outside of existing statutes and rulemaking or may be unique to our basin. I hope the regional planning approach will incorporate enough latitude to allow trial or pilot projects, even those which may require moving beyond existing practice, on solutions that might gain consensus among collaborators and governing agencies.

Thank you for this opportunity to comment – and for your continued efforts to serve us all.

Respectfully,

Jim Powell
Bend, OR



6/12/26



June 14, 2024

Oregon Water Resources Commission
Water Resources Department
725 Summer St. NE, Suite A
Salem, Oregon, 97301

Welcome Chairman Quaempt, Vice Chair Smitherman and members of the Commission

I am Becky Powell representing the League of Women Voters of Deschutes County. We support the Amendments of Chapter 690 Oregon Groundwater Rules and submitted a letter in April to that effect.

Thank you for coming to Bend to listen to the arid eastside of the Cascades and for this opportunity to share some comments in addition to our previous testimony.

Enactment of the 1955 Groundwater Act gave Oregon a rare opportunity in the western states to manage our groundwater. It is past time for clear rules to protect our valuable clean drinking water and streamflow.

The League believes that the interdependence of land use planning and water planning must be recognized and required at all levels of government. Land use decisions in the Deschutes River Basin are being made without regard to the availability of water or accounting for the impact of these decisions on water quantity and quality. Cities and developers are struggling with the economic impacts but must have clear guidelines to prevent injury to existing water needs.

The League recognizes that effective planning for water protection and use is most effective with a complete inventory of the water resource including all domestic wells. There are more than 20,000 exempt wells in the basin that are not monitored or regulated and some are known to exceed the three-household limitation and irrigate more than 1/2 acre. Priority efforts should be directed to geographic areas with identified problems and vulnerabilities.

In order to achieve equitable distribution of water for all living beings it is essential we understand the nature of the resource. We appreciate the department's work researching the Deschutes River Basin, educating and listening, and supporting basin planning with expert assessments.

Thank you.

Leadership Committee. League of Women Voters of Deschutes County

Mary B. Powell
20607 Coventry Cir. Bend, Oregon 97702
MLp504e@bendbroadband.com

From: [Richard Harrington](#)
To: [LANE Mindy J * WRD](#)
Subject: Status of My May 13 Request for Clarification of the Interpretation of ORS 537.143
Date: Tuesday, June 11, 2024 5:00:20 PM

On May 13 I submitted an email to the Commission regarding what I believed was an erroneous reading of ORS 537.143 which governs the issuance of Limited Licenses. 2024 was the second year that the Department had issued a Limited License for the irrigation of hemp, despite my Comments on the Application in 2023 and a Request for Reconsideration of LL-1950. My Comments on LL-1968 were ignored and the FO approving the Application was issued. Then following my May 13 email to the Commission, the Department rescinded LL-1968.

While this was the hoped-for result, such erroneous interpretation of the statute could happen in the future.

It took 4 attempts to put a stop to this unlawful interpretation

Therefore, I am again asking:

Please clarify the interpretation of ORS 537.143 with regard to hemp irrigation.

Please make whatever policy changes necessary to prevent future issuance of limited licenses in violation of ORS 537.143.

Thank You.

Richard Harrington



WaterWatch of Oregon Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission
725 Summer St. NE, STE A
Salem, OR 97301
Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

June 12, 2024

RE: Agenda Item A, Irrigation Modernization Funding Recommendations

Dear Chair Quaempts and members of the Commission:

Thank you for the opportunity to provide input on the OWRD irrigation modernization funding recommendations. We offer the following brief comments:

Irrigation District Modernization Projects to benefit the Oregon Spotted Frog: Two piping projects recommended for funding would provide benefits for the Oregon Spotted Frog in the Upper Deschutes River during winter months, when flows critical to their survival are needed¹. The envisioned pathway forward would allow NUID access to conserved water generated by the proposed piping projects in the summer months in exchange for NUID's release of an equivalent amount of water in the winter months from Wickiup Reservoir for the benefit of the Oregon Spotted Frog.

WaterWatch has been involved in conversations about this creative pathway to get water to the Oregon Spotted Frog in the Upper Deschutes for nearly a decade, and generally support the approach. That said, while we support the state's funding of these two projects for their intended purpose of providing summer flows to NUID and winter flows to the Oregon Spotted Frog, we do want to ensure that the winter water released from Wickiup Reservoir for the frog be protected instream in perpetuity.

To that end, we did want to flag that the secondary right for winter releases of stored water from Wickiup Reservoirs that AID and DRC identified in a grant application amendment requests is not limited to instream use only (which would guarantee the winter water for the frog in perpetuity), but rather, would be for the dual use of irrigation and flow augmentation. While we appreciate the stated intent of the irrigation districts involved is that there be a commensurate winter benefit to the frog for conserved water available to NUID in the summer, unless all documents that are being executed to allow this path clearly protect the winter water releases for solely for instream use, the instream benefits are at risk.

Therefore, as it relates to these two grant applications, if these projects are funded as recommended, we would ask the OWRD to commit to including in the grant agreements provisions to ensure that water

¹ Deschutes Resources Conservancy, Phase 2—G-1 and G-2 lateral piping and water conservation; Arnold Irrigation District, Basin Flow Restoration Project, Phase 3-4

noted for instream benefit will remain instream in perpetuity.² There are a number of ways to achieve this, but bottom line is that what is needed to achieve the stated goals is a grant agreement that includes directives to ensure enforceable documents that would protect winter releases for frogs in the river in perpetuity.

Additional Funds for the McKay Creek Water Rights Switch Project: WaterWatch is in support of additional funding for this project.

OWRD Review Standards: While not necessarily a topic at the Commission meeting, we wanted to state on the record that we agree with OWRD's position that the Irrigation Modernization Funding was meant to run through the existing Water Project Grant and Loan program. Statutory construct supports this.

Thank you for your consideration of our comments.

Sincerely,



Kimberley Priestley
Senior Policy Analyst
WaterWatch of Oregon

² NOTE: The TRT Review that went out for public comment noted that the water to the frog would be executed via a secondary right for instream purposes, however the description did not make clear that that the applicants intended that the secondary right for winter water from Wickiup would be for the dual purposes of instream and irrigation. The Staff Report for Agenda Item A is the first opportunity the public has had to assess this portion of the grant applications and understand what the applicants were proposing with regards to the secondary right, which is why our concerns were not flagged earlier.



WaterWatch of Oregon Protecting Natural Flows In Oregon Rivers

Oregon Water Resources Commission

725 Summer St. NE, STE A

Salem, OR 97301

Sent via email to: Mindy Lane, Mindy.J.LANE@water.oregon.gov

June 11, 2024

RE: WRC Agenda Item K - Groundwater Allocation Rulemaking (6-14-2024)

Dear Chair Quaempts and members of the Commission:

Thank you for the opportunity to comment on the critically important proposed Groundwater Allocation Rules (Proposed Rules). WaterWatch was a member of the Groundwater Allocation RAC. We have provided comment to the Commission a few times previously in support of the rulemaking. WaterWatch is very supportive of the Proposed Rules and appreciative of the OWRD's thoughtful, in-depth work and robust public engagement that went into developing the Proposed Rules.

WaterWatch will be submitting a detailed comment letter to the rules coordinator, including proposed language to add clarity to certain provisions and to advocate for strengthening certain resource protections, but writes here to express our support for the Proposed Rules, address a few specific issues, and urge your support.

Testimony from the public rulemaking process needs to be utilized and considered

As you are likely aware, there were four public rulemaking hearings held around the state in April and May, and a written comment period that closes June 14th. A great many people offered thoughtful and compelling oral testimony at the hearings in support of the Proposed Rules. This was the official public rulemaking process and we urge the Commission to watch the testimony, which is available on OWRD's Groundwater Allocation webpage. This includes testimony from an April 4th hearing in Bend, which included local people and organizations testifying in support of the rules and the central Oregon municipal interests sharing their perspectives. Comments in support of the rules outnumbered comments of concern at the April 4th Bend hearing. Many additional thoughtful comments in support were voiced at the May 21st hearing in Salem, which included an option to testify virtually and support for the rules was voiced at each of the four hearings. We flag this because it would be an unfair and unbalanced process if the added opportunity to comment directly to the Commission on June 14th erased, or undermined, all of the effort that went into testifying during the original, official rulemaking hearings. We similarly urge full consideration of the comments that will be submitted by the June 14th deadline.

Key reasons WaterWatch supports the Proposed Rules

- **Alignment with Oregon's 1955 Groundwater Act (ORS 537.505 *et seq.*)**

The Proposed Rules would align with statute. The existing rules, in contrast, do not align with statute as demonstrated, for example, by the plummeting groundwater levels in places like the Harney Basin caused

WaterWatch of Oregon

Main Office: 213 SW Ash St. Suite 208, Portland, OR 97204

Southern Oregon Office: PO Box 261, Ashland, OR 97520

www.waterwatch.org

Main Office: 503.295.4039

S. OR Office: 541.708.0048

by over-issuance of groundwater permits, and the fact that the existing permitting process fails to protect senior water rights from injury caused by pumping. Importantly, the Proposed Rules define and maintain (with regard to new allocations) reasonably stable groundwater levels, better protect groundwater use for human consumption, better protect senior water rights (including instream water rights), and would limit issuance of new permits to when water is available for the use.

- **Science-based and data-driven.**

The proposed Division 9 rules related to pumping affecting streamflow are consistent with the best available science in Oregon and beyond. Within Oregon, groundwater studies by the U.S. Geological Survey (USGS), in cooperation with OWRD, in major basins like the Klamath, Deschutes, Willamette, and Harney demonstrate the influence of groundwater pumping on streams. Recent nationwide studies across the United States also provide evidence for pervasive impacts to streamflow due to groundwater pumping. Further, the proposed Division 8 rules defining “reasonably stable” are based on an OWRD analysis of thousands of groundwater levels across the state that was peer reviewed by USGS. The ‘dynamically stable’ concept applied in the rules uses groundwater level trends to determine sustainability, which is a modern and up-to-date approach also supported by recent studies.

- **Implements a “Default to No” approach to avoid over-allocation where data is lacking.**

The Proposed Rules reverse OWRD’s decades-long damaging “Default to Yes” approach, whereby when reviewing a groundwater permit application, if data was lacking to determine whether groundwater was already over-allocated, the permit would be issued. This “Default to Yes” approach led directly, most recently, to the extremely challenging (and expensive) groundwater over-allocation problem in the Harney Basin. In contrast, the Proposed Rules establish the type and amount of data needed to determine whether groundwater levels are reasonably stable, and then change the default so that a lack of data will result in denial, or “Default to No.” This is a major and critically important change.

- **Implements a significantly more robust protection for senior rights on hydraulically connected surface water.**

For decades, the existing rules have resulted in issuance of groundwater permits that have reduced streamflows and injured senior surface water rights, in contravention of the Groundwater Act and the foundation of prior appropriation. This is because the existing Division 9 rules only require consideration of a fraction of the pumping impacts. The Proposed Rules remedy this by requiring full accounting of the impacts of proposed pumping on hydraulically connected surface water, combined with consideration of whether the surface water is over-appropriated, or withdrawn, in determining whether to issue a new groundwater right.

- **Important security for existing domestic well users.**

Many people in rural areas of Oregon rely on exempt domestic wells to provide drinking and household water. While exempt wells can pose their own problems in certain contexts, jeopardizing access to drinking water for existing domestic well owners by over-allocating groundwater to other junior uses is clearly problematic. It should be noted that simply drilling domestic wells deeper is not always workable due to water quality problems that can be encountered at increasing depths. Further, there is a significant expense associated with deepening domestic wells. The Proposed Rules’ implementation of the 1955

Groundwater Act's requirement to determine and maintain, with regard to new allocations, "reasonably stable" groundwater levels will provide important security for this drinking water source.

Specific Comments (again, WaterWatch will be submitting detailed comments on the rules but we wanted to highlight a few important things to the Commission in advance of the Bend Commission meeting):

1. The 'considerations' in the basin specific rule option should be retained and strengthened.

The Proposed Rules allows for a basin specific approach to defining and applying the statutory term "reasonably stable" groundwater levels. Specifically, the rules state:

"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. Any proposed superseding basin program definition *must consider*, at a minimum, the anticipated impacts of the new definition on:

(A) the number of wells that may go dry; and

(B) the character and function of springs and groundwater dependent ecosystems; and

(C) the long term, efficient, and sustainable use of ground water for multiple beneficial purposes."

Proposed OAR 690-008-0001(9)(d) (emphasis added). These are common-sense considerations that are important to Oregonians *and* that are consistent with the 1955 Groundwater Act. Further, there is certainly nothing unworkable or burdensome about 'considering' the impacts of a basin rule definition on these factors. OWRD included the basin specific rules option to address concerns raised by certain water user groups in the RAC about basin specific hydrology, resulting in flexible Proposed Rules.

While the Proposed Rules rightly require that basin rules consider the impact of any new definition on these factors, we note that these factors closely link to requirements of the 1955 Groundwater Act that must be met. We therefore suggest that, not only is it critically important to retain these considerations, but that including stronger sideboard requirements for the basin specific option would help ensure transparency and alignment with the statute. This would also help support stronger basin rules that better meet the needs of all interests.

We also note that while the basin rule option offers local flexibility, the Proposed Rules already account for variations in hydrogeology and hydrology across the state, because those are part of what drives the groundwater levels, groundwater level trends, and hydraulic connection to surface water that are required to be considered in the permitting process contained in the Proposed Rules.

2. The Proposed Rules implement important pieces of the Integrated Water Resources Strategy.

The 2017 Integrated Water Resources Strategy (IWRS) calls on the state to "Develop Additional Groundwater Protections" (Recommended Action 11.D). This recommendation expands upon a number of needed actions identified in the 2012 IWRS, including a call for the protection of groundwater in the regulatory and permitting processes (2012 IWRS actions 10F,10G). The Proposed Rules bring agency practices into alignment not only with statutory directives, but also with the recommendations in the IWRS.

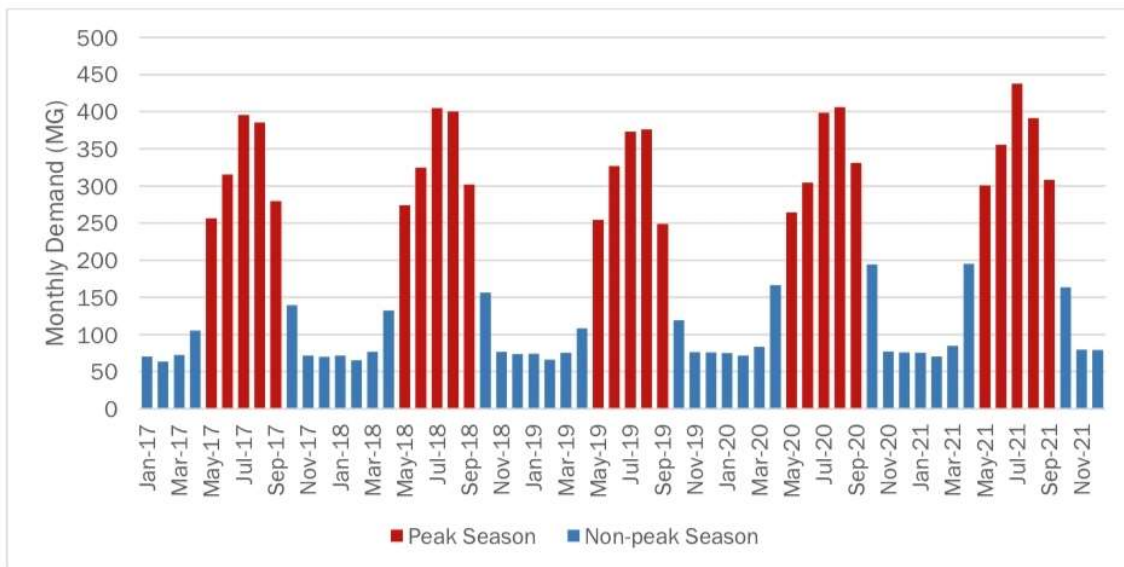
3. Cities have the water rights and tools to work within the Proposed Rules to meet reasonable water needs including providing additional housing.

A full discussion of cities' water data is beyond the scope here, but claims that the Proposed Rules' science-based, sustainable groundwater permitting approach would conflict with developing additional housing or meeting cities' water needs do not appear supported by data.

As an example, below is information from the 2022 City of Redmond Water Management and Conservation Plan (WMCP). It is important to note that **currently, the city’s average daily demand is only about 25% of its already permitted water rights, and by 2043 the city projects that average daily demand will still be well under 50% of its permitted water rights.** (City of Redmond WMCP, p. 5-5).

“Exhibit 2-6 shows total monthly demand, with the peak season of May through September in red and the non-peak season in blue. The average monthly demand was 337 MG during the peak season and 95 MG during the non-peak season. The MMD averaged 404 MG and these peaks occurred in July (2017, 2018, and 2021) and August (2019 and 2020).”

Exhibit 2-6. Monthly and Seasonal Demand, 2017 through 2021



Source: City of Redmond WMCP, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-9).

On Figure 2-6, the red bars show the dramatic increase in water use due to outdoor summer water use (e.g. lawn watering and landscape watering). The graph shows that it is *not* household use driving water demand – it is strictly peak summer use driven by outdoor watering. The current water use could support water for far more households by addressing the high peak summer use, for example through better conservation practices including but not limited to landscaping that is more adapted for the amount of water naturally available during the summer months.

To examine this further, Exhibit 2-11 (also from the City of Redmond WMCP), shows how water use for multi-family residential use (shown in orange) is much more flat year round and does not contain the large outdoor water use peak currently associated with single family homes (shown in blue). There appears ample room for conservation practices to free up water needed for additional multi-family housing, or any housing not entailing extensive outdoor watering.

Exhibit 2-11. Monthly Consumption by Customer Category, 2017 through 2021



Source: City of Redmond Water Management and Conservation Plan, Prepared by GSI Water Solutions, Inc., September, 2022 (p. 2-12).

The City of Redmond WMCP also provided this analysis:

“Average monthly peak season water use in 2021 was 3.5 times higher than non-peak season water use for single-family residential connections (due to outdoor landscape watering associated primarily with large residential lots), down from 4.1 times higher in 2017. In addition to the City’s water conservation outreach activities, this reduction is likely attributable to a reduction in average lot sizes for single family homes driven by changes in zoning and real estate market dynamics. Average monthly peak season water use for multi-family water service connections is consistently 2.2 times higher than nonpeak season water use. The 2021 multipliers for commercial and City water use were 3.5 and 6.3, respectively.

These ratios suggest that conservation efforts focused on reducing outdoor use by single-family homes and certain commercial customers with large landscape water use, may help to address peak-season demand (see Exhibit 2-10).”

(P. 2-11). This analysis highlights opportunities to provide additional water that could be directed to additional housing through bringing down “outdoor landscape watering associated primarily with large residential lots.”

The City of Redmond WMCP also provides other data that highlight water saving opportunities, including a “Maximum Operational Demand,” which adds a significant peak to the maximum day demand caused by people turning on their outdoor watering during the same hours each day. (P. 5-3 to 5-5). Addressing that peak, for example with scheduling or reducing outdoor use, or in-city water tanks, could instead provide water for housing.

Finally, the population of City of Redmond was 37,342 in 2022, which the city projects will increase to 56,810 by 2043. (City of Redmond WMCP, p. 5-1). The Mayor of Redmond recently stated: “We have

enough water rights that we acquired over the last 20 years to meet a population of 75,000 people." (Redmond Spokesman, *State signals it's likely to deny Redmond's application for future groundwater*, October 16, 2023.) This means City of Redmond is many decades away from needing additional water, if ever, providing ample time to apply modern techniques, programs and transactions, such as implementing lawn watering schedules or restrictions and prioritizing xeriscaping – in order to sustainably meet the city's needs without causing added groundwater declines.

Further, there are many additional tools, such as water right transfers, water reuse, infrastructure improvements to bring down peak use (e.g. in-city water tanks), and the Conserved Water Act, that can all contribute to ensuring robust water supplies for the cities in a sustainable manner.

In sum, any statements that cities must be allowed to acquire additional new groundwater permits need to be objectively evaluated with available data, including data provided in the cities' WMCPs. Reviewing City of Redmond's WMCP, for instance, shows that there is ample opportunity to provide water for a great deal of additional housing, including by addressing the pattern of water use; that it is not household use driving peak water demand; and that the city's existing water rights provide for a long horizon to develop sustainable strategies.

Conclusion

Thank you for the opportunity to comment and for your continued work on this critically important issue. As noted above, we will be filing additional detailed comments to the rule coordinator. While the Proposed Rules could be more protective in some areas, WaterWatch is very supportive of the Proposed Rules because of the significant benefit they will provide for Oregon's water future and we therefore urge your support. We commend Oregon for taking this long-overdue action to correct course, using science and data, to more sustainably allocate the critically important resource of groundwater. We look forward to seeing rules adopted at your September meeting.

Sincerely,

/S/Lisa A. Brown

Lisa A. Brown

Staff Attorney

lisa@waterwatch.org

From: [HARTT Laura A * WRD](#)
To: [LANE Mindy J * WRD](#)
Subject: FW: June 14 Hearing Comments
Date: Tuesday, June 18, 2024 9:35:23 AM

Here are the comments that we discussed. I believe they pertained to item H. thanks! Laura

From: marilyn koenitzer <mltknows@gmail.com>
Sent: Friday, June 14, 2024 3:20 PM
To: WRD_DL_rule-coordinator <wrd_dl_rule-coordinator@water.oregon.gov>
Subject: June 14 Hearing Comments

Some people who received this message don't often get email from mltknows@gmail.com. [Learn why this is important](#)

OWRD Commissioners:

This morning, June 14, 2024, I made comments on behalf of the League of Women Voters of Oregon (LWVOR). I should have made those comments representing myself, not LWVOR. Those comments were that the Oregon Land Use Goals and Policies do not link land use development to water availability. Redmond, Oregon applied for a new water permit and was denied. Bend will need to apply for a new permit as well and needs that water to supply its growth.

My new comments:

Few have spoken about the “missing link” in our state land use goals between development and availability of water for it. You are not responsible for creating that link, but you inadvertently are becoming part of it with your rule making. I hope my testimony raises awareness of the lack of connection.

I agree with the testimony of Mayor Melanie Kebler of Bend who is concerned that Bend will have trouble meeting state mandates for housing with future water constraints. Both Mayor Kepler and Annette Liebe mentioned the unique characteristics of the Deschutes Basin. Ground water comes from many sources, but is uneven. Ms. Liebe said ground water has been declining two feet per year in parts of the Basin and 50 feet (over a relatively short period of time). That is alarming to many of us.

More can be done with conservation by almost all water users, but conservation can only go so far. The state is actually regulating water somewhat, mainly through your rule making. It is past time for the state to acknowledge the part it plays in putting pressure on our water resources by mandating growth with its population projections, urban growth boundary regulations, density requirements and housing mandates.

The Department of Land Conservation and Development can link land use to water availability. It can create policies for use by cities and counties to ensure sustainable water supplies for development. It could also promulgate rules for conservation, if necessary. Having policy coming from the land use perspective could also alleviate pressure on your rule making.

I agree with your current rule making as I said in a previous letter, and I hope you can find a way to tackle exempt wells which are going dry at an accelerated rate. It is shocking that they can extract 12,000 gallons per day without being metered. I also hope we can define beneficial use with a conservation slant.

At your hearings it has been heartening to hear so many people on the same page on water issues.

I appreciate the listening and caring you exhibited during the two day meeting in Bend.

Thank you for all you are doing to try and save water for Oregon,

Marilyn Koenitzer
mltknows@gmail.com
20856 BOBWHITE CT
BEND OR 97701-7740
541-231-0156