

# Item B - Groundwater Allocation Rulemaking

Divisions 8, 9, 300, and 410

*Action Item*

Oregon Water Resources Commission

September 12, 2024



# Presentation Overview

- A. Background
- B. Rulemaking Process
- C. General Comments & Responses
- D. Specific Comments & Responses
  - Reasonably Stable Groundwater Levels
  - Hydraulic Connection & Potential for Substantial Interference
- E. Summary of Proposed Rule Changes
- F. Alternatives & Director's Recommendation



# Background



# Objective

Update groundwater allocation rules to be more sustainable and protective of existing water right holders, both instream and out-of-stream.



# Impacts of Over-Allocation

- Drying up of wells;  
increased pumping  
costs
- Reduced streamflow
- Curtailment of rights  
in which people have  
invested
- Water quality  
deterioration





# Allocation in Statute

ORS 537.621(2)(a), the “four-part test”:

- Use is allowed in the basin
- Water is available
- Existing rights will not be injured
- Meets additional Commission standards and rules

...and (2)(b) Other public interest criteria in statutory policy can be addressed as needed



# Water is Available if...

## Current Rules:

Requested source is available if not over-allocated:

- Allocate up to the full annual recharge volume
- Avoid short-term, acute impacts to surface water; while allowing long-term and cumulative impacts

## Proposed Rules:

Requested source is available only if:

- Groundwater level trends are Reasonably Stable
- Hydraulically connected surface water is available for further appropriation
- Aquifer physically capable of producing the requested rate

# Rulemaking Principles

1. Promote sustainable groundwater use, recognizing the prior appropriation doctrine, meaning that:
  - a. Reasonably stable groundwater levels are determined and maintained, and
  - b. Groundwater contributions to streamflow are maintained where streamflow is already fully allocated to existing water right holders.
2. Base rule changes in law, science, and Oregon's groundwater data.
3. Only issue additional groundwater rights where information exists to confirm that water is available for further appropriation.



# Scope of Rulemaking

Proposed rules apply to:

- Potential New Permitted Groundwater Uses

Proposed rules do not apply to:

- Existing permit holders
- Exempt groundwater users
  - Domestic
  - Small livestock
  - Small single industrial and commercial use



# Rulemaking Process



## Including

- 5 Public Outreach Meetings (Fall 2022)
- 8 Rules Advisory Committee (RAC) Meetings & 2 Technical Information Sessions
  - April 2023 – January 2024
- Groundwater Advisory Committee updates
- Commission updates
- Tribal updates
- Additional public outreach as needed/requested



# Rules Advisory Committee (RAC) Roster

47th Ave Farms  
Anderson Perry & Associates  
Applied Economics, OSU  
Association of Oregon Counties  
Atmospheric Science, OSU  
Central Oregon Cities Organization  
Citizen-at-Large  
Confederated Tribes of the Umatilla Indian Reservation  
Deschutes River Conservancy  
Dunn Carney/Oregon Cattlemen's Association  
Environmental Law, Willamette University  
Exempt Well User  
Grown Rogue  
GSI Water Solutions  
Jefferson County Commission  
Klamath Drainage District  
Klamath Tribes  
League of Oregon Cities  
Northwest Groundwater Services  
Oregon Association of Nurseries  
Oregon Environmental Council  
Oregon Farm Bureau  
Oregon Lakes Association  
Oregon Water Resources Congress  
Pacific Hydro-Geology, Inc.  
Rancher  
Seven Hills Winery  
The Nature Conservancy  
Verde  
WaterWatch

# Public Notice & Hearings

## Notice of Proposed Rulemaking (Divisions 8, 9, 300, & 410)

- Published March 1, 2024
- Comment period extended from May 31 through June 14, 2024 (104 days)

## Public Hearings Across the State

- April 4: Bend (in person)
- April 18: La Grande (in person)
- May 16: Central Point (in person)
- May 21: Salem (hybrid)



# Tribal Coordination & Consultation

## Comments:

- Notice should describe all Tribal coordination/consultation efforts during rulemaking
- Department should engage Tribes earlier in rulemaking process.

## Response:

- Future Notices will describe all Tribal engagement efforts
- Department to update and formalize coordination/consultation process after Department Director listening sessions with Tribes and pending guidance from Task Force on Tribal Consultation

# Groundwater Advisory Committee (GWAC)

- Need for rulemaking is clear
- Rules will not affect existing users
- Robust process
- Committee acknowledges impacts to future users
- Rules were thoughtfully developed
- Sound technical basis
- Encourage coordination for managing interstate aquifers
- **Overall, GWAC supports the proposed rules**

The background features a stylized landscape. The top portion shows a range of mountains in shades of brown and tan, with white snow-capped peaks. A large, white, fluffy cloud is positioned in the upper right. Below the mountains is a solid blue horizontal band. At the bottom, there are rolling green hills with light tan outlines, suggesting a valley or a path.

# General Comments & Responses

# Oral & Written Comments

- 1,310 commenters: 1,431 written; 60 oral
  - Residents of 33 Oregon counties, Arizona, Washington, California
  - 3 of Oregon's 9 Federally Recognized Tribes
- Most commenters recognized need to do more to manage groundwater sustainably
- Many commenters supportive of science-based approach in new rules

# Adequacy of Existing Management Tools

## Comments

- Existing management tools are/are not adequate

## Response:

- New rules needed because current rules have led to groundwater level declines and long-term impacts to hydraulically connected surface waters
- Other management tools (e.g., Critical Groundwater areas) are inadequate because they are implemented to remediate rather than prevent groundwater level declines



# Basin-Level vs. Statewide Approach

## Comments

- Department should study/adopt rules at basin level
- Not all basins are experiencing groundwater level declines
- Statewide approach is equitable and robust to basin-to-basin variability

## Response

- Statewide approach is most cost-effective and protective
- Science-based approach relies on data from each county and administrative basin
- Implementation relies on site-specific data
- Basin program rules may define Reasonably Stable Groundwater Levels

# Future Municipal Water Supplies

## Comments

- Impacts on municipalities due to past overallocation
- Compatibility with statewide comprehensive planning goals
- Future water supply demands, including housing and economic growth

## Response

- Proposed rules intended to protect existing users, including municipal
- Not required to evaluate proposed rules for consistency with comprehensive plans; do evaluate applications for consistency with plans
- Feasible water supply alternatives

# Water Supply Alternatives

Conservation & Efficiency

Reuse

Aquifer Storage and Recovery/ Aquifer Recharge

Transfers

Repurposing existing rights

Interties

Mitigation, water markets

# Impacts on Existing Water Right Holders, Exempt Uses

## Comment

- Proposed changes may impact existing water right holders, including within Critical Groundwater Area designations

## Response

- Reinstated current (Division 8) definitions of
  - Aquifer
  - Declined Excessively
  - Overdraw
  - Substantial or Undue Interference
- Deleted proposed new definition of Timely and Effective (Division 9)
- Added clarifying language (Division 9)
- Moved criteria associated with a PSI finding from Division 8 to Division 300 (Water is Available)
- Revised Division 410 to ensure no impacts to exempt uses

# Revise from Notice OAR 690-009-0010(3), (4)

## Basis for Regulatory Authority, Purpose, and Applicability

- (3) Rule 690-009-0040 applies to proposed groundwater uses and the determination of the Potential for Substantial Interference for water availability under OAR 690-0300(57).
- (4) Rules 690-009-0050 and 690-009-0060 apply to groundwater controls. Solely for the purpose of applying ORS 690-009-0050 to control or regulate groundwater rights in Hydraulic Connection with surface water, determination of the Potential for Substantial Interference with a surface water source shall apply the version of OAR 690-009-0040 that became effective on November 4, 1988. The November 4, 1988 version of OAR 690-009-0040 is readopted as OAR 690-009-0060.



# Revise from Notice OAR 690-009-0020(5)

## Definitions

- (5) “Potential for Substantial Interference”, or “PSI”, means a groundwater use will cause Streamflow Depletion based on the assessments described in OAR 690-009-0040 for proposed groundwater uses or OAR 690-009-0060 for groundwater controls.

# Revise from Notice OAR 690-009-0040(1)

## **Proposed Groundwater Use: Determination of Hydraulic Connection and Potential for Substantial Interference**

- (1) When evaluating a Proposed Groundwater Use, Hydraulic Connection and the Potential for Substantial Interference with a surface water source shall be determined by the Department according to these rules. These determinations shall be based upon the application of generally accepted hydrogeologic principles using best available information concerning the hydrologic system of interest and the well(s) under consideration.

# Revise from Notice OAR 690-410-0070(2)

(2) Principles. Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

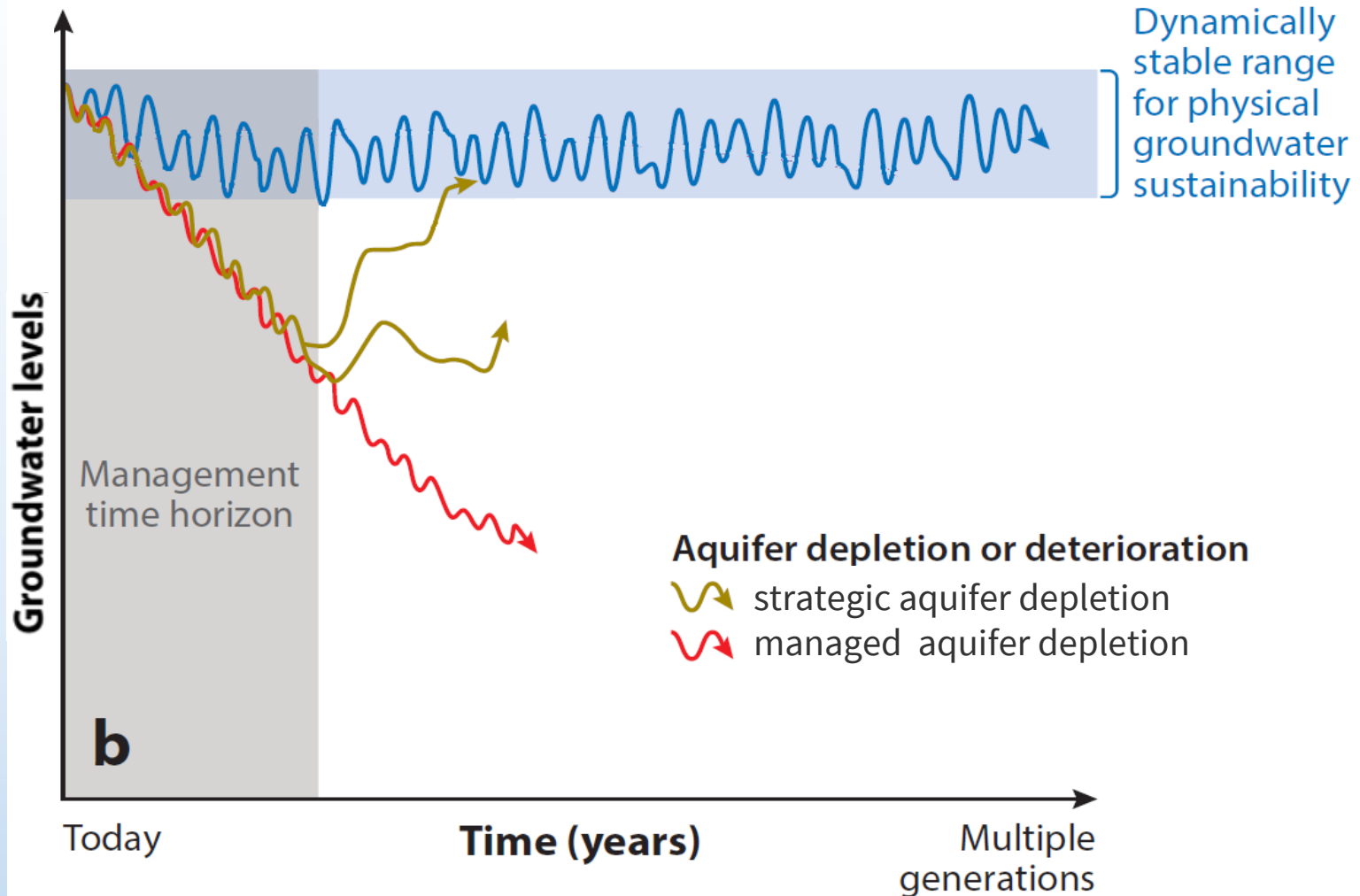
...

(b) The groundwater of the state shall be allocated to new beneficial uses only when the ~~new beneficial uses will not contribute to overappropriation of groundwater resources~~ Department makes a finding that Water is Available for a proposed use as defined in OAR 690-300-0010(57).  
Restrictions on allocations of water for exempt groundwater uses may be considered when a groundwater source is over-appropriated;



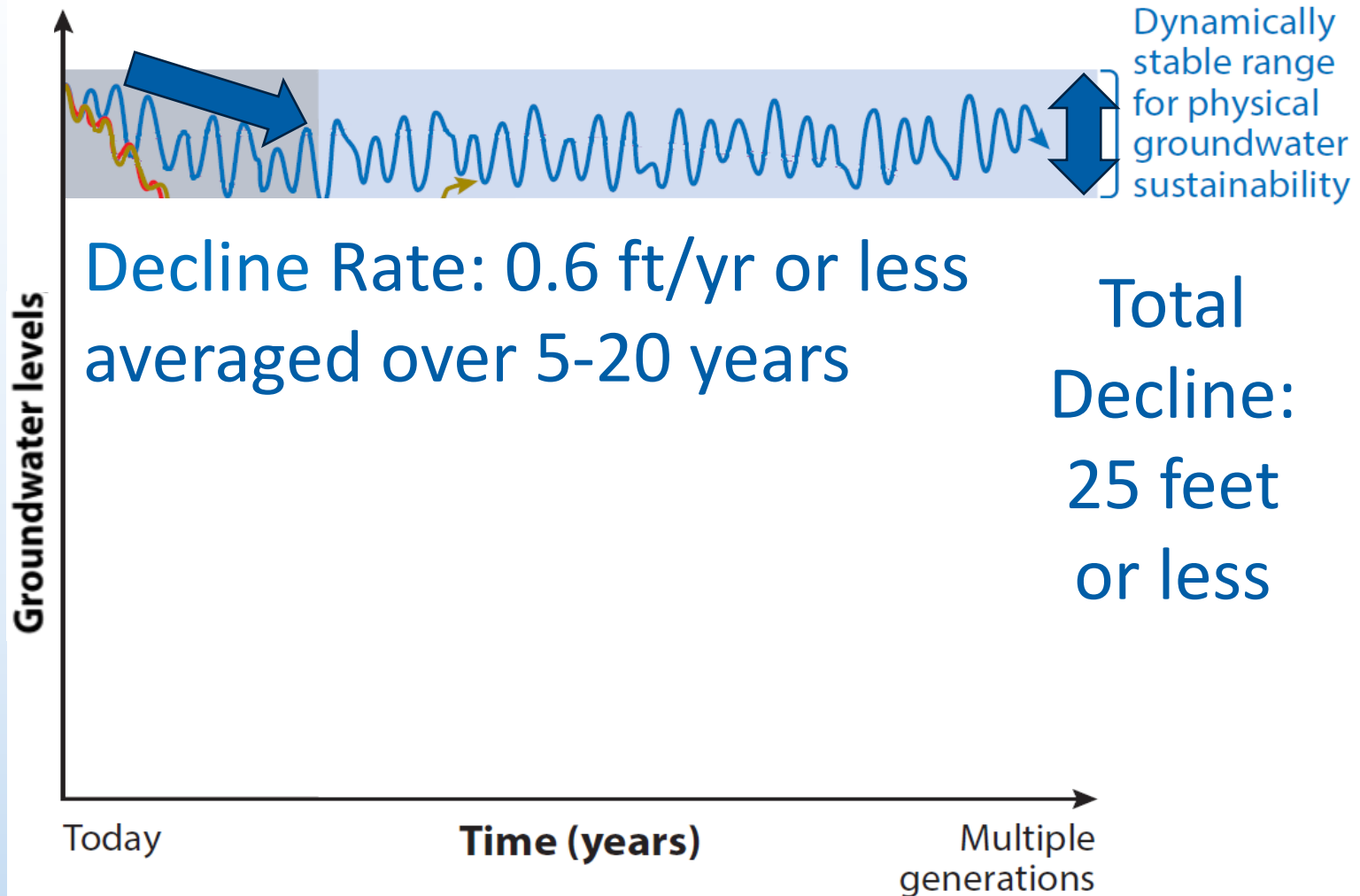
**Comments:  
Reasonably Stable Groundwater  
Levels (RSGLs)**

# RSGL: Science-Based Framework





# RSGL: Data-Driven Threshold Definitions



## Comments

- Scientific approach is robust/appropriate
- Other criteria should be included (e.g., aquifer thickness, groundwater dependent ecosystem needs)

## Response

- Reasonably stable groundwater levels are independent of aquifer thickness
- Some groundwater dependent ecosystems, and up to 14,000 existing water wells in Oregon, may be impacted by water level fluctuations less than 25 feet, but proposed thresholds strike a balance of many concerns

# RSGL Comments: Consideration of Artificial Recharge – Methodology

## Comments:

- Department should clarify *how* it will account for human-caused recharge.

## Response:

- Reservoir and ASR effects are straightforward
- Staff are gathering information about canal development and impacts in the Deschutes Basin
- Methodology for assessing canal impacts will be developed with input from Groundwater Advisory Committee and other technical experts
- Methodology and results will be documented

# Consideration of Artificial Recharge – Magnitude Test vs Rate Test

## Comments:

- Human-caused (or artificial) recharge should be considered in magnitude *and* rate tests.

## Response:

- Artificial recharge impacts the tests differently:
  - Magnitude test: reference level would be set too high permanently without AR consideration
  - Rate test: self-correcting because faster declines during cessation of artificial recharge are temporary, and the test relies on recent data that evolves with time

# RSGL Comments: Added Financial Burden on New Applicants

## Comment

- Need for five years of data collection where data is lacking may lead to cost inequities

## Response

- Currently, applicants may provide additional data to support an application; new rules do not shift that burden
- Where groundwater is not already extracted, water levels will be presumed to be reasonably stable
- Where groundwater is being extracted, nearby wells may be used to collect data

# RSGL Comments: Supersedence By Basin Program Rules

## Comments

- Support/oppose factors in proposed rule allowing basin program rules to supersede the definition of RSGLs

## Response

- Rules were revised to clarify that both the basin program statutes and the Ground Water Act of 1955 govern
- Plus Commission's allocation policy

# Revise from Notice Basin Program Rules & RSGL

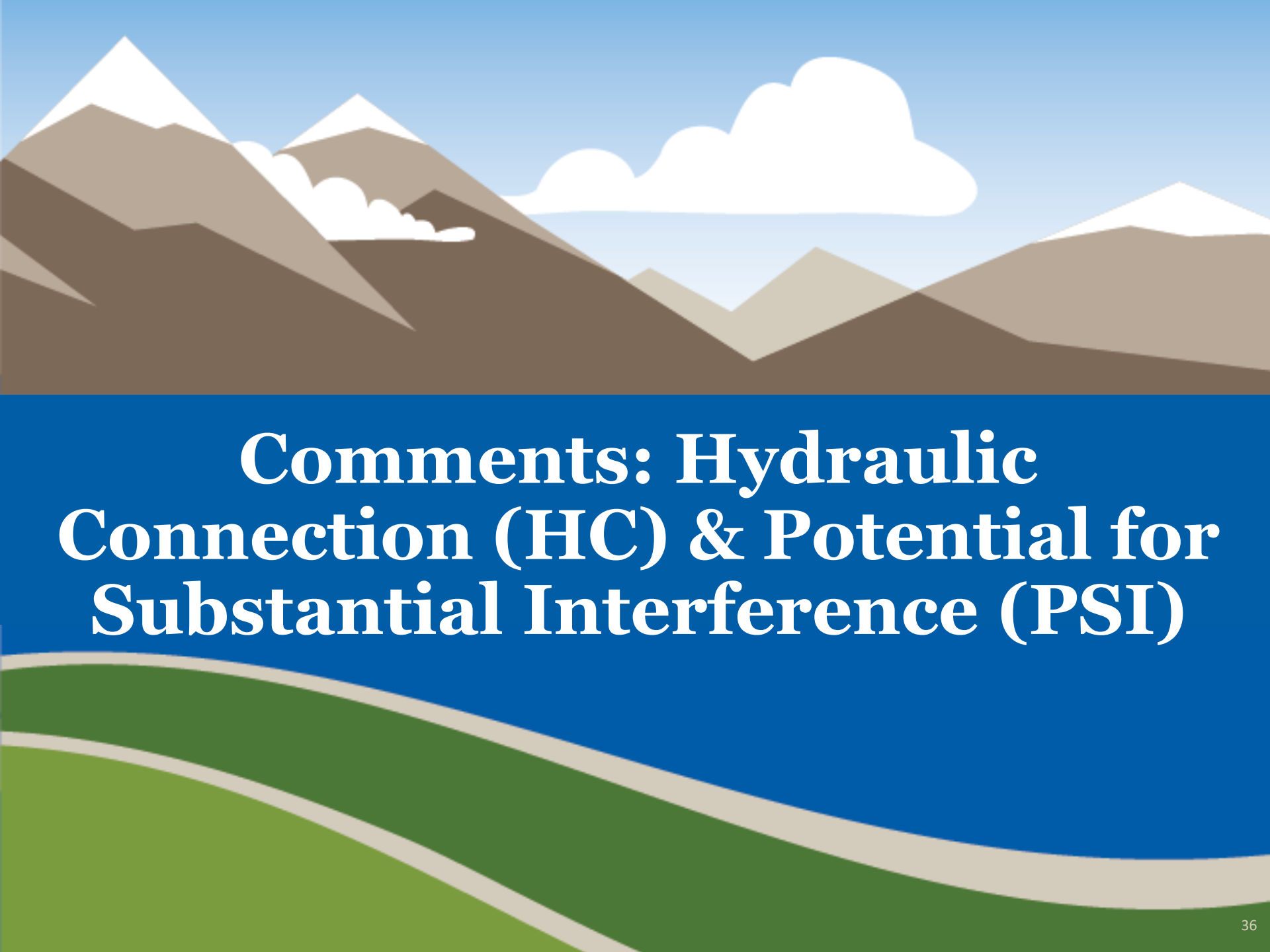
## OAR 690-008-0001 (Definitions)

Reasonably Stable Groundwater Levels (new-revise then adopt)

(9) “Reasonably Stable Groundwater Levels” means that Annual High Water Levels, based on observed trends over time, remain within a range consistent with sustaining the function and character of a groundwater reservoir indefinitely, and:

...

(d) The quantitative tests in part (a) of this definition may be superseded by a basin program rule adopted by the Water Resources Commission pursuant to the Commission’s authority in ORS 536.300 and 536.310. Any proposed superseding basin program rule definition must comply with ORS 537.505 to 537.795, 537.992, OAR 690-410-0010 and 690-410-0070.



**Comments: Hydraulic  
Connection (HC) & Potential for  
Substantial Interference (PSI)**



## HC and PSI: How the test works

- Hydraulic Connection (HC) is prerequisite for Potential for Substantial Interference (PSI)
- Potential for Substantial Interference (PSI) follows from Barlow & Leake (2012):
  - For surface waters hydraulically connected to a pumped aquifer, “the volume of depletion will equal the volume pumped.”
- If PSI, then allocate only if downstream surface water is sufficient to meet existing senior uses

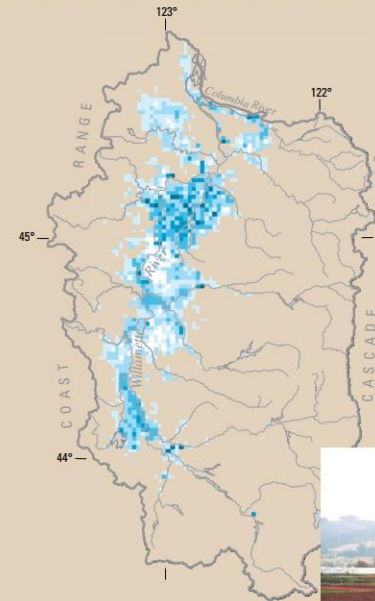
**Detailed, site-specific evaluation including:**

- Conceptual model
- GW and SW elevation data
- Stream periodicity
- Other relevant and available data, including information from application and public comments



Prepared in cooperation with the Oregon Water Resources Department

## Ground-Water Hydrology of the Willamette Basin, Oregon



Scientific Investigations Report 2005-5168



U.S. Department of the Interior  
U.S. Geological Survey

## Comment:

- There is no time or magnitude component in the evaluation HC or PSI

## Response:

- HC is a conceptualization of the groundwater flow system, not a specific quantity determination
- The HC and PSI evaluation are based on the application of generally accepted hydrogeological principles to a specific proposed use, as required in statute.

## Response (continued):

- If HC and PSI are found, the determination that Water Is Available relies on the Water Availability and Reporting System (WARS), a statistical assessment of surface water availability at the sub-basin scale
- Also takes into account Watermaster measurements and previous Withdrawals

# Revise from Notice OAR 690-300-0010(57)

**(57)"Water is Available," when used in OAR 690-310-0080, 690-310-0110, 690-310-0130, and 690-410-0070 means:**

...

- (f) The proposed groundwater use does not have the Potential for Substantial Interference (OAR 690-009-0020(5)) with a surface water source that:
- (A) is already over-appropriated during any period of the year;  
or
  - (B) is administratively or statutorily withdrawn; or
  - (C) is restrictively classified in an applicable basin program rule;  
or

# Revise from Notice OAR 690-300-0010(57)

**(57)"Water is Available," when used in OAR 690-310-0080, 690-310-0110, 690-310-0130, and 690-410-0070 means:**

...

(f) The proposed groundwater use does not have the Potential for Substantial Interference (OAR 690-009-0020(5)) with a surface water source that:

...

(D) is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior surface water rights; or

(E) is subject to a rotation agreement among existing surface water right holders to address limited surface water supplies; or

(F) has a minimum perennial streamflow or instream water right that is unmet during any period of the year.

# PSI: Nexus with Deschutes Mitigation Program

**(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110, 690-310-0130, and 690-410-0070 means:**

(f) The proposed groundwater use does not have the Potential for Substantial Interference (OAR 690-009-0020(5)) with a surface water source that...

- Div 310 includes the four part test from the statute; two of the criteria in 310 are:
  - 1) allowable use under the basin program rules and
  - 2) consistent with other rules of the Commission.
- OAR 690-505-0630(1): "If a ground water permit applicant satisfies the mitigation obligation, notwithstanding OAR 690, division 9, for the purposes of OAR 690, divisions 33, 310, 400, and 410, the proposed ground water appropriation is deemed to be a ground water appropriation that does not have the potential for substantial interference with surface water."



# Summary of Proposed Rule Changes



# Rule Changes in Response to Comments

## Main Changes from Proposed Rules in Public Notice

- (1) Clarify factors pertaining to basin program rules superseding statewide definition of Reasonably Stable Groundwater Levels (RSGL)
- (2) Avoid unintended consequences for existing permit holders

# Division 8 – Definitions

## OAR 690-008-0001

| Proposed in Notice                         | Change after Public Comment |
|--|-----------------------------|
| Annual High Water Level (new)              | None                        |
| Aquifer (revise)                           | Reverted to existing rule   |
| Declined Excessively (revise)              | Reverted to existing rule   |
| Overdraw (revise)                          | Reverted to existing rule   |
| Reasonably Stable Groundwater Levels (new) | Revised                     |
| Substantial or Undue Interference (revise) | Reverted to existing rule   |

# Division 9 – Definitions

## 690-009-0020

| Proposed in Notice   | Change after Public Comment |
|--|-----------------------------|
| Commission, Director (repeal)                              | None                        |
| Department (revise)  | None                        |
| Effective and Timely Manner (new)                          | Removed                     |
| Hydraulic Connection or Hydraulic Interconnection (revise) | Revised                     |
| Potential for Substantial Interference (new)               | Revised                     |
| Proposed Groundwater Use (new)                             | None                        |
| Streamflow Depletion (new)                                 | None                        |

# Division 9 – Other

| Proposed in Notice   | Change after Public Comment |
|--|-----------------------------|
| Basis for Regulatory Authority, Purpose, & Applicability (revise) – OAR 690-009-0010   | Revised                     |
| General Policy (delete) – OAR 690-009-0030   | None                        |
| Proposed Groundwater Use: Determination of Hydraulic Connection & Potential for Substantial Interference (revise) – OAR 690-009-0040 | Revised                     |
| Groundwater Controls (revise) – OAR 690-009-0050   | None (typo)                 |
| Groundwater Controls: Determination of Hydraulic Connection and Potential for Substantial Interference (revise) – OAR 690-009-0060   | Revised                     |

# Meeting Materials Typo – OAR 690-009-0050

## ~~Ground Water~~Groundwater Controls

- (1) The Department shall review existing ~~ground water~~groundwater appropriations to determine the potential to cause substantial interference with a surface water source on a case-by-case basis, in accordance with OAR 690-009-00640, whenever substantial interference with a surface water source is suspected to exist by the Department.
  - (a) Prior to controlling the use of any well greater than 500 feet from a surface water source, the Department shall determine whether any control would provide relief to the surface water supply in an effective and timely manner. The Department shall make the determination on the basis of the best available information, employing at least one of the methods set forth in OAR 690-009-00640(4)(d);

# Divisions 300 & 410

## Division 300 – Preamble & Definitions

| Proposed in Notice                             | Change after Public Comment |
|--|-----------------------------|
| Preamble (revise) – OAR 690-300-0010           | None                        |
| Water is Available (revise) – OAR 690-300-0010 | Revised                     |

## Division 410 - Principles

| Proposed in Notice                     | Change after Public Comment |
|--|-----------------------------|
| Principles (revise) – OAR 690-410-0070 | Revised                     |

# Minor Revisions as Needed

- Convert “ground water” to “groundwater” and “Ground Water” to “Groundwater”
- Correct spelling errors
- Update Statutory Authority and Statutes Implemented
- Update rule numbering and other formatting

The background features a stylized landscape. The top portion shows a range of mountains in shades of brown and tan, with white snow-capped peaks. A large, white, fluffy cloud is positioned in the upper center. Below the mountains is a solid blue horizontal band. The bottom portion of the image shows rolling green hills with light tan outlines, suggesting a valley or a path.

# **Alternatives & Director's Recommendation**



1. Adopt final proposed rules as noticed (Attachment 3)
2. Adopt final proposed rules as modified by Department following public comment (Attachment 9, with minor typo in OAR 690-009-0050 corrected)
3. Adopt final proposed rules as modified by Commission
4. Not adopt final proposed rules and request Department to further evaluate the issues

# Director's Recommendation

1. Adopt final proposed rules as noticed  
(Attachment 3)
2. Adopt final proposed rules as modified by  
Department following public comment  
(Attachment 9, with minor typo in OAR 690-  
009-0050 corrected)
3. Adopt final proposed rules as modified by  
Commission
4. Not adopt final proposed rules and request  
Department to further evaluate the issues

OREGON



WATER RESOURCES  
DEPARTMENT

The background features a stylized landscape. The top half shows a range of mountains in shades of brown and tan, with white snow-capped peaks. A large, white, fluffy cloud is positioned in the upper right. The middle section is a solid blue band containing the title text. The bottom section shows rolling green hills with a light tan path or road curving across them.

# **Proposed Rule Changes from Notice**

# Division 8 – New Definition OAR 690-008-0001(1)

- (1) “Annual High Water Level” means the highest elevation (shallowest depth) static groundwater level that exists in a groundwater reservoir or part thereof in a year.

## Division 8 – New Definition OAR 690-008-0001(9)(a)(A)

- (9) “Reasonably Stable Groundwater Levels” means that Annual High Water Levels, based on observed trends over time, remain within a range consistent with sustaining the function and character of a groundwater reservoir indefinitely, and:
- (a) The Annual High Water Levels as measured at one or more representative wells in a ground water reservoir or part thereof:
- (A) indicate no decline or an average rate of decline of less than 0.6 feet per year over any immediately preceding averaging period with duration between 5 and 20 years. Four Annual High Water Levels are required to calculate the rate of change; one must have been measured in the year to which the evaluation of reasonably stable applies, and at least one must have been measured between 5 and 20 years prior;  
and

## Division 8 – New Definition OAR 690-008-0001(9)(a)(B)

- (9) “Reasonably Stable Groundwater Levels” means that Annual High Water Levels, based on observed trends over time, remain within a range consistent with sustaining the function and character of a groundwater reservoir indefinitely, and:
- (a) The Annual High Water Levels as measured at one or more representative wells in a ground water reservoir or part thereof:
- ...
- (B) have not declined by more than 25 feet from a reference level to the level in the year to which the evaluation of reasonably stable applies. The reference level shall be the highest known water level unless Annual High Water Levels have been measurably increased by human activity, in which case the Department may set a different reference level using best available information.

## Division 8 – New Definition OAR 690-008-0001(9)(b)

(9) “Reasonably Stable Groundwater Levels” means that Annual High Water Levels, based on observed trends over time, remain within a range consistent with sustaining the function and character of a groundwater reservoir indefinitely, and:

...

(b) If water level data are insufficient to perform either test in (a) for a given year, then the Department will presume that groundwater levels are not reasonably stable unless:

(A) the most recent evaluation of reasonably stable applies to a year within 5 years of the given year, in which case the Department may presume that the recent evaluation still applies; or

(B) groundwater has not yet been extracted or authorized for extraction from the groundwater reservoir, in which case the Department may presume that groundwater levels are reasonably stable.



## Division 8 – New Definition OAR 690-008-0001(9)(c) -(e)

(9) “Reasonably Stable Groundwater Levels” means that Annual High Water Levels, based on observed trends over time, remain within a range consistent with sustaining the function and character of a groundwater reservoir indefinitely, and:

...

(c) The Department may evaluate Reasonably Stable Groundwater Levels for the year of the priority date of a groundwater right application or for a later year if more recent data are available.

(d) The quantitative tests in part (a) of this definition may be superseded by a basin program rule adopted by the Water Resources Commission pursuant to the Commission’s authority in ORS 536.300 and 536.310. Any proposed superseding basin program rule definition must comply with ORS 537.505 to 537.795, 537.992, OAR 690-410-0010 and 690-410-0070.

(e) This definition does not apply to Critical Groundwater Areas designated under OAR 690-010.

# Division 9 - Revisions

## OAR 690-009-0010(1), (2)

### **Basis for Regulatory Authority, ~~and Purpose~~, and Applicability**

- (1) The right to reasonable control of the ~~ground waters~~ groundwater of the State of Oregon has been declared to belong to the public. Through the provisions of the Ground Water Act of 1955, ORS 537.505 to 537.795, the Water Resources Commission has been charged with administration of the rights of appropriation and use of the ~~ground water~~ groundwater resources of the state. ~~These rules govern the use of ground waters, pursuant to 537.730 and 537.775, where the ground water is hydraulically connected to, and the use interferes with, surface waters.~~
- (2) Except for exempt uses under ORS 537.545, these rules apply to all wells as defined in ORS 537.515 (9).

# Division 9 – Revisions OAR 690-009-0010(3), (4)

## **Basis for Regulatory Authority, ~~and Purpose~~, and Applicability**

...

(3) Rule 690-009-0040 applies to proposed groundwater uses and the determination of the Potential for Substantial Interference for water availability under OAR 690-0300(57).

(4) Rules 690-009-0050 and 690-009-0060 apply to groundwater controls. Solely for the purpose of applying ORS 690-009-0050 to control or regulate groundwater rights in Hydraulic Connection with surface water, determination of the Potential for Substantial Interference with a surface water source shall apply the version of OAR 690-009-0040 that became effective on November 4, 1988. The November 4, 1988 version of OAR 690-009-0040 is readopted as OAR 690-009-0060.

# Division 9 - Revisions OAR 690-009-0010(5)

## **Basis for Regulatory Authority, ~~and Purpose,~~ and Applicability**

...

- (5) The authority under these rules may be superseded by a basin program rule adopted by the Water Resources Commission. ~~may be locally superseded where more specific direction is provided by the Commission.~~

# Division 9 – Revisions

## OAR 690-009-0020

- (2) ~~“Commission” means the Water Resources Commission.~~
- (34) “Department” means the Water Resources Department, ~~and consists of the its~~ Director, ~~of the Department~~ and all personnel employed ~~in~~ by the Department including but not limited to all watermasters appointed under ORS 540.020 (536.039).
- (46) **“Hydraulic Connection”** means saturated conditions exist allowing water to move between two or more sources of water, either between groundwater and surface water or between groundwater sources. ~~means that water can move between a surface water source and an adjacent aquifer.~~
- (5) ~~“Director” means the Water Resources Director.~~

# Division 9 – New Definitions

## OAR 690-009-0020

- (5) “Potential for Substantial Interference”, or “PSI”, means a groundwater use will cause Streamflow Depletion based on the assessments described in OAR 690-009-0040 for proposed groundwater uses or OAR 690-009-0060 for groundwater controls.
- (6) “Proposed Groundwater Use” means an application to appropriate groundwater pursuant to ORS 536.750, ORS 537.143, or ORS 537.615 that is under consideration with the Department.

# Division 9 – New Definition

## OAR 690-009-0020

- (7) “Streamflow Depletion” means a reduction in the flow of a surface water source due to pumping a hydraulically connected groundwater source. Streamflow Depletion encompasses:
- (a) captured groundwater that would otherwise discharge to a surface water source; or,
  - (b) induced infiltration from a surface water source to the hydraulically connected groundwater source.

# Division 9 – Repeal OAR 690-009-0030

~~The following rules establish criteria to guide the Department in making determinations whether wells have the potential to cause substantial interference with surface water supplies and in controlling such interference. The rules apply to all wells, as defined in ORS 537.515 (7), and to all existing and proposed appropriations of ground water except the exempt uses under 537.545. The authority under these rules may be locally superseded where more specific direction is provided by the Commission after the effective date of adoption of these rules~~



# Division 9 – Revisions

## OAR 690-009-0040(1)

### Proposed Groundwater Use: Determination of Hydraulic Connection and Potential for Substantial Interference

- (1) When evaluating a Proposed Groundwater Use, Hydraulic Connection and the Potential for Substantial Interference with a surface water source shall be determined by the Department according to these rules. These determinations shall be based upon the application of generally accepted hydrogeologic principles using best available information concerning the hydrologic system of interest and the well(s) under consideration.
- (a) Appropriate information that is provided in the application or in the public comment period for the application shall be considered in the process of making these determinations.
  - (b) Best available information may include, but is not limited to, pertinent water well reports, aquifer test analyses, hydrologic and geologic studies and reports, groundwater and surface water elevation data, available numerical and analytical groundwater flow models, and any other information that is used in applying generally accepted hydrogeologic principals and methodologies.

# Division 9 - Revisions

## OAR 690-009-0040(2)-(4)

### **Proposed Groundwater Use: Determination of Hydraulic Connection and Potential for Substantial Interference**

- (2) A determination of Hydraulic Connection is a prerequisite for a determination of the Potential for Substantial Interference.
- (3) A determination of the Potential for Substantial Interference with a surface water source shall at a minimum include application of the generally accepted hydrogeological principles described in “Streamflow Depletion by Wells – Understanding and Managing the Effects of Groundwater Pumping on Streamflow” by P. M. Barlow and S. A. Leake, 2012.
- (4) The Potential for Substantial Interference with a surface water source exists if the well(s) under consideration will, over the full term of the proposed or authorized groundwater use, obtain water from Streamflow Depletion.

# Division 9 – New OAR 690-009-0060

## Groundwater Controls: Determination of Hydraulic Connection and Potential for Substantial Interference

Solely for the purpose of applying OAR 690-009-0050 to control or regulate groundwater rights in Hydraulic Connection with surface water, determination of the Potential for Substantial Interference with a surface water source shall be according to these OAR 690-009-0060 rules. ~~For the purpose of permitting and distributing groundwater, the potential for substantial interference with surface water supplies shall be determined by the Department.~~

*Note: remaining 690-009-0040 rule language was retained and moved to OAR 690-009-0060*

# Division 300 – Revisions

## OAR 690-300-0010

### **Revise (as Noticed)**

The following definitions apply in OAR chapter 690, divisions ~~15~~, 310, 320, 330, 340, ~~and 350~~, and 380 and to any permits, certificates, limited licenses, or transfers issued under these rules:

# Division 300 – Revisions OAR 690-300-0010(57)(a), (b)

## **Revised (from Noticed)**

(57)"Water is Available," when used in OAR 690-310-0080, 690-310-0110, ~~and 690-310-0130~~, and 690-410-0070 means:

- (a) The requested surface water source is not over-appropriated under OAR 690-400-0010 and 690-410-0070 during any period of the proposed use; or
- (b) If the requested surface water source is already over-appropriated for any portion of the period of use proposed in a new application:

# Division 300 – Revisions OAR 690-300-0010(57)(d), (e)

(57) "Water is Available," when used in OAR 690-310-0080, 690-310-0110, ~~and 690-310-0130~~, and 690-410-0070 means:

...

(d) The proposed groundwater source exhibits Reasonably Stable Groundwater Levels, as defined in OAR 690-008-0001; and

(e) The total requested rate of groundwater allocation is obtainable by the expected yield of the well(s) proposed in the application given best available information; and

# Division 300 - Revisions

## OAR 690-300-0010(57)(f)

(57)"Water is Available," when used in OAR 690-310-0080, 690-310-0110, 690-310-0130, and 690-410-0070 means:

...

- (f) The proposed groundwater use does not have the Potential for Substantial Interference (OAR 690-009-0020(5)) with a surface water source that:
- (A) is already over-appropriated during any period of the year;  
or
  - (B) is administratively or statutorily withdrawn; or
  - (C) is restrictively classified in an applicable basin program rule;  
or

# Division 300 - Revisions

## OAR 690-300-0010(57)(f)

(57)"Water is Available," when used in OAR 690-310-0080, 690-310-0110, 690-310-0130, and 690-410-0070 means:

...

(f) The proposed groundwater use does not have the Potential for Substantial Interference (OAR 690-009-0020(5)) with a surface water source that:

...

(D) is the source for one or more existing surface water rights that have been regulated off due to insufficient supply to satisfy senior surface water rights; or

(E) is subject to a rotation agreement among existing surface water right holders to address limited surface water supplies; or

(F) has a minimum perennial streamflow or instream water right that is unmet during any period of the year.



# Revise from Notice OAR 690-410-0070(2)

(2) Principles. Programs to achieve the policy in section (1) of this rule shall be guided by the following principles:

...

(b) The groundwater of the state shall be allocated to new beneficial uses only when the ~~new beneficial uses will not contribute to overappropriation of groundwater resources~~ Department makes a finding that Water is Available for a proposed use as defined in OAR 690-300-0010(57).  
Restrictions on allocations of water for exempt groundwater uses may be considered when a groundwater source is over-appropriated;