



WaterWatch of Oregon

Protecting Natural Flows In Oregon Rivers

June 10, 2025

Oregon Water Resources Commission
Sent via email to: Cassidy Fredlund, Mindy Lane

RE: WRC June 12, 2025 Item F (Division 512 Rulemaking)

Dear Chair Quaempts and Members of the Commission:

Thank you for the opportunity to comment on the Division 512 Rulemaking. WaterWatch, which served on the 512 RAC, will be providing more detailed comments through the rulemaking process but wanted to provide you with these higher level comments in conjunction with Item F.

1. *The Proposed Rules will result in additional unacceptable impacts to springs, streams, and native vegetation which runs afoul of the Water Code.*

WaterWatch very much appreciates the Department's work on developing the rules and running the extensive related RAC process. However, we remain very concerned that Proposed Rules will unduly impact springs, streams, and native vegetation in order to allow additional groundwater pumping for irrigation.

Under Oregon's Groundwater Act, among the provisions that OWRD must include in any rule designating a critical groundwater area is the following:" "[a]ny one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety in accordance with the intent, purposes and requirements of ORS 537.505 to 537.795 and 537.992." ORS 537.735(2)(d).

The provisions for protecting the public welfare, health and safety are provided at ORS 537.525 and include that "[a]dequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses." ORS 537.525(5).

Under Oregon law, public instream uses of water are beneficial uses. ORS 537.332 and ORS 537.334(1). These uses include the "conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and any other ecological values[.]" ORS 537.332(5)(b). These uses are therefore included in the requirement of ORS 537.535(5) to "conserve[e] maximum supplies of ground water" for "other beneficial uses" (among other uses). We also read the term "within the capacity of available sources" in ORS 537.525(3) to require consideration of these same aspects the groundwater resource because they are supported by the capacity of the source. Importantly, ORS 537.525(5) does not refer just to other water rights; because instream uses are beneficial uses, they are uses for which critical groundwater area rules must conserve a maximum supply (whether or not there is a relevant instream water right).

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

Relevant instream uses here include, but are not limited to: habitat and ecological values supported by natural evapotranspiration (ET) (e.g. native vegetation); habitat provided by groundwater fed wetlands; habitat provided by springs (including for aquatic species and terrestrial species); habitat provided by groundwater dependent lakes such as Stinkingwater Lake on the Malheur National Wildlife Refuge (which hosts an endemic crayfish); and habitat provided by groundwater discharges into streams. These landscape elements also provide for non-fish and wildlife uses, such as supporting domestic animals.

None of these were utilized as criteria in designing the Proposed 512 Rules. Rather, the USGS model was run to maximize irrigation pumping while ultimately stabilizing groundwater levels. We think this ultimately contributed to an imbalance in the Proposed Rules favoring irrigation pumping.

The magnitude of reductions in groundwater dependent ecosystems is significant. USGS has estimated that between pre-1980 and 2018 there has already been a reduction in natural evapotranspiration across the basin of 45%, with an annual loss of 40,000 acre-feet. (USGS, Groundwater Model of the Harney Basin, Southeastern Oregon, Scientific Investigations Report 2024–5017, p. 82, Adobe 96). The proposed rules are estimated to reduce this further so that by 2060 only 43.7% of lowland natural evapotranspiration remains across the basin, with some sub-areas experiencing even greater losses. (RAC 14 PPT, p. 181). USGS estimates that discharge to streams and springs has already been reduced by 43.5% between pre-1980 and 2018, basin wide, with the proposed rules certain to decrease this further as groundwater levels are allowed to further decline. While these are modelled results, which may not be as precise as the projected groundwater levels, it is the best available information regarding these impacts.

We also note that the 512 rulemaking did not have the benefit of review of additional entities, such as ODFW. Impacts from the rules are highly relevant for Oregon’s Sage-grouse Conservation Strategy (especially because sage-grouse need seeps, springs, and green spots during the summer months) and Oregon’s Wildlife Action Plan (including for sage-brush, and aquatic systems that support State Sensitive redband trout). Further, it is unclear whether the impacts to the Malheur National Wildlife Refuge were adequately minimized and addressed.

In sum, we do not think the Proposed Rules struck an appropriate balance between irrigation pumping and limiting additional impacts to springs, streams and native vegetation and thus urge further refinement to address these.

2. *Oregon’s Groundwater Act prioritizes ensuring groundwater for human consumption and the Proposed Rules do not do so.*

As noted above, the critical groundwater rules require that “[a]dequate and safe supplies of ground water for human consumption be assured, while conserving maximum supplies of ground water for agricultural, commercial, industrial, thermal, recreational and other beneficial uses.” ORS 537.525(5). This plainly elevates protecting supplies of groundwater for human consumption over irrigation and other uses, but that is not how the Proposed Rules were designed.

The Proposed Rules are projected to result in 98 additional domestic wells being dried up as a result of continued irrigation pumping (compared to 200 if no action is taken). Even if it were legal to address this impact through funding (*i.e.* paying to deepen wells or truck in water or the like), there is no plan in place (nor money) to do so. While an analysis is beyond the scope here, neither of the two existing Oregon programs—the statewide WARF fund or the Harney Domestic Well Fund—have the money or appropriate eligibility criteria to address situations with these 98 additional dry wells. This clearly fails to meet the statutory requirement related to assuring groundwater for human consumption.

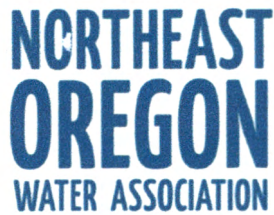
To address these issues, we think that further reduction in the Permissible Total Withdrawals, further frontloading of the curtailment implementation, and further consideration regarding assurance of groundwater for human consumption are needed.

Thank you for the opportunity to comment and for your service on the Commission.

Sincerely,

/s/ Lisa A. Brown

Lisa A. Brown
Staff Attorney
lisa@waterwatch.org



Via Hand Delivery (6/13/25 WRC Meeting)

Eric Quaempts, Chair
Julie Smitherman, Vice-Chair
Oregon Water Resources Commission
Pendleton, Oregon

RE: Regional Effort (Public Comment)

Chair Quaempts, Vice-Chair Smitherman and Committee Members:

On behalf of the Northeast Oregon Water Association, we welcome you to Pendleton and to the most sustainable, coordinated and sophisticated water use region in the State of Oregon. It is unfortunate that during your visit to the region you were not able to tour the many great things that are happening around water and water sustainability in the region, in addition to touring the CTUIR tribal water rights settlement and fishery enhancement projects.

The region you are meeting in grows, processes and distributes food to the state, nation and world. Our region includes an irrigated area approximately 350,000 acres in size that truly is irreplaceable for agricultural production. This is due to our unique climate, soil conditions, water supply/conjunctive sustainability, work force and infrastructure network. As the water footprint and food demand of our urban centers continues to grow, protection and enhancement of our high-value agricultural regions, and the water they need to ensure production, will hopefully become a priority of the State of Oregon.

In addition to our value-added, irreplaceable ag region, the area you are in also stores the data for your daily life, produces the energy (both baseload and renewable/interruptible) you rely upon in your home and at our place of work. We dispose of the garbage of the urban centers (both refuse and biosolids). We provide significant recreational opportunities in our rural private and public land base. Lastly, we are a region that provides family wage jobs, clean and affordable water & housing for our diverse population both within and outside of city limit boundaries.

The Umatilla Basin/Mid-C Region of Oregon is the place where recharge was born in the United States. We have the first functioning recharge project in Nation (which still operates today). We have one of the most successful municipal ASR projects in state history to date (with more cities in planning or implementation stages). We have the first AR to ASR project in the world (still operating) and one of our residents invented the 3R valve which is used around the world for ASR and downhole energy recovery.



MAILING PO Box 1026, Pendleton, OR 97801

EMAIL jrcook@northeastoregonwater.org WEB northeastoregonwater.org PHONE 541.969.8026

We include the most sophisticated and technologically advanced ag and livestock operations in the nation, and we host many tours annually from people all around the world wishing to witness and possibly adopt our technologies to enable their sustainability goals to be realized.

Most importantly, though, our region continues to adopt and advance efforts to become sustainable together.

About NOWA

NOWA is a result based non-profit support organization to the natural resource-based economy of the Mid-Columbia region of Northeast Oregon. We represent solutions not special interests or industries for the benefit of all needs in our region. Our organization includes landowners of over 350,000 acres of the most highly productive, irrigated food producing farmland in the world, as well as the counties, cities, ports, special districts, and private businesses that generate and support our value-added agricultural output that now contributes not only food but over \$2 billion annually to the region and State of Oregon. A sustainable, drought & climate-change resilient, conjunctively managed water supply program is critical to sustainability of our region and the quality of life of all our current and future generations and NOWA gives us all the opportunity to communicate and work as one to achieve our sustainability goals.

Our Issues and Generation

Our generation of leaders has been handed the arduous task of fixing legacy water sustainability issues including groundwater quantity issues, ground and surface water quality issues and enhancement/repair of ecological issues impacting our two primary surface water bodies (Umatilla River watershed and Columbia River mainstem).

Many of these issues originated in the early 1900's when the state encouraged settlement and development of North Morrow County and West Umatilla County. Science caught up to development in the Mid-1900's which led to a very tense period in the Umatilla Basin of regulation and litigation. During this tense period, more resources were spent on litigation and fighting than on solutions. The region was at a crossroads: either keep fighting the State & amongst ourselves or find a way to compromise with one-another and find solutions to the various goals and values of our diverse population.

In the 1980's the Umatilla Basin, with the help of strong State and Federal leadership, came together and adopted the mantra of "do no harm" for both water users and the environment as well as "collaboration over litigation." That mantra, to this day, has lead to the most successful Bureau of Reclamation exchange project that saw both our irrigation community kept whole while also successfully restoring anadromous fish species in the Umatilla River and its tributaries (work that continues today). That mantra has also lead to a renaissance on use of available and/or mitigated Columbia River water to enable the regional food production land base to slowly lesson their dependence on potable basalt groundwater, alluvial groundwater and lower Umatilla River surface water. The freed up groundwater is planned to be targeted for municipal/potable needs and drought resilience of the food production land base (i.e. in drought years/periods, saved and banked groundwater can be used for irrigation when the fish need all of the water in the rivers for survival). The alluvial and surface water savings are beneficial for both direct stream flow needs as well as return flow and cold water refugia needs in the lower reaches of the Umatilla River.

One Community Cumulatively Working on Water Sustainability Solutions in the Mid-Columbia

= Mid-C

The private water rights holders, cities, counties, ports and special districts have been working together for over three decades to try to solve water quantity issues. We have developed three regional plans and have found a way to communicate and collaborate not just on sharing the available water resources we have available, but also how we can develop publicly owned (note: not just municipal but "public") infrastructure to meet daily needs of farmers, cities, rural residents, industry and other needs of the human population. Today, through various publicly owned water supply systems and through a mix of public and privately held water rights ran through publicly owned systems, our basin is

maintaining our food production land base, saving potable groundwater that can be used for drought and/or human consumption, and finding ways to recharge aquifers and solve legacy ecological problems. As a region, we do not see our Columbia River diversions and/or water rights as individual, public or district held; we see our diversions and water rights as a network serving the broader needs of our residents and the State of Oregon.

This has not happened overnight. It has taken a significant amount of local collaboration and a willingness of our municipalities, private water rights holders, special districts and intergovernmental entities. Our basin has learned that, while our cities, farmers and citizens can all compete for business and growth, the best use of our Columbia River water rests with public water supply systems and using public mechanisms to use individually held water for optimum regional benefit.

Just in the past decade our region has built three regional, multi-beneficial, water supply systems that serve agriculture and municipal/special district interests. These projects are multi-beneficial either directly by their use (i.e. one pipe serving agriculture, industry and municipal needs at the same time) or indirectly by the potable groundwater savings the public water supply system has created (i.e. agriculture using mitigated water in lieu of pumping potable groundwater that can then service human consumption needs.)

Our region's public water supply owners (districts, municipalities, ports and IGA entities) are in on-going planning and negotiations on how we can share the same molecule of water without pumping more out of the Columbia River. We are also finding ways to share in the cost of one pipeline rather than subject tax payers and rate bases of the various users to exorbitant fee increases and capital outlay of building and maintaining a Columbia River diversion and pipeline for one specific use.

We are proud of our efforts to both save taxpayer money and optimize water and infrastructure for maximum sustainability gain in our region. We feel that effort and our willingness to work together should be rewarded and incentivized, not set back.

Our Concerns

To ensure success of our efforts requires both state understanding and leadership. Over the past ten years we have seen a gradual shift in leadership that once supported our sustainability efforts and understood that changes may be necessary to implement them. We are now experiencing unnecessary pressure from the State to conform to systems that do not work, and unnecessary changes in interpretation of long-standing positions that jeopardize a network of water rights holders that have lived in relative harmony since the 1980's.

Our Regional Ask

Our first request is that the Commission develop a better understanding of the diversity of all users in our Basin. We request that you plan another trip to the region and visit the non-tribal water users (private water users, public water supply districts, and quasi-municipal providers) and better understand how the coordinated efforts of those users are leading to saved native ground and surface water that is needed for both CTUIR water rights settlement purposes and drought/climate change resiliency.

We are asking that you find a way to encourage formation and flexibility within our public water supply jurisdictions, and their willingness to work together to solve problems, rather than inequitably reward one over another simply due to the name that is on the diversion or on the publicly held water right. In our region, the only way to accommodate and effectuate optimum use of existing water rights is by bringing private water users to the table and managing the modernization through a public district. This not only allows a private water user to be bigger than themselves, but also

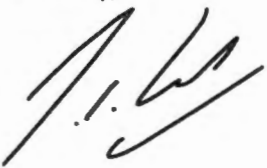
creates and legal, public pathway for a group of private/public water users to come together and implement a plan that may not necessarily be in-line with the original intent of the original water right.

We ask that the Commission discourage new interpretations of rules, laws and conditions without due process or, at a minimum, public notice. Over the past decade our regional relationship with our state agencies has become fraught with trust issues. We cannot solve water problems without first trusting each other that we have a common goal. At this time, the region is confused as to the goals of OWRD in our area and within our plan(s). Better communication, collaboration and transparency is necessary to rebuild trust and continue to move forward on sustainability goals.

Lastly, we are asking that you work to better understand and help empower regions like ours that have come together to share water and financial resources, through public means, to solve problems and help each other out. Memorialization of our efforts and efforts by the State and via the Commission to find common ground and try innovative ideas out in a regional manner are necessary to modernizing both our infrastructure and management of our water resources.

We are proud of the collaborative efforts in our basin. We appreciate your visit to our region, and we hope that this visit and from this day forward we can begin to again work together on solving the solvable water management issues in the Umatilla Basin and Mid-Columbia region of Oregon.

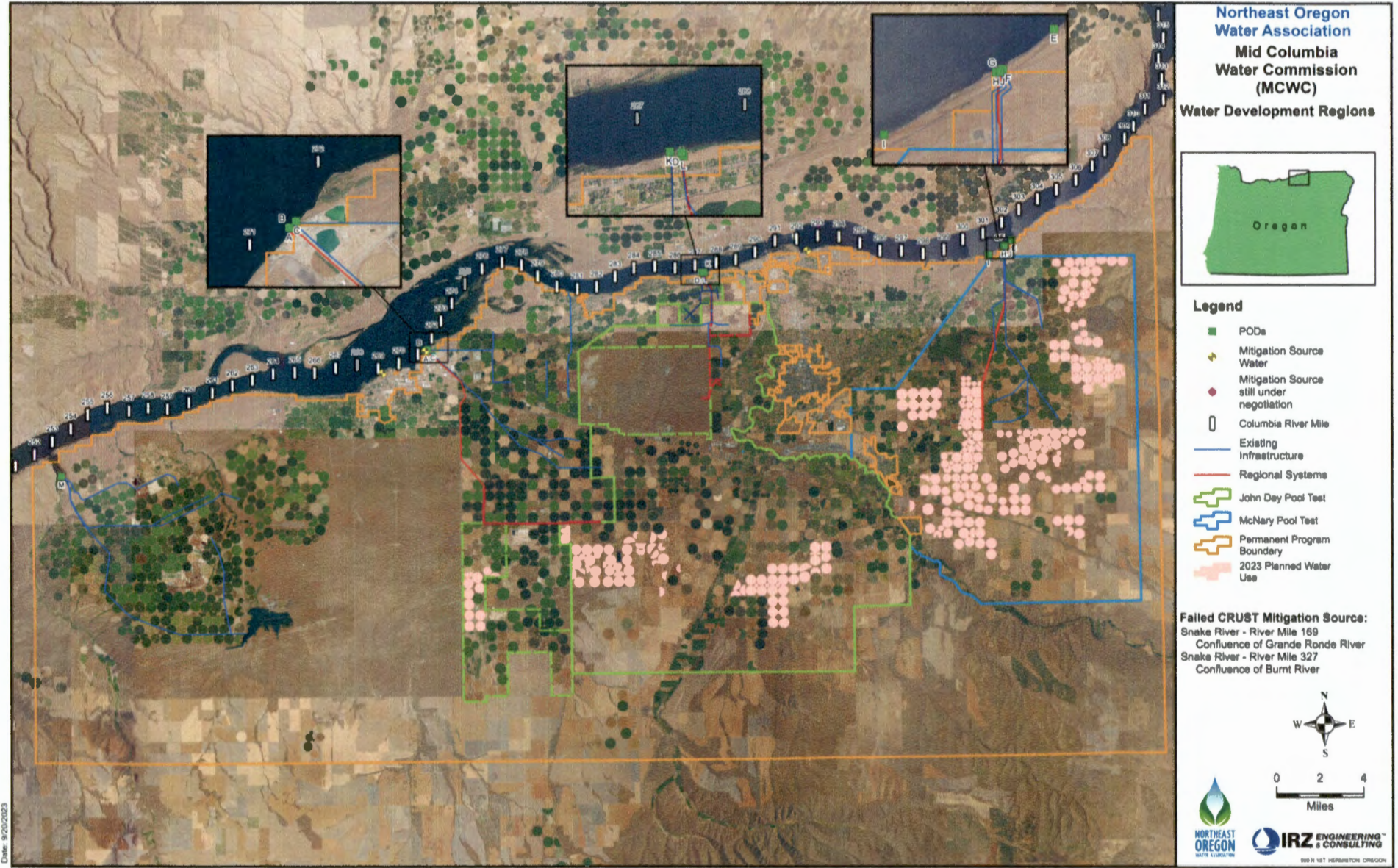
Sincerely,

A handwritten signature in black ink, appearing to read 'J.R. Cook', with a stylized, cursive script.

J.R. Cook

Director

Attachment: Mid-C Project Map



From: [Jacob Davis](#)
To: [WRD DL Director](#); [FREDLUND Cassidy A * WRD](#); [LANE Mindy J * WRD](#)
Subject: Jacob Davis water users, lower Blitzen
Date: Thursday, June 12, 2025 9:20:53 AM
Attachments: [OWRD_Division512_Policy Questions.docx](#)

[Some people who received this message don't often get email from jacobdavis1219@gmail.com.
Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

Sent from my iPad

June 11, 2025

Dear Director Gall and Water Resource Commissioners:

We are writing to you to encourage you to reflect on important policy questions being raised and considered through the Division 512 (Harney Basin Rulemaking) process. We are concerned that the Department and Commission have not meaningfully deliberated on the potential statewide implications of policy decisions that are likely to come before the Commission later this year. This is an invitation and a request to do so. Between now and adoption of the Harney Basin Rules, we respectfully request that the Department and Commission further reflect on the following high priority policy questions and deliberate them in a public setting.

1. **Delineation of Groundwater Reservoirs.** Within the Draft Division 512 rules and the Division 10 report that provides the technical basis for the rules, the Department delineates the entire Harney Basin as a single groundwater reservoir. This seems to be based on the sole criteria that the groundwater in the basin is a single interconnected system, but does not seem to account for differences in geology, recharge areas, discharge areas, groundwater quality, groundwater levels, other aquifer properties, or other considerations that might reflect groundwater characteristics or affect localized groundwater management. Using this approach, declines in any part of a hydrologically connected system (e.g., Deschutes River Basin, Walla Walla River Basin, Klamath River Basin, etc) could be used to justify regulating a well in any other part of the basin without consideration of any other criteria. Groundwater reservoir is ultimately a policy term that must be based in science, it is not a technical term. What criteria should be considered in the delineation/definition of groundwater reservoirs in addition to hydrologic connectivity?
2. **Supporting Data for Critical Groundwater Management Area Designation.** It is clear that there are places in the Harney Basin (Weaver Springs and areas in the Northeast part of the basin and around Crane) that meet the criteria to be designated a critical groundwater area (wells that have declined excessively, wells that are excessively declining, groundwater is or is about to be overdrawn). ORS 537.780 restricts the Department from “adopt[ing] any rule restricting ground water use in an area unless the rule is based on substantial evidence.” For two parts of the basin groundwater level declines have been modest, no wells have declined excessively or are declining excessively, and there is sufficient recharge to meet current groundwater use. Also, within these areas Department leadership and staff led residents to believe (up until about 6 months ago) that there wasn’t a problem and that there might actually be water for additional development. We are aware of wells where groundwater levels have actually come up higher than the reference levels set in their permit, but they may be subject to regulation under the proposed rules. The only reason these areas are being included in the proposed Critical Groundwater Management Area are because of the Department’s simplified definition of a groundwater reservoir (see above), which does not consider different aquifer characteristics and more site-specific data. This doesn’t seem reasonable, effective, or equitable. What supporting data or evidence is sufficient to include an area in a Critical Groundwater Management Area beyond hydraulic connectivity?
3. **Process for Lifting a Critical Groundwater Management Area Designation.** Members of the Division 512 RAC have continuously asked for more conversation and language within the rules regarding the conditions and process by which a critical groundwater management area could be removed. The Department has not engaged on this topic and has not included draft language for consideration. What criteria and process should be used to lift a critical groundwater management area designation?

4. **Definition of Public Health, Welfare and Safety.** Policy contained within ORS 537.525 “declares and finds that the right to reasonable control of all water within this state from all sources of water supply belongs to the public, and that in order to insure the preservation of the public welfare, safety and health.” Within a critical groundwater area the Department may include “any one or more provisions making such additional requirements as are necessary to protect the public welfare, health and safety.” This is not defined in statute or rule and certain groups are using this lack of a definition to influence the Department towards a very narrow interpretation of this term that may not actually be protective of public welfare, health, and safety. If the economic impacts are as significant as anticipated, this could hobble Harney County’s economy, which would have an effect on our schools, healthcare systems, as well as the wellbeing of residents who might lose everything or struggle to make ends meet. What factors should be considered and balanced in the Department’s determination of actions that preserve the public welfare, safety and health?
5. **Defining Reasonably Stable.** Within the Harney Basin the Department is proposing a groundwater management goal of durable stability by 2058, with a target groundwater level trend of 0 ft/year of decline. In ORS 537.525 the Department has a responsibility to determine and maintain “reasonably stable groundwater levels.” Department leadership ensured we would have a conversation about this at the beginning the rulemaking process and then made a unilateral decision that they have since defended. We would argue that the declines in some areas of the basin are reasonably stable, especially when compared to other places in Oregon and that some portions of the basin will remain reasonably stable with minimal reductions. Theoretically under the updated groundwater allocation rules the Department could continue to allocate groundwater if declines have not reached 25 feet and the rate of decline is less than 0.6 ft/yr. In the Harney Basin there are areas that have only declined by a few feet and are declining at a rate much less than 0.6 ft/yr (these are also the parts of the basin that are currently using less than the recharge). One model run shared by the Department showed that without reductions the Silver Creek area would be stable, but at that time they were defining stable as very minor declines (~0.1 ft/yr or less). The Department has since changed its approach and is relying on a new aggressive standard that is not reasonable and would hold Harney Basin to a standard that most other basins are not held to. How should reasonably stable be defined and how can the standard be applied more equitably so that that one basin is not held to a more restrictive standard?
6. **Transfers in Classified or Critical Groundwater Management Areas.** The Department has continued to allow transfers out of the areas with the most serious declines into other areas that were not previously experiencing declines making some irrigators junior to the transferred rights. At the same time the Department began to propose significant reductions in parts of the basin where they have been publicly communicating for years that they do not see a problem. This has confused and disadvantaged some basin stakeholders who were led to believe that their groundwater rights were secure. Furthermore, it is unclear how the Department will consider transfers in the basin in the future within and between subareas. This issue has been raised at nearly every Division 512 RAC meeting and yet we have not had a substantive discussion about it and there is no proposed language in the draft rules. How should transfers be handled within existing authorities in Critical Groundwater Management Areas and designated subareas to ensure fairness and limit the exacerbation of problem?

7. **Achieving Balance with Statewide Goals, Basin Goals, Existing Rights, and Site-Specific Data.**

There are many state policies that give statutory preference to existing groundwater rights. ORS 537.525 states that “Rights to appropriate ground water and priority thereof be acknowledged and protected, except when, under certain conditions, the public welfare, safety and health require otherwise.” This is of course in the context of other relevant policy objectives. ORS 536.220 limits the Commission’s ability “to modify, set aside or alter any existing right to use water or the priority of such use established under existing laws.” Many water rights holders made significant investments based on trust in the State’s decision to grant groundwater rights based on an original assessment of groundwater availability as well as based on the terms and conditions of their groundwater right. In some areas there the Department has been vocal within the basin that they did not consider there to be problems based on the evidence. Within the last year the Department has completely changed its approach and is now proposing drastic reductions in these areas despite the lack of concerning data. The Department made promises and entered into contracts with individuals and should honor those contracts to the maximum extent possible while also considering statewide and basin goals. While public values are changing and there is a desire to take a more holistic approach to groundwater management, there is also a need to make sure this is rooted in previous commitments. How will the Commission prioritize the need to honor existing commitments while achieving balance with broader public interests?